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

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

आयकर अपील सं./ITA No. 396/JP/2022
निर्धारण वर्ष/Assessment Year : 2012-13

Smt. Geeta Devi Sharma 36, Pushpanjali Colony, Mahesh Nagar Jaipur – 302 015	बनाम Vs.	The ITO Ward 6(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANWPS 8288 B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya, Advocate
Shri Devan Gargieya, Advocate
राजस्व की ओर से/ Revenue by: Smt. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख/ Date of Hearing : 28/11/2023
उदघोषणा की तारीख/Date of Pronouncement: 18 /01/2024

आदेश/ ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 09-09-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

> 1.1. The very action taken u/s 147 r.w.s 148 is bad in law without jurisdiction and being void ab initio, the same kindly be quashed. Consequently, the impugned assessment framed u/s 144/148 dated 29.02.2015 also kindly be quashed.

1.2. The impugned order u/s 147/143(3) dated 20.12.2016 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. The Id.CIT(A) erred in law as well as on the facts of the case in refusing to admit the additional evidences filed under Rule 46A without any justified basis. Even though he discussed and considered the same while adjudicating the grounds on merit. The impugned order of the Id. CITIA) deserves to be suitably modified to this extent.

3. Rs. 35,36,100/-: The CIT(A) erred in law as well as on the facts of the case in confirming addition of a huge amount of Rs. 35,36,100/- in relation to the purchase of a house property situated at Plot No.66, Jagdish Colony, Mahesh Nagar, Jaipur alleging that the same to be undisclosed income. The addition so made being contrary to the provisions of law and facts of the case and contrary hence, the same kindly be deleted in full.

4. Rs. 5,00,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition made on account of alleged unexplained cash deposits in the bank of Rs. 5,00,000/- on 15.02.2012 alleging that the assessee has failed to supply supporting evidences. The addition so made being contrary to the provisions of law and facts of the case and contrary hence, the same kindly be deleted in full.

5. The Id.AO further erred in law as well as on facts of the case in charging interest u/s 234A & 234B of the Act. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.

2.1 The Bench noted that the Ground No. 1 & 2 are interconnected and interrelated. Vide these grounds , the Ld. AR of the assessee challenged the action of AO for invoking the provisions of reopening by stating that the AO was wrong in issuing notice u/s 148 dated 02-03-2016 against the assesse as he had no case for reopening of the assessment for which the ld. AR of the assessee relied upon the following written submission.

> 1. Reason to believe and not reason to suspect:
> 1.1. It is submitted that even under the amended law the bedrock condition or words, which continue right since inception till date, are *"reason to believe" and not "reason to suspect".* The word *"believe"* has to be understood in contradistinction of suspicion or opinion. Belief indicates something concrete or reliable. Kindly refer Gangasharan & Sons Pvt. Ltd. v/s ITO & Anr. (1981) 130 ITR 1 (SC) and ITO v/s Lakhmani Mewal Das (1976) 103 ITR 437 (SC) has held that:
>
> *"12. The powers of the ITO to reopen assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening to the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. ---------- The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. ------"*
>
> 1.2 Further, the belief must be of an honest and reasonable person based upon reasonable grounds. The officer may act on direct or circumstantial evidence, but his/her belief must not be based on mere suspicion, gossip or rumor. The ld. AO would be acting without jurisdiction if the reason for his/her belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the provision of law. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court Sheo Nath Singh v/s AAC (1971) 82 ITR 147 (SC). However, in the present case the AO has not followed the settled principles.

2. In addition, it was further submitted that the AO has referred to some *information*, which is stated to be brought on record. However, neither that information was ever supplied to the assessee nor any details thereof has been shown in the assessment order and thus, without confronting the appellant, the AO proceeded to form reason to believe and issued the impugned notice u/s 148. The foundational document, based on which the AO formed reason to believe must have been supplied to the assessee as per the principal of natural justice in absence of which otherwise, it was a case of mere reason to suspicion and not reason to believe. The photocopy of the so called prior agreement dt. 12.02.2012 was given by Shri Dave to the appellant but the AO never supplied the same to the appellant. On this ground alone therefore, the entire proceedings has to be quashed. Reliance is to be placed on Micro Marbles (P) LTD. vs. ITO (2023) 331 CTR (Raj) 329 (DPB1-8) wherein it was held as under:

"Supply of the material which forms the basis for forming such opinion becomes sine qua non to enable the notice to effectively participate in the proceedings by filing objections. The supply of documents referred to in the reasons to believe becomes inevitable and in the event such documents are not supplied, it would be flagrant violation of the principles of natural justice. The reasons to believe, as supplied to the assessee, on the face of it are incomplete and do not afford the assessee due and proper opportunity to file objections against such reassessment. The submission of Revenue that reasons to believe cannot be equated with the final conclusion and as long as the AO has sufficient material to demonstrate that he had bona fidely formed the opinion that the income chargeable to tax has escaped assessment, the requirement of law stands satisfied is of no avail as there are no two opinions on the above aspect. Sufficiency of material is one thing and supply of the same is another, which is mandatory in nature. Therefore, the non-supply of the material referred to in the reasons to believe would be enough to render the proceedings bad, even though the material for forming the opinion may be sufficient. —Sabh Infrastructure Ltd. vs. Asstt. CIT (2017) 398 ITR 198 (Del) and Tata Capital Financial Services Ltd. vs. Asstt. CIT & Ors. (2022) 325 CTR (Bom) 575 : (2022) 212 DTR (Bom) 55 relied on.

Shorn of all other technical aspects which may have been raised the very fact that the material referred to in the "reasons to believe" was not supplied to the assessee, the entire proceedings for the reopening of the assessment and leading to the consequential assessment stand vitiated in law."

3.In the case of Shri Krishan Gopal vs ITO ITA No. 3249/del/2015 dt. 16.05.2017 the Hon'ble ITAT quashed 147 proceedings because it was merely based on photocopy of bayana receipt which decision equally apply on the facts of this case. Therefore, proceedings u/s 147 and the impugned assessment please be quashed."

2.2 It is also worth mentioning to place on record the findings of the ld. CIT(A) on the issue in question is as under:-

> *4.1 Vide Ground of appeal no.1, the appellant has challenged the validity of the reopening of the assessment in her case. In the submission dated 05/02/2018 filed by the AR, the appellant has claimed that the AO did not have grounds for forming the belief that her income had escaped assessment. In support of her claim, she has relied on certain case laws centering on the notion that the AO should have 'reason to believe and not reason to suspect'. In the present case, the AO has recorded that the appellant, had in her return of income, disclosed only a nominal amount of Rs. 1,88,570/- whereas in the agreement to sell dated 12/02/2012, she had agreed to pay Rs. 34,71,000/- for purchase of a property, out of which Rs. 6,00,000/- had been paid in cash as an advance and the balance Rs 28,71,000/- was assured to be paid by 15/03/2012. Given these facts, it is evident that the AO had sufficient grounds to form the belief that the appellant's income had escaped assessment and therefore he issued the notice u/s 148. In the case of Nova Promoters and Finlease Pvt Ltd. 342 ITR 169 (Delhi), the Hon'ble Delhi High Court had laid down the principle that the prima facia belief of the AO that the income had escaped assessment is enough at the stage of reopening and merits of the matter are not relevant. In the light of the above facts, the AO's action in reopening the appellant's assessment for the A.Y. 2012-13 is found to be in accordance with the provisions of the law. This ground of appeal is therefore dismissed."*

2.3 During the course of hearing, the ld. DR relied upon the orders of Revenue Authorities and it was also submitted that the grounds raised by the ld. AR deserves to be dismissed.

2.4 After having gone through the detailed arguments, orders passed by the lower authorities, judgement relied upon by the respective parties and material placed on record, we are of the considered view that the AO was having information and documents for forming reasons to believe that during the year under consideration, the assessee had purchased a residential house property from Smt. Sushila Devi which got registered on 22-03-2012 with Sub-Registrar-VIII,

Jaipur and according to that registered sale deed the said Smt.Sushila Devi sold the property for total consideration of Rs.12.00 lacs. According to the AO, this information and documents were enough ‘’reasons to believe’’ that assessee’s income had escapement and therefore he issued notice u/s 148 of the Act. Although, the ld. AR of the assessee in this regard has relied upon the decision in the case of Gangasharan & Sons Pvt. Ltd. vs ITO & Anr. (1981) 130 ITR 1(SC) , ITO vs Lakhmani Mewal Das (1976) 103 ITR 437 (SC), Sheo Nath Singh vs AAC (1971) 82 ITR 147 (SC), Micro Marbles (P) Ltd vs ITO (2023) 331 CTR (Raj) 239, Shri Krishan Gopal vs ITO (ITA No. 3249/Del/2025 dated 16-05-2017) yet after going through the facts of the same, we found that the facts and pari-materia contained in the cases are different from the facts contained in the present case. Therefore, the above decisions are of no help to the case of the assessee. The ld. AR of the assessee strongly stressed the point that the AO has not supplied any material which forms the basis for forming the reasons to believe by the AO. In this regard, we found that the AO has invoked the provisions of Section 148 after coming to know about the agreement to sell dated 12-02-2012. Even the existenceof the said agreement to sell dated 12-02-2012 is not disputed and the copy of the same has also been annexed by the ld. AR at page 47 to 51 of the paper book which means that the same was already in the possession of the assessee. Thus the decision referred by the ld. AR in the case of Micro Marbles (P) Ltd vs

ITO (supra) is not applicable in the case of the assessee. Even otherwise the case of Nova Promoters and Finlease (P) Ltd. 349 ITR 169 (Del.), the Hon'ble Delhi High Court had laid down the principle that ''prima facie belief'' of the AO that income had escaped assessment is enough at the stage of reopening and merits of the matter are not relevant at this stage. In the case of ACIT vs Rajesh Jhaveri Stock Brokers (P) Ltd. 291 ITR 500 (SC), it was held *by the Hon'ble Court that at the stage of issue o*f notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Therefore, whether the materials would conclusively prove that the escapement is not concern at that stage. This is so because the formation of belief by the AO with the realm of subjective satisfaction. Thus keeping in view the above principles, we hold that AO's action in reopening the assessee's assessment for A.Y.2012-13 is found to be in accordance with the provisions of the law. Therefore, these grounds raised by the assessee stands dismissed.

3.1 The Ground No. 2 of the assessee is denial of admission of additional evidences under Rule 46A by the ld. CIT(A). Brief facts of the case are that during the course of ongoing proceedings, the assessee submitted a detailed prayer for admission of additional evidences under the rule 46A r/w 250 and 251 of the act vide letter dt. 05.02.2018, which is reproduced at Pg. 6 to 8 of the Appellate Order. The ld. CIT(A) however, rejected the prayer at pg. 11 very summarily as under:

"From a plain reading of the above provisions, it is apparent that the case of the appellant does not satisfy any of the four conditions specified therein. The AO had afforded the appellant adequate opportunities to substantiate with documentary evidence the source of funds for purchase of the property and for payment of the stamp duty and registration charges. Therefore, the admission of the additional evidence under Rule 46A is not tenable."

3.2 It is noted that the ld. AR of the assessee has submitted the following written submission countering the action of the ld. CIT(A)

''After going through the prayer for admission and also the counter comment submitted on the remand report reproduced at Pg. 8 to 10 of Appellant Order, it is evident that the ld. CIT(A) has not at all applied his mind on the various facts and legal position. He vaguely alleged that the AO had afforded the appellant adequate, without giving the details but at the same time ignoring that the need to file additional evidences being the confirmatory Affidavit arose because the AO made the addition straightaway and without confronting the doubts in his mind or the grounds of his dissatisfaction, if there was any and ignoring that the facts of the case were clearly covered by rule 46A(1)(d) of the Act. Though we have already narrated the legal positon in Para 4 pg. 7 of his order. But in addition, we also rely upon Smt. Prabhavati S. Shah v. Commissioner of Income-tax [1998] 100 TAXMAN 404 (BOM.) (DPB 9-13)

"Section 250(5) of the Income-tax Act, 1961, read with rule 46A of the Income-tax Rules, 1962 - Commissioner (Appeals) - Powers of - Whether restrictions placed on an appellant by rule 46A to produce additional evidence do not affect powers of AAC under section 250 - Held, yes - As summons issued to creditors of assessee from whom assessee allegedly took loan were returned unserved, loan amount was treated as addition to income - Before AAC assessee sought to produce documentary evidence which was refused to be entertained - Whether AAC should have admitted evidence in exercise of power under section 250(5) - Held, yes - Whether even otherwise case fell within rule 46A(1)(c) - Held, yes"

Commissioner of Income-tax v. K. Ravindranathan Nair [2003] 131Taxman 743 (Kerala)

Section 250 of the Income-tax Act, 1961 - Commissioner (Appeals) - Procedure in Appeal - Assessee in his accounts had shown that he had received loans during relevant year - Assessing Officer, however, did not accept same for want of confirmation letters from creditors, and, accordingly, made additions under section 68 - On appeal before Commissioner (Appeals), assessee produced confirmation letters - Commissioner (Appeals) rejected said additional evidence by holding that assessee's case did not fall under any of exceptional circumstances mentioned in rule 46A - Appeal filed against said order was allowed by Tribunal - Whether in view of sub-rule (4) of rule 46A and provisions of section 250, Commissioner (Appeals) was not justified in rejecting confirmation letters produced by assessee straightaway and he should have directed Assessing Officer to consider said confirmation letters and find out identity, creditworthiness, etc., of persons who had made fixed deposits - Held, yes Section 80HHC of the Income-tax Act, 1961 - Deductions - Exporters - Whether processing charges received by assessee do not form part of export turnovers as only sale proceeds of goods or merchandise alone form part of said turnover - Held, yes

Interestingly, the ld. CIT(A) on one hand rejected the admission but at the same time even went on commenting upon merits of these very evidences. Which, evidently implies that the ld. CIT(A) had virtually admitted these evidences as he considered the same while adjudication. Kindly refer M/s Mahendra Oil Mills vs. The Income Tax Officer, ITA. No.751/JP/2017

Hence, his denial is only for the sake of denial but having considered the merits, such denial deserve to be ignored and the matter may kindly be decided on its merit considering all these additional evidences which were available before the CIT(A) and also before the AO (through remand).

3.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.4 We have heard both the parties and perused the materials available on record. The Bench noted that the Ground of Appeal No. 2 taken by the assessee is in against the denial of the admission of additional evidences by the ld. CIT(A) under Rule 46A holding that the assessee did not satisfy any of the four conditions specified therein. These evidences are in the shape of affidavits of the cash creditors who provided financial help to the assessee and of witnesses to the sale transaction. We find that the AO in response to the confirmations filed by the assessee before him in some cases straight forwardly made the impugned addition without disclosing his mind, which made the assessee to file these affidavits. Even otherwise the evidences go to the root and are necessary for a decision on the controversy in hand. Pertinently, the ld. CIT(A) himself has considered the same and adjudicated the issue on merits based thereon. The denial to admit the evidences is thus, not justified. The assessee thus, succeeds on this ground No. 2.

4.1 The Ground No. 3 of the assessee is regarding addition of Rs.35,36,100/- on account of undisclosed income earned from undisclosed sources. Brief facts of the case are that the AO alleged that the assessee had purchased residential plot pursuant to sale agreement dated 12.02.2012, in which the assessee agreed to pay Rs. 34, 71,000/- to purchase a house property, against which Rs. 6 lacs were paid in cash as advance at the time of signing of agreement and rest of Rs. 28,71,000/- was assured to be paid by 15.03.2012. When asked the assessee submitted vide letter dated `NIL` that the assessee paid Rs.12 lakhs through various cheques to purchase the property through conveyance deed registered on 22.03.2012 before the Sub Registrar-Jaipur VIII, Jaipur. However, dissatisfied with the reply of the assessee, the AO concluded that the assessee had actually purchased the property for Rs.34,71,000/- as per Agreement to Sale dated 12.02.2012 (PB 47-51) instead of Rs.12.00 Lacs declared and that she had also incurred expenses of Rs. 4500/- for stamp duty and Rs. 20,100/- for registration charges. Finally, he made addition of Rs.35,36,100/- on account of unexplained income. The breakup of the same are as under:-

1. Rs.22,71,000/-(Rs.34,71,000/paid- less Rs.12,00,000/- declared)
2. Rs.12,00,000/-
3. Rs. 65,100/- (Stamp and Registration)

4.2 In the first appeal, the CIT(A) also confirmed the additions by observing at para 11 & 12 of his order in the following words:-

"On merits too, the additional evidence in the form of affidavits does not significantly help the appellant's case. Apart from submitting confirmations from three parties that they had made cheque payments on the appellant's behalf to the seller, no documentary evidence of their creditworthiness in terms of their return of income, PAN or bank statement were filed. Only in one case, that of Shri Ramprasad Sharma, has a copy of the return of income been filed. A perusal of the same indicates that Shri Ramprasad Sharma had returned income of Rs.1.74.370/- for the A.Y. 2011-12 from salary, business and other sources. However, he made a payment of Rs 4,00,000/- on behalf of the appellant. He also did not submit a copy of his bank statement to substantiate his ability to make such a payment on behalf of the appellant, who is stated to be known to him. Further, in the affidavit, Shri Ramprasad Sharma has claimed that he is an agriculturist, but no agricultural income has been shown in his return of income for rate purposes. In the affidavit it is stated he was repaid a total of Rs.6,50,000/- by the appellant on the instructions of Shri Pradeep Jain though why he should be repaid extra has not been explained. In the case of the affidavit filed by Shri Satya Narain Sharma, it is seen that he is an agriculturist and has stated that his annual income was Rs.1,08,000/-. He has issued a cheque for Rs.1,00,000/- on behalf of the appellant to the seller. No bank statement or PAN or return of income has been filed to substantiate his ability to make the above payment. Two other affidavits have been filed by the appellant's son, Shri Umesh Sharma and her daughter. Ms. Seema Sharma respectively. Shri Umesh Sharma had made a cheque payment of Rs.1,50,000/- on behalf of his mother. In the affidavit he has given his PAN and stated that the payment was made out of his monthly savings from his computer work. However, his annual income is stated to be only Rs 1,35,000/- which is less than the payment made on behalf of the appellant for the purchase of the property. Likewise, Ms. Seema Sharma gave a cheque for Rs 1,00,000 though her annual income from a private job was only Rs. 84,000/-. She has also not stated if she has a PAN and is filing her return. Neither Shri Umesh Sharma nor Ms. Seema Sharma have submitted copies of their bank statements to corroborate their ability to make the above payments. From the above analysis of the affidavits, it is apparent that the genuineness of the transactions and creditworthiness of the lenders have not been established. Thus, the appellant cannot claim to have discharged the onus placed on her and therefore the reliance on the case laws cited by the AR is misplaced. One affidavit filed by Shri Satya Narain Maheshwari, who is the son-in-law of the seller merely affirms that he was a witness to the registered sale deed and that the transaction amount was only Rs. 12 lakhs. Given his relationship with the seller the contents of the affidavit cannot be accepted at mere face value. To sum up, the affidavits are self-serving documents and cannot be the basis for accepting the appellant's claims The appellant too did not file her bank statement to be able to substantiate her ability to make the balance cash payments. In the case of Krishnaveni Ammal vs CIT 158 ITR 526 (Madras), the Hon'ble Madras High Court held that if best evidence is not placed before a Court, an adverse inference can be drawn against a person who ought to have produced it. In case of non-furnishing of documentary evidence of corroborative value, which is within reach of the assessee, judicial body cannot act on such interested testimony of the assessee alone. Also in the case of R. Mallika vs CIT [2017] 79 taxmann.com 117 (SC), the SLP filed against the High Court's ruling that the assessee had not discharged the burden as regards source from which investment was made, investment in property was an unexplained investment. and the same was rightly added to the assessee's income, was dismissed by the Hon'ble Supreme Court. In view of the above discussion, this ground of appeal is dismissed."

4.3 During the course of hearing, the ld. AR of the assessee filed the following written submission countering the decision of the ld. CIT (A) as under:-

A: Submission: on the Addition of Rs.22,71,000/-

1.1 At the outset it is submitted that the only dispute between the parties is whether the assessee has paid Rs.34,71,000/- as per agreement to sell dated 12.02.2012 as

alleged by the AO as against declared sale consideration of Rs.12,00,000/- and whether the AO was justified in making the addition of difference of Rs.22,71,000/-

It is submitted that the AO has given unwanted emphasis and importance to the agreement to sale dated 12.02.2012 whereby the assessee allegedly agreed to pay Rs.34,71,000/- to purchase the residential house and out of which she paid Rs.6 Lakh in cash as advance at the time of signing of agreement and rest of Rs.28,71,000/- was assured to be paid by 15.03.2012, however in the conveyance deed executed on 22.03.2012 the said residential house was purchased at Rs.12,00,000/- which clearly indicate that after receipt of balance amount of Rs.28,71,000/-, the seller has executed the sale deed on 22.03.2012 on lesser amount, in as much as the ld. AO has ignored the following factual and legal aspects of the entire matter:

1.2.1 Firstly, it is only a photocopy of the alleged agreement dated 12.02.2012, based on which the assessee is presumed to have purchased, for a higher sale consideration than declared. But pursuant to this agreement nothing happened or in other words, the agreement was not acted upon nor it is so proved by AO. The appellant, of course purchased a property through a separate registered sale deed executed on dated 22.3.2012 (PB 1-14) but not based on the said earlier agreement dated 12.02.2012 nor there is any reference thereof in the registered sale deed of this earlier agreement. The credibility of the document is otherwise highly doubtful. Further, Photocopy has no evidentiary value as held in the cases of Shri Krishna Gopal vs. ITO ITA No. 3249/Del/2015 dt. 16.05.2017(DPB 43-50), Moosa S. Madha and Azam S. Madha vs. CIT [1973] 89 ITR 65 (SC) (DPB 51-57) and Dy. CIT vs. B. Vijaya Kumar ITA No. 235/Hyd./10 dt. 18.09.2012 pg.12 pr. 11 (DPB 58-74)

1.2.2 The allegation of the AO at Pg-7 Pr-3.4 that the seller had *confessed* and confirmed the fact that actual sale consideration was 34,71,000/-, is completely contrary to her statement. Smt. Sushila Maheshwari (Seller) in reply to Q-12 clearly admitted that she had sold the subjected property only for actual consideration of Rs.12,00,000/- (AO Pg-7) and she did never get any amount more than the agreed sale consideration. When again asked vide Q-13 as to why not addition should be made to her income assuming the sale consideration of Rs. 34,71,000/-, she again firmly replied that she sold the house no. 66 for Rs.12,00,000/- only. Such statement, taken on oath, were binding upon the AO.

1.2.3Further, the DLC rates of the property at the point of time when sold also suggested the sale price (full value of sale consideration) only further Rs.12,00,000/- and not Rs. 34.71 Lakh i.e. almost three time more as alleged. Facts are otherwise against the human/ preponderance of probability which lay in favour of the assessee because the buyer will be making substantially higher consideration then the prevalent market rate and why the seller should declare the LTCG thereon when not actually received. Further, the AO has not brought any other comparable case, showing that the actual sales consideration could have been to such a high extent that is 3 times of the prevailing DLC rate, based on the similar sale instances in the nearby area or even at some remote place to support his allegation.

1.2.4 The ld. AO completely ignored that the actual sale consideration was only Rs.12 lakhs however, it was only to pressurize the assessee seller this higher amount has been mentioned but not otherwise.

1.3 It is not denied that the declared sale consideration of Rs.12 Lakh was based on the registered sale agreement duly signed by the buyer appellant and the seller both, not only in the presence of the witnesses but even before the Sub- Registrar VIII, Jaipur himself, before whom the subjected transaction had taken place. The price quoted by the seller, agreed upon by the buyer at Rs. 12 lakh and the fact of handing over of the amount which was paid through five accounts payee cheques / cash as mentioned in the registered sale deed at Pg-6 (PB-10) starting from date 05.03.2012 and ending on 21.03.2012 up to which date the assessee had already paid Rs.11,00,000/- and balance cash of Rs.1 Lakh was paid through cash on dated 22.03.2012 itself totaling to Rs.12 Lakh were affirmed by the parties in the presence of the Sub-Registrar and the witnesses. Needless to say that there is always a presumption of existence of certain facts. It is useful to refer Sec.114 (e) of the Indian Evidence Act,1872 providing that the official acts done by a public servant can be presumed to have been regularly performed. Kindly refer Anil Bulk Carriers (P) Ltd. vs. CIT (2005) 194 CTR (All) 226: (2005) 276 ITR 625 (All).

"Held, that there is a presumption of existence of certain facts under section 114 of the Indian Evidence Act, 1872. The Court may presume under clause (e) of section 114 of the Evidence Act that judicial and official acts have been regularly performed."

Therefore, in absence of anything strongly proving contrary, the presumption was that the subjected transaction was took place at Rs.12,00,000/- only.

2.1The appellant was never confronted when enquiries made from the seller nor copy of the statement were ever supplied along with the show cause notice issued to the appellant on dated 17.11.16, nor any opportunity of cross examination of the seller Smt. Shushila was ever afforded to the appellant. Unfortunately, even the material gathered at the back of the appellant and was used adverse to the appellant, which is completely contrary to the principle of natural justice and it is not a mere irregularity but such a lapse is serious going to the root and hence was a nullity. Kindly refer the Andaman Timber Industries vs CCE (2015) 127 DTR 241(SC) (DPB 75-77). They have been followed by the Jaipur ITAT in various cases.

It is settled and there are several judicial pronouncements on this point yet it will be sufficient to refer to Sec.142(3) of the Act itself which provides that the material collected by the ld. AO must be confronted to the assessee before making any addition. Unless the appellant was given an opportunity to cross examine, the law clearly prohibits the use of such a testimony given by the witness. Kindly refer Vimal Chandra Golecha v/s ITO & Anr. (1982) 134 ITR 119 (Raj.) & Kishinchand Chellaram vs. CIT (1980) 125 ITR 713 (SC), ITO & Anr. v/s Gargidin Jwala Prasad Maholi & Ors. (1980) 124 ITR 203 (All). In these it is held that it is not a matter of merely confronting with the material but it was an obligation on the AO was obliged to have given the assessee opportunity to

cross examine the witness, the statement of whom are being used adversely and against the assessee.

In this factual and legal ground, allegation of the action of the ld. AO was not mere irregularity but was a nullity.

2.1 In support of its contention that the actual sale consideration paid / received by the buyer / seller, was Rs.12 Lakh only and the statement given by the seller was misread by the ld. AO, without giving further opportunity to the assessee as stated above, hence an affidavit of the seller affirming the fact of selling the property at Rs.12 lakh only and also an affidavit of Shri Satya Narain Maheshwari (Who acted as a witness to the registered sale deed as also to the entire transaction taking place between the parties) affirming the fact to this effect, were submitted. (PB-37)

2.2. The seller thus, having repeatedly stated that the actual sale consideration was 12 lakh only in her statement as also later on through duly sworn Affidavit. The onus was shifted to the AO who completely failed to disprove the same by bringing any contrary evidence on record except making mere suspicion.

3.1. Further the role of the broker Shri Durgesh Dave is also highly doubtful who appears to have acted as a witness to the said agreement dated 12.02.2012 and has also acted as a witness to the registered sale deed dated 22.03.2012. Normally it is the real estate agent / broker who brings the parties together, also take care of the drafting matters. Also it is not common that while drafting the agreement, the figures and dates etc. are left blank and are filled in later. Sometime even the blank papers are got signed at the bottom which are got typed later on such possibility cannot be ruled out which is in accordance with the prevailing trade practice. Since the brokerage is always linked with the transacted amount, it is not uncommon that in such partly drafted / blank agreement, the figures /matters are filled in by the broker himself and with the help of the same, they are able to create a pressure on the parties. Normally parties, once having engaged a professional like a real estate broker, trust him and sign the papers and even also hand over the cheque as per his directions/advice.

3.2.1. Shri Durgesh Dave thus, intentionally mentioned the higher figure to pressurize (nothing wrong if even said to be a case of blackmailing) both the parties. He also obtained two blank cheques on dated 04.03.2012 from the assessee (Ch. No. 047626 for Rs.1,00,000/- and Ch. No. 054357 for Rs. 50,000/-) and misappropriated the same without any authority of the appellant. In fact, these cheques were given for onward delivery to the seller when required by the buyer appellant but the broker neither handed over the same to the seller nor even returned back. Therefore, the assessee lodged FIR (No. 168/12 Mahesh Nagar Police Station) against him u/s 406/420/471 of IPC on dated 23.06.2012 (PB- 18). The fact of mentioning of higher sale consideration or not may not be in there in the FIR, yet however the very fact of filing the FIR against Shri Durgesh shows that something seriously wrong was done by the broker with the assessee, which was to the extent that he compelled the appellant to approach the police authority by

filling an FIR. The Upper Mahanagar Magistrate, S.No. -18, Jaipur rejected his bail application (II PB 91-92). Shri. Dave was never summoned and examined by the AO so as to bring correct facts on the record, probably that might have gone against the AO.

3.2.2. Very pertinently Shri Dave has now affirmed that the actual sale consideration was Rs. 12 Lakhs only vide his Affidavit (II PB 93-95) u/r 8 of ITAT Rules, 1963.

3.3 Interestingly, the AO is completely silent as to what happened in the case of Sushila Devi. If she really sold the property for such a huge amount, the department must have collected tax from her as well. In absence of such investigation, no valid conclusion could be reached in this case/buyer.

3.4 Alternatively and without prejudice to the basic contention as stated above even assuming there was an agreement dated 12.02.2012 which was acted upon by a party and was rightly considered by the AO, on merits it is submitted that the credibility / veracity of this very agreement dated 12.02.2012 is highly doubtful and cannot be made binding upon the parties unless the same is strongly corroborated by any other independent evidence of equal weight / strength, which the AO has completely failed to do in this case.

3.5 Neither the witnesses who signed the registered agreement nor those said who signed the agreement to sale were examined by the AO, who could have thrown light on the actual facts related to the subjected transactions and in absence of such enquiry, what the AO alleged remains a mere allegation only but not conclusive.

3.6 Even the Bank sanctioned loan of Rs. 15Lakh only considering the sale at Rs.12 Lakh (PB 45) as per letter dt. 28.05.2022.

4. Legal position:

4.1 Onus on Revenue not discharged: The settled legal position is that the onus is always upon the Revenue to prove the understatement or the fact of passing of the consideration from the buyer to the seller more than recited in the registered sale deed as held long back in the case of K.P. Varghese v/s ITO & Anr. (1981) 131 ITR 597 (SC) held that

"the burden lies on the revenue to show that there is an understatement of the consideration". It was further held that "to throw the burden of showing that there is no understatement of the consideration on the assessee would be to cast an almost impossible burden upon him to establish a negative, namely, that he did not receive any consideration beyond that declared by him".

Similar view has been taken in the case of CIT v/s Shivakami Co. (P) Ltd. (1986) 159 ITR 71 (SC) holding that unless there is evidence that more consideration than what

was stated in the document of transfer was received the declared sale consideration was to be accepted.

This has been followed in CIT v/s Raja Narendra (1994) 210 ITR 250 (Raj.) wherein, it is held that:

> *"The onus is on the Revenue to prove that there was understatement by the assessee i.e. the consideration received by the assessee in respect of the transactions was not truly declared or disclosed by him but was shown at a lower figure. What is intended to be taxed are the actual gains of an assessee, not what an assessee might have gained or could have gained or received."*

In the present case also the AO merely acted on suspicion based on unregistered agreement to sale completely disown by the parties and AO having failed to prove understatement. The ratio so laid down, holds good till date.

5.1 There apart, the amended law u/s 50C creates a legal fiction for the purposes of determining the full value of sale consideration. The sale consideration as determined/adopted by the Stamp Duty Authorities, has to be adopted for the purposes of computation of capital gain. Thus, the intention of the legislature is quite clear that after this amendment, it is always the Stamp Valuation to be considered (except the cases of S.50C(2)) and there is no warrant to replace such figure in view of such binding legal fiction. The subjected transaction between the seller and the assessee buyer firm, was in accordance with the prevailing DLC rates and the Stamp Duty Authority has duly accepted the declared consideration. Thus, Sec. 50C directly and strongly supports the case of the assessee buyer.

5.2 Sale consideration supported by Registered Deed: The facts are not denied that the declared sale consideration of Rs.12 Lakh was duly supported by Registered Sale Deed and was transacted in the presence of the witnesses as also before the Sub Registrar himself as aforesaid and is having more evidentiary value as against any other unregistered document and that too based on a photocopy thereof hence no adverse inference could have been drawn.

6.What is apparent is Real – Onus not discharged: It is a settled law that what is apparent is real unless controverted. The onus lay upon the person, who alleges that what is apparent is not real. Kindly refer Daulat Lal Rawat Mal (1973) 87 ITR 349 (SC), followed recently in CIT v/s Bedi & Co. Pvt. Ltd. (1998) 230 ITR 580 (SC). In the present case, what was apparent was that the parties entered into a transaction of sale at a particular sales consideration of a particular property, duly registered under the Registration Act, 1908 (PB 1-14) before the Sub Registrar, Jaipur-VIII under the provisions of Transfer of Property Act, 1886. Such an apparent state of affair, if alleged to be unreal, it was for the AO making such allegation to prove contrary, which it has totally failed to do.

B: Addition of Rs.12,00,000/-:

Facts: The facts as noted by the ld. AO in the impugned order are as under:

"3.5 The assessee has further failed to explain the sources of even Rs. 12.00 lacs (out of Rs. 3471000/-). The assessee has not explained the sources of Rs. 2.50 lacs paid in cash. Further, the assessee has furnished the confirmation of only 3 persons (for amount Rs. 4.50 lacs) which are also without PAN numbers, return of income and bank accounts of lenders. Further, it is also noticeable that during the whole course of assessment proceedings, the assessee has not filed the copy of her bank account statement for the year under consideration. Therefore, it is also not clear how the loans were received and used in payments of purchase consideration. Therefore, the confirmations filed by the assessee for the amount of Rs. 4.50 lacs are not acceptable. The assessee has not even filed confirmation of rest of the amount (Rs. 5.00 lacs)."

The dispute is whether the AO was justified in making the addition of Rs.12,00,000/- alleging that the assessee has failed to explain the sources of Rs. 12.00 lakhs. The AO has dealt with this issue at Pg-7 Pr-3.5, the subjected amount of Rs.12,00,000/- was received from 5 Persons as per details given to the AO (PB-46).

Submission:

1.1 It was submitted before the ld. AO that the assessee availed financial assistance from his nears and dears to make payment to the sellers and even confirmation in some of the cases were filed but were rejected without there being any justified ground. As Admitted by the AO himself, confirmations from three persons (Shri Pradeep Jain of Rs. 2 Lakhs, Smt. Seema Sharma of Rs. 1 Lakh and Shri Umesh Kumar Sharma of Rs.1.5 Lakhs) were submitted but were not accepted for want of PAN No., ROI etc. though the other facts of making payment directly to the seller was available on record

1.2 It is submitted that despite filing confirmation the AO never disclosed to the assessee that he was not satisfied with these confirmations but straight away made the addition which, came to the notice of the assessee only after receipt of the order. Therefore, we are filing herewith affidavits from Shri Ram Prasad Sharma (Rs.4,00,000/-), Shri Satya Narain Sharma (Rs.1,00,000/-), Smt. Seema Sharma (Rs.1,00,000/-) and Shri Umesh Kumar Sharma (Rs.1,50,000/-) totaling to Rs.7,50,000/- wherein, the fact of giving amount to the assessee is mentioned.

1.3 It is pertinent to note that all the persons had given account payee cheques and that too directly in the name of the seller Smt. Sushila Maheshwari and therefore, these cheques were deposited by the seller lady in her bank account with the HDFC Bank, Vidhyadhar Nagar, Jaipur. The cheque numbers mentioned in the affidavits of these three persons duly reconcile with the cheque number mentioned in the registered sale deed page-6 (PB-10). There apart, all the persons have also explained the source wherefrom, such amount was given to the seller lady on behalf of the appellant through account payee cheques. Thus, to the extent of Rs. 7,50,000/- no addition should have been made by the AO in view to these facts. With regard to the remaining amount of Rs.2,00,000/- given by Shri Pradeep Jain it is submitted that Shri Pradeep Jain gave a Ch. No. 963776 of Rs.2,00,000/- which was given to the seller directly and find place in the registered sale deed and was repaid back through Shri Ram Prasad Sharma. In the affidavit of Shri Ram Prasad Sharma (PB-58) in para-5. There is a clear mention that the appellant having repaid this amount to Shri Ram Prasad Sharma himself on behalf of

Pradeep Jain. Thus, the fact of receiving loan as also repayment to Pradeep Jain stand fulfilled. Although no separate affidavit could be filed from Pradeep Jain. Thus, the assessee has fully explained the source of Rs.9.50 Lakhs and the onus lay upon the assessee has been discharged. The ld. CIT(A) kept silence on those contentions and facts that are going in favor of appellant.

It was only because of the reason that the AO never confronted of the doubt in his mind on this aspect and straight away made the addition therefore, the assessee couldn't file the evidences in support of the contention.

1.5 Addition of Cash Deposit of Rs.2,50,000/-: It is submitted that this was deposited by the assessee out of her past and present savings. The return declared this year was at Rs.1,88,570/-. The assessee was already filing ROI in the past as well. Details of the income declared by the assessee in her ROI are as under:

S.No.	A.Y.	Return filed on	Income Declared	PB
1.	2008-09	26.07.2008	1,65,750/-	24
2.	2009-10	14.05.2009	2,49,802/-	27
3.	2010-11	16.11.2010	1,94,420/-	31
4.	2011-12	-	2,02,030/-	34

Apart from her business savings she has saved more than Rs.5-6 lakh from her stridhan, which she got from her parents and other relatives on different occasions. The ld. AO however, appears to have completely ignored the same, which directly prove the source of Rs.2,50,000/- was out of past savings.

2. Addition u/s 69 is discretionary: with regard to the financial assistance provided by the different person the CIT(A) do not deny that affirmatory affidavits duly sworn on oath were submitted for him on which, even remand report was obtained and thus, such evidences were before the authorities however firstly, they completely failed to controvert the contents of the affidavits which were otherwise binding upon the authorities as held in case of Mehta Parikh & Co. 30 ITR 181 (SC) (DPB 14-23) wherein it was held :

"...t*he cash book of the appellants was accepted and the entries therein were not challenged. No further documents or vouchers in relation to those entries were called for, nor was the presence of the deponents of the three affidavits considered necessary by either party. The assessee took it that the affidavits of these parties were enough and neither the AAC, nor the ITO considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in their affidavits. Under these circumstances it was not open to the revenue to challenge the correctness of the cash book entries or the statements made by those deponents in their affidavits".*

The CIT(A) mainly alleged that neither bank statement of the creditors was filed nor their source was explained and or where explained they were too meagre. However, it will be suffice to state that onus upon the assessee is only to the extent of discharging the initial burden but he is not required to proof the source of source. The moment the creditor affirmed and his identity is established (which has fully been done in

this case and not denied by the authorities below), such initial burden stands discharged. The very fact they transferred the funds through banking channels directly in the account of seller Smt. Sushila Devi and cheque numbers reconciling with the sale deed and filling of affidavits duly notarized fully proved the genuineness of the transaction and the identity and existence of the creditors. Kindly refer Labhchand Bohra V/s ITO (2008) 8 DTR 44 (Raj.) (DPB 24-30) held that:

"Cash credit- burden of proof- identity of the creditors established and the confirmed the credit. This discharged the burden of appellant to prove genuineness. However, capacity of the lender to advancement money to appellant was not a matter which the appellant could be required to establish and that would amount to calling upon him to establish the source of source. Hence addition cannot be sustained."

In Aravalli Trading Co. v/s ITO (2008) 8 DTR 199 (Raj).) (DPB 31-38) held that:

"Once the existence of the creditors is proved and such persons own the credits which are found in the books of the appellant, the appellant's onus stand discharged and the latter is not further required to prove the sources from which the creditors could have acquired the money deposited with him and, therefore the addition u/s 68 cannot be sustained in the absence of anything to establish that the sources of the creditors deposits flew from the appellant itself."

3.The AO completely ignored the settled law that u/s 68, 69 etc. only discretion has been conferred upon the AO to be exercised judiciously but he is not always obliged to make the addition if the explanation is not found satisfactory. Kindly refer CIT v/s P. K. Noorjahan (1999) 237 ITR 570 (SC) (DPB 39-42)

" In the corresponding clause of the Bill which was introduced in Parliament, while inserting section 69 in the Income Tax Act, 1961, the word "shall" had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word "may". This clearly indicates that the intention of Parliament in enacting section 69 was to confer a discretion on the Income Tax Officer in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the Income Tax Officer is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee id found to be not satisfactory. The question whether the source of the investment should be treated as income or not under section 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the Income Tax Officer under section 69 of the Act to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case. Held, dismissing the appeal, that in the instant case, the Tribunal had held that the discretion had not been properly exercised by the Income Tax Officer and the Appellate Assistant Commissioner taking into account the circumstances in which the assessee was placed and the Tribunal had found that the investments could not be treated as income of the assessee. The High Court had agreed with the said view of the Tribunal. There was no error in the finding recorded by the Tribunal. Section 69 could not be invoked in respect of the investments of the assessee".

4. AO completely failed to discharge onus shifted to him: Thus, the onus lay upon the assessee has been discharged however, the onus was upon the AO to prove such deposit was undisclosed income of the assessee

Thus, the impugned addition kindly be deleted.

C: Addition of Rs. 65,100/-:

Facts: The facts as noted by the ld. AO in the impugned order are as under:

"3.6 The assessee, in respect of sources of registration expenses and stamp duty of Rs. 65,100/-, has submitted that she had spent the same from income and savings. However, the submission is very general and without any basis. The assessee has not explained the availability of cash with her. She has not filed the copy of her bank account statement. Therefore, the submission in this regard is also not acceptable."

The dispute is whether the AO was justified in assuming that the payment of Rs. 45,000/- towards Stamp Duty and Rs. 20,000/- towards registration charges were paid without any source and hence was unexplained income of the assessee. The AO has dealt with this issue at Pg-3 pr 3.1

Submission: This was a small amount which, the assessee paid out of her past and present savings from her. The return declared this year was around Rs.2,00,000/-. In the past also she was receipt of such income and filed ROI. Her Husband and Son are also employed and getting salaries. Thus, the impugned addition kindly be deleted in full.''

4.4 On the other hand, the ld. DR supported the order of the ld. CIT(A)

4.5 We have heard both the parties and perused the materials available on record. In this case, it is noted that the assessee vide Ground of Appeal No. 3 challenges the addition of Rs. 35,36,100/- which consisted of three parts. The difference of Rs. 22,71,000/- between the sale consideration shown in the sale agreement dated 12.02.2012, and the one declared in the registered Sale Deed Rs 12 lacs. The lack of source of the payment of stamp duty and registration charges of Rs. 65,100/-. Lastly the absence of source of Rs. 12 Lakh paid by the appellant to the seller - Sushila Devi. With regard to the addition of Rs. 22,71,000, being the

difference between the sale consideration found in the sale agreement and declared in the registered sale deed, the AO has placed reliance mainly on the agreement dated 12.02.2012, as also on the statement of the Seller Shri Sushila Devi recorded on 27.03.2014 - Question 12 reproduced in the assessment order. After careful consideration of the material placed on record and the rival contentions however, we find that there are valid reasons not to believe the said agreement showing the sale consideration of Rs. 34,71,000/-. The appellant alleged that the figure of Rs. 34,71,000/- was not real, but was put by the broker, so also confirmed by the Seller - Smt. Sushila Devi in the same answer to question No. 12. The source of receipt of the agreement was the real estate broker Shri Durgesh Dave. The conduct of Ss. Dave was itself doubtful as the assessee filed First Information Report (FIR) against him. Even his bail application was rejected by the upper Mahanagar Magistrate. Though the complaint related to dishonor of cheques, but that shows the conduct of the person. Further it was merely a photocopy and not the original agreement itself, so as to be made a conclusive basis of making the addition. Furthermore, a careful perusal statement of Sushila Devi - Seller shows that she clearly admitted having sold the property for Rs 12 Lakhs only as the actual sale consideration. Such a statement was again, affirmed in her affidavit at the pg. 62 of Paper Book. The AO did not inquire the witnesses to this said agreement, but the assessee submitted affidavit of one of the witnesses Shri Satya Narayan

Maheshwari (Copy placed at Pg. 64 of Assessee's Paper book) who also confirmed the actual transition of sale at Rs. 12 Lakhs only. Later on Durgesh Dave also confirmed this fact of actual sale consideration at Rs. 12 Lakhs only. Even the DLC rate in the area, undisputedly stood at Rs. 12 Lakhs only, and not Rs. 34,71,000/-. The legal presumption raised under Section 50 C also supports the assessee. The AO thus, failed to establish the understatement of sale consideration, the onus of which was upon him. No other cogent evidence was brought on record to support the conclusion of understatement. Whereas the buyers and sellers in the presence of the Sub-registrar and the witnesses agreed for sale consideration of Rs. 12 Lakh only without any reference to earlier agreement, which was neither owned nor was acted upon. Now coming to the addition of Rs. 12,00,000/- w.r.t payment of the declared sale consideration, the AO made the addition for want of supporting evidence biz. bank statement. The ld. CIT(A) observed the affidavits filed do not show that how payment was received and transferred to the seller. The appellant claimed receipt of, loans/ financial assistance from Ram Prasad Sharma of Rs.4,00,000/-, Pradeep Jain Rs. 2,00,000/-, Satya Narayan Sharma Rs.1,00,000/-, Seema Sharma Rs.1,00,000/-, Umesh Kumar Sharma Rs.1,00,000/-totaling to Rs.9,50,000/- as per detail placed at pg.46 of the Paper book and in support affidavits are also available in the paper book. A perusal thereof shows that apart from affirming the fact of extending financial health, the cheques number with

dates and the bank are duly mentioned therein. It is not disputed that these cheque numbers find place in the registered sale deed at pg.6 of the paper book hence, the fact of making payment by these persons directly to the seller is established. Although these affidavits were before the AO as sent during the remand proceedings, however, the AO failed to controvert the averments made therein hence as per the law well settled in the case of Mehta Parikh & Co. 30 ITR 181 (SC) the averments are binding upon the authorities. It is also settled that the AO cannot ask to prove source of source, once the existence, identity of the Creditor and the affirmation of getting loan from them, are established. We draw support from Labhchand Bohra V/s ITO (2008) 8 DTR 44 (Raj.) and Aravalli Trading Co. v/s ITO (2008) 8 DTR 199 (Raj). Thus, the appellant having discharged the initial onus and the AO failed to discharge the burden by making enquiries and bringing cogent evidence on record, we do not find any justification behind the addition made of Rs.9,50,000/-. As regards the balance amount of Rs. 2,50,000/- which was paid in cash to the seller by the appellant, the facts are not disputed that she has been filing a return of income in the past ranging between Rs. 1.65 to 2.02 Lakh and keeping in mind that being a female she was not supposed to incur expenditure, saving of a small amount of Rs. 2,50,000/- was not something abnormal. Looking to the totality of facts and circumstances she could have saved around Rs. 3.50 lacs to 4 lacs. Hence the source of Rs. 2.50 lacs stand explained.

Similarly, the payment of Rs. 65,100/- towards the stamp duty and registration charge being small amount and could be made out of the past savings of the family. We thus, find no justification behind the addition of Rs. 35,36,100/- and the same hereby deleted. This ground of the assessee is allowed.

5.1 In Ground of Appeal no.4, brief facts of the case are that the assessee has challenged the addition of Rs. 5 lac made by the AO being the cash deposit in the bank account. The only basis of the addition is ITS details wherein the Assessee was found to have deposited cash of Rs. 5 lacs on 15.12.2012. When asked, the assessee submitted a reply that it was a joint bank account and most of the entries in that account pertained to her husband only and Copy of the bank statement was stated to be enclosed. Further source of Rs. 5 lacs were explained to be out of the past savings of the husband. The AO, however, rejected the contentions of the assessee and made addition of Rs. 5 lacs on this account and further estimated income of Rs. 5 lacs in absence of the bank statement. Thus, the total addition of Rs. 10 lacs was made by the AO as under:

> *"4.3 In this regard, it is worth mentioning that the assessee has not filed any bank account statement with her written submission. It is also not clear that the assessee's account is joint account with her husband and the same was deposited by her husband. The submission with is without any supporting evidences. It is not explained that which property was sold by her husband. Therefore, the amount of cash deposit of Rs. 5.00 is unexplained in the hands of the assessee and is considered her unexplained income of the year under consideration. Further, since the assessee has not filed copy of bank statement for verification, therefore, as per discussion in para 1 of show cause notice dated 17-11-2016, a lump sum addition of further Rs. 5.00 lacs is considered to be appropriate on this account. Hence, an addition of Rs. 10.00 lacs is made on account of unexplained income."*

5.2 The ld. CIT (A) confirmed the addition of cash deposit of Rs. 5 lacs, but the other addition of Rs. 5 lakhs was deleted holding as under:

> *"4.3 Ground of appeal no. 3 relates to the addition made of an amount of Rs. 5,00,000/-being unexplained cash deposits in the appellant's bank account. Neither during the assessment nor during appellant proceedings, has the source of these cash deposits been explained by the appellant. In the view of above, the AO's action is sustained. The ground of appeal is dismissed.*
>
> *4.4 Vide ground of appeal no. 3.2, the appellant has contended that the AO had erred in making a further lump sum addition of Rs. 5,00,000/- on the grounds that she had not produced her bank statement. Seen in the context of the addition made on account of cash deposits in the appellant's account as discussed in ground of appeal no. 3 supra, I am of the opinion that no further addition is called for as the AO has not provided any rationale for the lump sum addition. The addition made on his account is deleted. This ground of appeal is allowed."*

5.3 During the course of hearing the ld. AR vehemently agitated the addition so made and explained the sources thereof. The written submission so made before us is as under:-

> ''Before the AO it was submitted that it was a joint account with the husband (II PB 87-90), who deposited Rs 5 lakh on 15.02.2012 out of past savings. Further we also rely our w/s filed before CIT(A)(PB74-75). The CIT(A) wrongly stated that no explanation was given. Hence addition deserve to be deleted.

5.4 The submissions so made by the ld. AR of the assessee before the ld. CIT(A) at pages 74 & 75 are also reproduced as under:-

> **"*A: Submissions with regard to Rs.5,00,000/- deposited in Bank Account:***
>
> ***1. 1.*** *It is submitted that the totality of facts and circumstances* ***strongly reveal and support the contention*** *of the assessee that the assessee was rather in a position to have saved and kept much more amount than Rs.5.00 Lakhs only.*
>
> ***1.1 Assessee:***

*It is submitted that this was deposited by the assessee out of joint past and present savings. The return declared this year was at Rs.1,88,570/-. The assessee was already filing ROI in the past as well. In A.Y. 2008-09 the assessee declared income of Rs. 1,65,750/-**(PB-24)**, In A.Y. 2009-10, Rs. 2,49,802/- **(PB-27)**, In A.Y. 2010-11 Rs. 1,94,420/- and in A.Y. 2011- 12 Rs. 2,02,030/- **(PB-34)** declared by the assessee. Apart from her business savings she has saved more than Rs.5-6 lakh from her stridhan, which she got from her parents and other relatives on different occasions. The ld. AO however, appears to have completely ignored the same, which directly prove the source of Rs.2,50,000/- was out of past savings.*

***1.2 Husband Shri Navinder Kumar Sharma:** He is also a Central Government employee with Department of Post and has been serving as postman (now in other capacity) and getting salary more than of Rs.3,00,000/- Annually. Here also if a minimum amount of saving of Rs.30,000/- if considered for last 10 years he was also in a position to save Rs. 3 Lakhs at least.*

***1.3 Son Shri Umesh Kumar Sharma:** He is aged 37 yrs and passed out B.Com and providing computer maintenance and repairing services. He is also drawing a handsome amount of professional fee. Here also if a minimum amount of saving of Rs.20,000/- if considered for last 10 years he was also in a position to save Rs. 2 Lakhs at least. Since all are residing jointly/ incurring house hold expenses commonly, the availability of more than sufficient cash/funds cannot be denied, could not be dispute by the AO even though basic submissions very duly made before him, hence he failed to discharge the onus shifted to him.*

The preponderance of the probabilities thus, suggest that taken together the family could have saved this much of the amount over a period of time and keeping of cash to this extent was not abnormal because firstly, it was kept by the members separately and secondly, keeping in mind the fact that such fund were required / might be needed towards the acquisition of new plot, there was nothing abnormal if the family pooled and kept the cash with them only.

***2.** Thus, it can't be denied that the assessee has furnished a plausible explanation u/s 69A, fully explaining the sources of the cash of Rs.5.00 Lakhs which was deposited in her bank accounts.*

3.** Otherwise also Sec.69A conferred a discretion only upon the AO and it is not always obligatory upon him to make addition in any situation. Kindly refer **CIT v/s P. K. Noorjahan (1999) 237 ITR 570 (SC).

Hence, the impugned addition kindly be deleted in full."

5.5 The ld. DR. strongly relied upon the orders of the authorities below.

5.6 We have carefully considered the material placed on record and the rival contentions. The source of cash deposit was explained out of the past saving of the appellant which could be around Rs.5 to 6 lakhs from her business and Streedhan;

from the past saving of her husband, Navender Kumar, who has been a central government employee and partly from the savings of Shri Umesh Kumar Sharma s/o the appellant. While considering the source of payment of sale consideration of Rs. 2.50 Lakh by the appellant herself, we have held that looking to the totality of facts and circumstances she could have saved that amount. In addition, the fact is not denied that her husband Navender Kumar was a central government employee and retired from the Post and Telegraph department after serving as a postman getting salary more than Rs.3 Lakh annually as claimed and thus considering the saving for a period of 10 years, only his past savings could be considered around Rs 2.5 Lakh as reasonable. However, we find that son Umesh Kumar Sharma has already contributed towards the payment of sale consideration of Rs.1,50,000/- Further contribution from him cannot be expected. Thus, considering the totality of facts & circumstances it would be reasonable that source is considered explained up to Rs.3,00,000/-and the balance Rs.2,00,000/- is considered as without any source and thus, addition to the extent to Rs.2,00,000/- is hereby sustained. The appellant thus, get relief of Rs.3,00,000/-. This ground of the assessee is partly allowed.

6.0 In the result, the appeal of the assessee is partly allowed

Order pronounced in the open court on 18/01/2024.

Sd/-	Sd/-
(राठोड कमलेश **जयन्तभाई**)	(संदीप गोसाई)
(Rathod Kamlesh Jayantbhai)	(Sandeep Gosain)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 18/01/2024
*Mishra
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Smt. Geeta Devi Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(1), Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 396/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar