

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH**

BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No 4/CHD/2023

निर्धारण वर्ष / Assessment Year : 2015-16

M/s TJR Properties Private Limited, SCO 80-81, Sector 17-C, Chandigarh.	Vs. बनाम	The ACIT, Central Circle-2, Chandigarh
स्थायी लेखा सं./PAN No:AACCT8364R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Rohit Goyal, CA &
Sh. T.N. Singla, CA

राजस्व की ओर से/ Revenue by : Smt. Kusum, CIT-DR

तारीख/Date of Hearing : 16.01.2024

उद्घोषणा की तारीख/Date of Pronouncement : 16.02.2024

HYBRID HEARING

आदेश/Order

PER A.D.JAIN, VICE PRESIDENT

This is assessee's appeal against the order dated 15.12.2022 of the Id.CIT (A)-3, Gurgaon pertaining to 2015-16 assessment year.

2. The assessee has taken the following grounds of appeal:-

1. *That the order of Learned C.I.T. (Appeals) is bad and against the facts and Law.*
2. *That the assessment completed u/s 153A of the Income Tax Act, 1961 is against the provisions of the law as neither any search was conducted on the company nor any Panchnama was prepared in the name of the company.*
3. *That on the facts and in the circumstances of the case, the Order of assessment passed under Section 153A of the Act is wholly illegal and without jurisdiction as no search had been conducted under Section 132 of the Act in any of the business premises of the appellant - company.*
4. *That on the facts and in the circumstances of the case, the finding recorded in the assessment Orders that search and seizure operations were carried out under Section 132 of the Act in the case of the appellant -company, is perverse and wholly erroneous and therefore, the Order of assessment passed under Section 153A of the Act is without jurisdiction.*
5. *That the additions made in the assessment Order are not based on any corroborative and relevant incriminating material stated to have been unearthed during the course of any search by the Assessing Officer, though no search has taken place on the appellant and therefore, the Order of Assessment is wholly illegal and without jurisdiction in view of the judgment in the case of Commissioner of Income-tax (Central)-III v. Kabul Chawla [2016] 380 ITR 573 (Delhi)/[2015] 281 CTR 45 (Delhi).*
6. *That the learned CIT(A) has wrongly upheld addition of Rs. 20,00,000/- received from M/s Abel Cold Store without any justification.*
7. *That the learned CIT(A) has wrongly upheld addition of Rs. 79,50,000/- received from Sh. Keshav Garg without any justification.*
8. *That the learned CIT(A) has wrongly upheld addition of Rs. 4,13,000/- on account of Income deposited in cash by the appellant without any justification.*
9. *That the learned CIT(A) has wrongly upheld addition of Rs. 1,03,63,000/- u/s 68 of the Act on surmises and conjectures.*
10. *That the learned CIT(A) has wrongly upheld disallowance of loss of Rs. 9,66,547/- without any justification.*
11. *That the learned CIT(A) has wrongly upheld disallowance of depreciation on vehicle to the extent of Rs. 9,01,873/- without any justification.*

12. *That the appellant craves leave to add, alter, amend or withdraw any grounds of appeal before the final hearing.*

3.1 The assessee has also raised the following additional grounds :

1. That the approval u/s 153D was granted by the JCIT without application of mind and without consideration of relevant records.

2. That no search was conducted on the appellant company and otherwise also the alleged search, if any, conducted was in violation of provisions of section 132(1) of the Income tax Act, 1961.

3.2 The additional Grounds 1 & 2 are legal grounds and therefore admitted, not requiring any fresh materials to be gone into.

3.3 At the outset, the Id. Counsel for the Assessee has stated at the bar that he does not wish to press the additional grounds. Rejected as not pressed.

4. Ground Nos. 1 & 12 are general in nature and need no adjudication.

5. As per Ground No.2, since neither any search was conducted on the Assessee company, nor any 'Panchnama' was prepared in its name, the provisions of section 153A of the Income Tax Act, 1961 (in short 'the Act') are not applicable and so, the assessment completed u/s 153A of the

Act is against the provisions of law. This Ground corresponds to Ground No. (b) raised by the Assessee before the ld. CIT(A). The Assessing Officer passed the assessment order dated 30.12.2019 u/s 153A(1)(b) read with section 143(3) of the I.T. Act, making various additions. Before the ld. CIT(A), the Assessee raised this issue by way of Ground No. (b).

6. The ld. CIT(A), in para 10 of the impugned order, has observed, inter alia, that a letter dated 7.9.2022 had been sent to the A.O., requiring him to furnish details of the warrant executed / 'Panchnama' prepared, on the basis of which, proceedings u/s 153A of the Act were initiated; that in response, the A.O. had furnished the copy of the warrant which was duly executed in the name of the Assessee on 6.2.2018, in respect of the premises situated at SCO 80-81, 4th Floor, Sector 17-C, Chandigarh; that the said warrant was found containing the name of the Assessee; that accordingly, it was found that the warrant of authentication u/s 132(1) of the Act had been executed in the name of the Assessee; and that, therefore, the A.O. was justified in initiating assessment proceedings u/s 153A of the Act.

7. Before us, on behalf of the Assessee, it has been contended that neither any search was conducted on the Assessee company, nor any 'Panchnama' was prepared in its name; that the Assessee company filed an application under the RTI Act, bearing Registration No. CCITC/R/E/20/0001 dated 7.1.2020, seeking information with regard to copy of last warrant, a copy whereof has been placed at Assessee's Paper Book ('ABP'), pages 346-350. It has been contended that the said application of the Assessee was transferred (APB 351-352) to the DGIT, ITO office of PCIT (Investigation), Ludhiana and the DCIT, Central Circle-2, Chandigarh (APB 354-356) and finally to the DCIT, Central Circle-2, Mohali (APB 357); that none of the Income Tax Authorities provided the Assessee company with the copy of the said warrant; that the ACIT, Central Circle-2, Chandigarh vide order (APB 360-361), dated 5.2.2.020, passed u/s 7(5) of the RTI Act, denied the Assessee company with a copy of the search warrant.

8. It has been contended that the assessment u/s 153A of the Act was completed against the provisions of the law, as neither any search u/s 132 was conducted on the Assessee company, nor any 'Panchnama' was prepared in its name; that though the Assessee specifically requested the

Assessing Officer to provide it with a copy of the search warrant in the name of the Assessee company, no such search warrant was provided to the Assessee company; that neither the name of the company was mentioned in the 'Panchnama'; nor a copy of the search warrant was provided to the Assessee company, despite repeated requests. It has been contended that the search was conducted at the residential premises of the Assessee company, namely Shri Tarloki Nath Singla and Shri Jagdish Rail Gupta in their individual capacity; that simultaneously, search was also conducted in the business premises at M/s Kansal Singla and Associates, Chandigarh, at SCO 80-81, 4th Floor, Sector 17-C, Chandigarh, which is also the registered address of the Assessee company; that during the search of M/s Kansal Singla and Associates, regular books of account along with bank details of the company were found; that one of the directors of the company, Shri T.N.Singla, who is also a partner in M/s Kansal Singla and Associates, was present at the time of search, but his signatures were not taken on the 'Panchnama' prepared in the name of M/s Kansal Singla and Associates; that on the request of the Assessee company, the Id. CIT(A), vide letter dated 7.9.2022, directed the A.O. to

furnish a copy of the search warrant / 'Panchnama' prepared, on the basis of which, the assessment u/s 153A had been completed in the case of the Assessee company; that the ld CIT(A), in the impugned order, has similarly mentioned that the "Assessing Officer furnished the copy of the warrant which was duly executed in the name of the appellant on 16.2.2018 in respect of the premises situated at SCO 80-81, 4th Floor, Sector 17-C, Chandigarh. The said warrant was found containing the name of the appellant"; that the ld. CIT(A), by simply observing so, agreed with the action of the Assessing Officer and held that the Assessing Officer was justified in initiating assessment proceedings u/s 153A of the Act; that the ld. CIT(A) did not provide the Assessee with the copy of the warrant, nor reproduced the same in the order; that since none of the Income Tax Authorities provided the Assessee with the copy of the search warrant, the Assessee company was suspicious that its name was not mentioned in the search warrant.

9. In the above situation, the Bench had called for the original search warrant from the Department, which was produced. The name of the Assessee company was found mentioned in the search warrant. It is seen that a copy of

the 'Panchnama' has been placed at APB 519-522. At APB 519, at item A, it is mentioned: 'Warrant in the case: M/s Kansal Singla and associates'; at item (B), it has been stated that: 'Warrant to search (Details and Ownership of place of search): M/s Kansal Singla and Associates SCO 80-81, 4th Floor, Sector 21C, Chandigarh. So, the name of the Assessee Company, is not mentioned in this 'Panchnama'. Also, this 'Panchnama' does not bear the signature of Shri T.N. Singla, Director of the Assessee Company, who is stated to have been present at the place of search at the time of the search.

10. On this issue, the submissions on behalf of the Department, as contained in the oral arguments addressed by the ld. CIT (DR) and the written submissions dated 5.6.2023 are that providing of the copy of the warrant is not a right of the searched persons; that u/s 96 of the CrPC read with section 76 of the Evidence Act, a certified copy of a search warrant could be obtained on payment of legal fee. Reliance has been placed on the decision of the Hon'ble Delhi High Court in the case of 'MDLR', 361 ITR 405 (Delhi), wherein, it has been held in para 24, that it will be salutary and proper that a copy of the search warrant be

furnished to the occupant or the person searched; and that this would curtail any allegation of interpolation, addition of names, etc. On the issue as to whether it is necessary to have the names of the person searched in the 'Panchnama', the Id. DR has sought to place reliance on 'MDLR' (supra), wherein, the Hon'ble Delhi High Court has held that since the 22 parties whose names were not mentioned, did not object to the order u/s 153A in the petition u/s 264 pursuant to the assessment order, such objection was not justified in the writ petition filed; that the assessment order under section 153A cannot and should not be permitted to become a matter of writ petition as the First Appellate Forum; and that the First Appellate Statutory Authority could deal statutorily with the questions and issues raised in the writ petition the jurisdiction of the First Appellate Authority having not been invoked with the appeals preferred by the writ petitioners.

11. Concerning the issue of absence of signatures of the main person on the search warrant, the Id. CIT (DR) has contended that there is no re-equipment of service of warrant on the main person, who is usually occupied at other

premises, that the search warrant is required to be served on the witnesses.

12. As observed, the name of the Assessee company has been mentioned in the search warrant, which was produced in the original by the Department before us. Therefore, this puts this entire controversy at rest and the Assessee's objection in this regard is found to be unjustified and it is, accordingly, rejected, while rejecting Ground No.2.

13. Now coming to Grounds 3 and 4, the matter pertaining to these grounds stand effectively decided by us in the preceding paragraphs, where we have found that the Search Warrant did contain the name of the assessee company, therefore, the grievance of the assessee by way of Ground Nos. 3 and 4 does not contain any merit and, accordingly, Ground Nos. 3 and 4 are rejected.

14. According to Ground No.5, the additions made are not based on any incriminating material found during the search. In this regard, the Id. CIT(A) has held that the Assessing Officer was having jurisdiction to assess the income of the Assessee on the basis of the material available at the time of the assessment and he was not to restrict the

additions subject to the incriminating material found during the search. For holding so, the Id. CIT(A) has placed reliance on the decision of the Hon'ble Kerala High Court in the case of "CIT vs. KPUmmer", (citation not given); the decision of the Hon'ble Allahabad High Court in the case of 'Rajkumar Arora', 367 ITR 517 (Allahabad); the decision of the Hon'ble Kerala High Court in the case of 'EN Gopakumar vs. CIT', (2016) 75 taxman.com 215 and the decision of the Hon'ble Allahabad High Court in the case of 'CIT vs. Kesarvani Zarda Bhandar', ITA No.270/2014. The Id. Counsel for the Assessee, on this issue, has contended that the A.O. issued notice u/s 153A of the Act on 09.03.2019, against which, the company filed return and challenged the initiation of proceedings u/s 153A vide letter dated 03.05.2019 (APB-1); and that the additions made by the Assessing Officer are not emanating from the search proceedings, as no incriminating material or evidence was found during the course of the alleged search related to the Assessee company for the year under consideration. Reliance in this regard is placed on the order of the Hon'ble Apex Court wherein, the SLP filed by the Department in the cases of 'Meeta Gutgutia, 96 taxmann.com 468/257 Taxman 441 (SC) and 'Kabul Chawla' were

dismissed by the Hon'ble Apex Court. The relevant portion is re-produced below

"Recently, Hon'ble ITAT Delhi in 'Alankar Sapphire Developers v. Dy. CIT', [2020] 116 taxmann.com 389/184 ITD 847 (Delhi -Trib.) decided the issue that if no incriminating material is found in the search, no addition can be made u/s 153A. During the course of hearing in this case the assessee relied on the decision of Hon'ble Delhi High Court in 'CIT v. Kabul Chawla', [2015] 61 taxmann.com 412/234 Taxman 300/[2016] 380 ITR 573 (Delhi) and 'Pr. CIT v. Meeta Gutgutia', [2017] 82 taxmann.com 287/248 Taxman 384/395 ITR 526(Delhi). On the basis of arguments of the parties the Tribunal noted that SLP filed by the Department in the case of 'Kabul Chawla' (Supra) was dismissed by the Hon'ble Apex Court for low tax effect and SLP filed before the Supreme Court in the case of 'Meeta Gutgutia', (supra) was dismissed by the Hon'ble Supreme Court in 'Pr. CIT v.Meeta Gutgutia',[2018] 96 taxmann.com 468/257 Taxman 441 (SC) by observing that 'We do not find any merit in this petition' . The Department submitted that SLP on the similar issue has been admitted by the Hon'ble Apex Court in 'M/s Apar industries' (Citation not provided). The Tribunal however held that once the SLP is not admitted, the

decisions given by the High Court in the case of 'Kabul Chawla' and 'Meeta Gutgutia' became final and binding."

14.1 The Id. Counsel for the Assessee has contended that therefore, the addition made by the Assessing Officer cannot be sustained in the present case in the order passed under section 153A of the Act, in the absence of any incriminating material found during the course of search action, where there was no pending assessment which could be said to have abated on the date of search.

14.2 Reliance has been placed on the judgment of the Hon'ble Apex Court in the case of 'PCIT vs M/s Abhisar Buildwell P. Ltd.', CA No. 6580, dated 24.04.2023, wherein, the Hon'ble court held that "in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961."

14.3 Reliance has further been placed on the judgement of the Hon'ble High Court of Bombay, in 'Pr. CIT Vs. Sandeep Agarwal (HUF)', dated 09/10/2023, wherein, it was held that - "We dismiss the appeal, holding that the only issue which arises for determination will have to be answered against the Revenue and favouring the Assessee given the decisions of the Hon'ble Supreme Court in 'Abhisar Buildwell (P.) Ltd.', (supra) and 'U.K. Paints (Overseas)', (supra). The clarification issued in both these judgments is, however, issued in these matters as well in the context of reassessment proceedings under Sections 147 and 148 of the IT Act. However, as noted above, all contentions of all parties are kept open in this context.

14.4 It has been contended that the Assessing Officer has wrongly made addition u/s 153A(l)(b) r.w.s. 143(3) of the Act on the direction of the third party without having any incriminating material on record, as no incriminating material/document was unearthed by the Department during the search proceeding. Hence, assessment u/s 153A(l)(b) r.w.s. 143(3) of the Income Tax Act, 1961 has been wrongly made, against the provisions of the law.

14.5 The ld. DR has not been able to rebut the above position.

14.6 The ground-wise submissions and material of both the parties qua all the additions made have been considered in extensor while dealing with Ground Nos. 6 to 11, infra. At the same time, in view of the above-referred legal position, as settled by 'Abhisar Buildwell' (supra), Ground No. 5 is accepted.

15. Ground No. 6 - Addition of Rs. 20,00,000/- received from M/s Abel Cold Store AO Observation - Page 10-11 of AO Order.

15.1 AO made addition of all the credit entries in bank of appellant company amounting to Rs. 2,09,43,578/- without considering each credit separately on merit, on the plea that purpose and utilization of funds not explained by assessee.

15.2 Documents submitted before AO vide reply dated 21.03.2020 (Paper book page 78-80)-

1. Copy of account of Abel Cold Storage (Ajit India) in the books of M/s TJR Properties Private Limited for A.Y.2015-16 (Paperbook page 78)
2. Bank Account statements of M/s TJR Properties Private Limited for A.Y.2015-16 showing amount received and paid to Abel Cold Storage (Paperbook page 79-80)

15.3 The AO in the assessment order has wrongly made addition of Rs. 2,09,43,578/- including Rs. 20,00,000/- received back from M/s Abel Cold Storage on the plea that the assessee could not explain the purpose and sources of funds without mentioning the documents submitted by the assessee during the assessment proceedings in the assessment order.

CIT (A) Observation - Page 97, Point 1 of CIT(A)'s Order

15.4 CIT(A) made addition of Rs. 20,00,000/- received from M/s Abel Cold Storage alleging that - "In the absence of any documentary evidence the same remains unexplained"

Documents submitted before CIT(A) vide reply dated 21.03.2020 (page 72 and 80 of CIT(A)'s order)

Documents submitted before ITAT which were also submitted before CIT(A) vide reply dated 21.12.2019 (Paper book page 77-80) -

1. Confirmation of Abel Cold Storage (Paperbook page 77)
2. Copy of account of Abel Cold Storage (Ajit India) in the books of M/s TJR Properties Private Limited for A.Y.2015-16 (Paperbook page 78)
3. Bank Account statements of M/s TJR Properties Private Limited for A.Y.2015-16 showing amount received and paid to Abel Cold Storage (Paperbook page 79-80)

15.5 The assessee company contends that the company advanced Rs. 20,00,000/- to M/s Abel Cold Storage on 24.07.2013 and the same were returned back to the company on 21.04.2014 through banking channels and as it was not a case of cash credit, which was part of the books of accounts submitted by the company during the assessment proceedings and remand proceedings. The company has filed written submission before CIT(A) in 2020 and, the CIT(A) had more than 2 years to examine the documents submitted by the assessee company and ask for any other document, if required. But neither the CIT(A) nor AO asked the appellant to submit any other documentary evidence with regard to the amount received back from M/s Abel Cold Storage.

15.6 The CIT(A) wrongly confirmed the addition made by the AO on the plea that the company did not submit any documentary evidence. The CIT(A) ought to have raised any query or issued any notice asking the assessee to submit the same. But no such query was raised nor any notice was issued to the assessee in this regard. Additionally, the CIT(A) confirmed the addition of Rs. 20,00,000/- made by the AO for an absurd reason, without giving any findings on the copy of account and bank statement already submitted by

the assessee company during the assessment proceeding and remand proceeding. The CIT(A) has reproduced the entire written submission of the assessee company in its order, on page 72 of the CIT(A) order, the assessee had mentioned in the point 1 of the table that the company advanced Rs. 20,00,000/- to M/s Abel Cold Storage on 24.07.2013 and received back on 21.04.2014 and has submitted copy of ledger account as documentary evidence for the same. However, the CIT(A) did not discuss the same while wrongly confirming the addition of Rs. 20,00,000/-.

15.7 Further, if the AO found the documentary evidence furnished by the assessee company to be unsatisfactory or the assessee company failed to submit any documentary evidence before CIT(A), then, they could have initiated proceedings under Sections 133(6) or 131 of the Act for further investigation. However, it is noteworthy that neither the AO nor the CIT(A) extended any such notice to the lender / creditor for additional inquiries. Instead, an addition of Rs. 20,00,000/- was made based on the directive of a third party.

15.8 Neither enquiry was made by CIT(A) or AO before confirming the addition of Rs. 20,00,000/- nor any documentary evidence were sought from the assessee company, therefore the assessee company has now submitted Confirmation of Abel Cold Storage (Paperbook page 77) as additional evidence, Copy of account of Abel Cold Storage (Ajit India) in the books of M/s TJR Properties Private Limited for A.Y.2015-16 (Paperbook page 78) and Bank Account statements of M/s TJR Properties Private Limited for A.Y.2015-16 showing amount received and paid to Abel Cold Storage (Paperbook page 79-80) was already submitted with the AO & CIT(A). The submission of said documents as additional evidence is neither challenged nor disputed in the appeal by the department.

16. Ground No. 7 - Addition of Rs. 79,50,000/- received from Sh. Keshav Garg. AO's Observation - Pages 10-11 of AO's order.

16.1 AO made addition of all the credit entries in bank of the appellant amounting to Rs. 2,09,43,578/- without considering each credit separately on merit, on the plea that purpose and utilization of funds not explained by assessee.

Documents submitted before AO vide reply dated 21.03.2020

(Paper book page 46-59)-

1. Income Tax Return of Sh. Keshav Kumar (Paperbook page 46)
2. Computation of Keshav Kumar for A.Y. 2015-16 (Paperbook page 47-48)
3. Affidavit of Sh. Keshav Garg (Paperbook page 49-51)
4. Copy of account of Keshav Garg in the books of M/s TJR Properties Private Limited for A.Y. 2015-16 (Paperbook page 52)
5. Copy of account of Garg Enterprises in the books of M/s TJR Properties Private Limited for A.Y. -2015-16 (Paperbook page 53)
6. Bank Account statements of M/s Garg Enterprises for A.Y. 2015-16 (Paperbook page 54)
7. Bank Account statements of Keshav Kumar for A.Y. 2015-16 (Paperbook page 55-59)

16.2 The AO in the assessment order has wrongly made addition of Rs. 2,09,43,578/- including Rs. 79,50,000/- received from Sh. Keshav Kumar on the plea that the assessee could not explain the purpose and sources of funds without mentioning deficiency on the part of assessee to prove the utilization of funds and also without mentioning the documents submitted by the assessee during the assessment proceedings in the assessment order.

16.3 CIT(A)'s Observation - Page 9-100, Point 5 of CIT Order

16.4 CIT(A) made addition of Rs. 79,50,000/- received from Keshav Garg alleging that - "Merely submission of bank account will not amount to explaining creditworthiness of Sh. Keshav Garg particularly keeping in view the amount (Rs. 79.50Lacs) and level of income he has shown in the ITR (Rs. 6,28,550/-)"

Documents submitted before CIT(A) vide reply dated 21.03.2020 mentioned by CIT(A) (page 73, 76 and 78 of CIT(A)'s order)

Documents submitted before ITAT which were also submitted before CIT(A) vide reply dated 21.12.2019 (Paper book page 46-76) -

1. Income Tax Return of Sh. Keshav Kumar (Paperbook page 46)
2. Computation of Keshav Kumar for A.Y. 2015-16 (Paperbook page 47-48)
3. Affidavit of Sh. Keshav Garg (Paperbook page 49-51)
4. Copy of account of Keshav Garg in the books of M/s TJR Properties Private Limited for A.Y. 2015-16 (Paperbook page 52)
5. Copy of account of Garg Enterprises in the books of M/s TJR Properties Private Limited for A.Y. -2015-16 (Paperbook page 53)
6. Bank Account statements of M/s Garg Enterprises for A.Y. 2015-16 (Paperbook page 54)
7. Bank Account statements of Keshav Kumar for A.Y. 2015-16 (Paperbook page 55-59)
8. Proof of Sale and Purchase transactions of Keshav Kumar (Paperbook page 60-76) - Additional evidence

16.5 The assessee company contends that the company received Rs. 34,50,000/- from Sh. Keshav Garg on 18.09.2014 (Paperbook page 58) and Rs. 45,00,000/- from Garg Enterprises (proprietorship of Sh. Keshav Garg) on 11.09.2014 (Paperbook page 54). The company has filed written submission before CIT(A) in 2020 and, the CIT(A) had more than 2 years to examine the documents submitted by the assessee company and to ask the assessee to submit any other document, if required. But neither the CIT(A) nor AO asked the appellant submit any other documentary evidence in this regard.

16.6 The company submitted all the required proofs, affidavit, copy of account, ITR, bank statement before the CIT(A), to prove the creditworthiness of Sh. Keshav Garg during the appellate proceedings, thereby shifting the onus on the CIT(A). The CIT(A) without any verification wrongly confirmed the addition made by the AO on the plea that Merely submission of bank account will not amount to explaining creditworthiness of Sh. Keshav Garg. If the CIT(A) was not satisfied with the documentary proofs submitted by the company and the CIT(A) ought to have raised any query or issued any notice asking the assessee to submit the same.

But no such query was raised nor any notice was issued to the assessee in this regard. Additionally, the CIT(A) confirmed the addition of Rs. 79,50,000/- made by the AO for an absurd reason without giving any findings on the documentary evidences which were already submitted by the assessee company during the assessment proceeding as well as during the appellate proceedings. The CIT(A) has reproduced the entire written submission of the assessee company in its order, and on page 73, 76 and 78 of the CIT(A) order, the following facts were mentioned by the assessee in its submission which were reproduced by CIT(A) :-

Page 73 of the CIT(A)'s order

DATE	RECEIPT INWARD (CR)		REMARKS	PROOF OF IDENTITY, GENUINES AND CREDIT WORTHINESS OF THE PARTY
	AMOUNT (IN RS)	PARTY NAME/ ACCOUNT NO.		
11/09/2014	45,00,000/-	GARG ENTERPRISES (Proprietorship of Relative of Director)	RS 45,00,000 RECEIVED FROM GARG ENTERPRISES ON 11/09/2014 OUT OF WHICH RS 20,00,000 RECEIVED AS REPAYMENT OF ADVANCE GIVEN ON 23/04/2014 AND BALANCE RS 25,00,000 RECEIVED AS UNSECURED LOAN ON 11/09/2014.	BANK STATEMENT ITR OF KESHAV GARG CONFIRMATION LEDGER ACCOUNT
18/09/2014	34,50,000/-	KESHAV GARG (RELATIVE OF	UNSECURED LOAN OF RS 34,50,000 RECEIVED OUT OF	BANK STATEMENT ITR

		DIRECTOR)	WHICH RS 7,50,000 REPAID ON 01/11/2014	CONFIRMATION LEDGER ACCOUNT COPY OF AFFIDAVIT
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Page 76 of the CIT (A)'s order

DATE	RECEIPT INWARD (CR)		REMARKS	PROOF OF IDENTITY, GENUINES AND CREDIT WORTHINESS OF THE PARTY
	AMOUNT (IN RS)	PARTY NAME/ ACCOUNT NO.		
11/09/2014	20,00,000/-	GARG ENTERPRISES (Proprietorship of Relative of Director)	RS 45,00,000 RECEIVED FROM GARG ENTERPRISES ON 11/09/2014 OUT OF WHICH RS 20,00,000 RECEIVED AS REPAYMENT OF ADVANCE GIVEN ON 23/04/2014 AND BALANCE RS 25,00,000 RECEIVED AS UNSECURED LOAN ON 11/09/2014.	BANK STATEMENT OF ITR OF KESHAV GARG CONFIRMATION LEDGER ACCOUNT
TOTAL			Rs. 20,00,000/-	

Page 78 of CIT(A) order

DATE	RECEIPT INWARD (CR)		REMARKS	PROOF OF IDENTITY, GENUINES AND CREDIT WORTHINESS OF THE PARTY
	AMOUNT (IN RS)	PARTY NAME/ ACCOUNT NO.		
18/09/2014	34,50,000/-	KESHAV GARG (RELATIVE OF DIRECTOR)	UNSECURED LOAN OF RS 34,50,000 RECEIVED OUT OF WHICH RS 7,50,000 REPAID ON 01/11/2014	BANK STATEMENT OF ITR CONFIRMATION LEDGER ACCOUNT COPY OF AFFIDAVIT
OPENING CR BALANCE OF UNSECURED LOAN RS. 15,00,000. RS 11,50,000 TRANSFERRED TO SACHIT SINGLA ON 22/04/2014. RECEIVED AGAIN RS 34,50,000 ON 18/09/2014 OUT OF WHICH RS 11,00,000 WAS REPAID ON 01/11/2014 AND BALANCE RS 27,00,000 WAS REPAID ON 23/02/2018				
TOTAL			Rs. 34,50,000/-	

16.7 The above documents were submitted before the CIT(A) which were neither considered by the CIT(A) nor discussed by the CIT(A) in its order. The CIT(A) wrongly confirmed the addition made by AO without carrying out any investigation or verification on the documents so submitted. The CIT(A) wrongly confirmed the addition of Rs. 79,50,000/- by taking a plea that bank statement was not a valid proof to substantiate the creditworthiness of the credits in the bank account.

16.8 The appellant company submitted copy of affidavit, bank statement, ITR filed by the lender to AO / CIT(A). As evident from Bank statement of Sh. Keshav Garg, amount Rs. 79,53,481/- is received by Keshav Garg from Trustline Securities but no question / query in this regard was asked by any of the Income Tax Authorities and simply added credits in the bank account of the appellant company. Further, it is submitted that Sh. Keshav Garg sold his investment in shares of Rs. 79,53,481/- and the corresponding LTCG of Rs. 11,93,777/- was shown by Sh. Keshav Gag in his return for AY 2015-16, the copy of which was submitted by the appellant company to substantiate the creditworthiness of the lender, but the same was not

considered by any of the Income Tax Authorities before confirming the said addition in the hands of the appellant company.

16.9 The appellant has placed on record ITR along with computation of income details at Page 46-48 of paperbook to show sale of shares by him of listed company through recognized stock exchange and capital gain amounting to Rs. 11,93,777/- and LTCG on said sale has been claimed as exempt u/s 10(38) if the Income Tax Act, 1961 by Sh. Keshav Garg, which has been accepted by the department. The said sale of shares was made by Sh. Keshav Garg during the year and sale consideration was also received during the year as per below in his bank account no. with HDFC bank placed at paperbook Page 57-59 :-

S no	Particulars / ISIN Code	Sale Date	Sale Consider	Purchase Date	Purchase Cost	FMV (Asset)	Improve ment Cost	Index Cost	Exemp tion	Exp	Gain/ Loss
1	Stylum Industries Limited (Shares)	12/09/2014	79,53,481	19/12/2011	51,82,000			67,59,704	0	0	11,93,777
	Total		79,53,481		51,82,000		0	67,59,704	0	0	11,93,777

16.10 The detail of proof of sale of listed share by the lender are also placed on record at Page 60-75 of paperbook.

It is observed that Sh. Keshav Kumar has transferred Rs. 45,00,000 on 08.09.2014 to bank account of his proprietorship concern M/s Garg Enterprises out of sale proceeds of these shares and the said Rs. 45,00,000/- was paid to the appellant company on 11.09.2014 (bank statement of M/s Garg Enterprises is placed at Page 54 of paperbook)

16.11 Another payment of Rs. 34,50,000/- was made by Sh. Keshav Kumar to the appellant company on 18.09.2014 out of balance sale consideration of aforesaid equity shares on 18.09.2014 as per bank statement of sh. Keshav Kumar at Page 58 of paperbook.

16.12 Therefore, the sources of Rs. 79,50,000/- given by Sh. Keshav Kumar through banking channel out of his own bank account and bank account of his proprietorship concern were given out of sale proceeds of listed shares of M/s Stylum Industries Limited through recognized stock exchange which were purchased by Sh. Keshav Kumar during AY 2012-13.

16.13 Further, if the AO found the documentary evidence furnished by the assessee company to be unsatisfactory and the CIT(A) observed that the creditworthiness cannot be

established by submitting bank statement only, then they could have initiated proceedings under Sections 133(6) or 131 of the Act for further investigation. However, it is noteworthy that neither the AO nor the CIT(A) extended any such notice to the lender / creditor for additional inquiries. Instead, an addition of Rs. 79,50,000/- was made based on the directive of a third party.

16.14 Moreover, if only the assessee was not able to establish the creditworthiness of Sh. Keshav Garg by submitting the aforesaid documents due to which the CIT(A) confirmed the addition of Rs. 79,50,000/-, then how come the CIT(A) was satisfied with the creditworthiness of Sh. Keshav Garg and M/s Garg Enterprises with the same set of documents for AY 2013-14 (on Page 96 of CIT order for AY 2013-14) and AY 2014-15 (Page 105 of CIT order for AY 2014-15). The bank account from which the amount was transferred by Sh. Keshav Garg and M/s Garg Enterprises to the assessee company for AY 2013-14, AY 2014-15 and AY 2015-16 are same and yet CIT(A) was satisfied with the creditworthiness for AY 2013-14 and AY 2014-15 and not for AY 2015-16. This clearly shows that the decision of CIT(A)

was based on surmises and conjectures and against the principal of natural justice.

16.15 Neither enquiry was made by CIT(A) or AO before confirming the addition of Rs. 79,50,000/- nor any documentary evidence were sought from the assessee company, therefore the assessee company has now submitted Proof of Sale and Purchase transactions in equity shares by Keshav Kumar (Paperbook page 60-76) as additional evidence along with all the documents already submitted before CIT(A) and AO. The submission of said documents is neither challenged nor disputed in the appeal by the department.

16.16 The Long Term Capital Gain on said sale of shares were duly declared by the lender in his ITR and claimed it as exempt u/s 10(38) of the Income Tax Act, 1961. Further, the claim of said exemption and sale of equity shares by the lender was accepted by his assessing officer. Thus, the source of Rs. 79,50,000/- given by the lender (Sh. Keshav Kumar) is proved beyond doubt and no addition of Rs. 79,50,000/- received from Sh. Keshav Kumar should have been made and needs to be deleted.

17. Ground No. 8 - Addition of Rs. 4,13,000/- on account of cash deposited in bank

17.1 AO's Observation - Page 10-11 of AO.

17.2 AO made addition of all the credit entries in bank of Rs. 2,09,43,578/- (which includes cash deposit of Rs. 4,13,000/- by the company in its bank account) without considering each credit separately on merit and on the plea that purpose and utilization of funds not explained by assessee.

CIT(A)'s Observation - Page 100, point 7 of CIT Order

17.3 The CIT(A) confirmed addition of Rs. 4,13,000/- on account of cash deposit made by the assessee company by mentioning that - "The cash deposits were explained as made on account of income generated during the year under consideration which was duly reflected in P&L account. However, no evidence/details giving the particulars of person from whom such cash was received, nature of transaction with them have been furnished. Therefore, cash source deposits and of Rs. 4,13,000/- remain unexplained."

17.4 The assessee contends that the company submitted copy of income account along with copy of cash account, bank account statement, profit and loss account and copy of expense account in the books of the company for AY 2015-16 before the CIT(A), which were not considered by the CIT(A) before confirming the addition. No other explanation or documentary evidence, whatsoever was ever asked by CIT(A) either by way of show cause notice or during the personal hearing, before confirming the addition made by the AO.

18. The ld. DR has placed strong reliance on the impugned order.

19. It is seen that as rightly contended, while confirming the addition made by AO, CIT(A) wrongly mentions that -no evidence/details giving the particulars of person from whom such cash was received, nature of transaction with them have been furnished, without even going through the written submission and documentary evidences submitted by the assessee company during appellate proceedings. The assessee company submitted the completed reply before the CIT(A) in 2020, and it took the CIT(A) more than 2 years to realize that the assessee failed to submit some of the

documentary evidences to substantiate its claim. Moreover, even after that, the CIT(A) did not ask the assessee to submit any documents but wrongly confirmed the addition made by AO on the dictate of third party.

19.1 We find that the assessee company earned commission income of Rs. 4,13,000/- during the year, which fact was explained to the AO during the assessment proceeding, which the AO completely ignored while making the said addition. The copy of account of commission in the books of the company (Paperbook page 328) was submitted before the AO which was part of books of account submitted by the company during assessment proceedings. The AO neither discussed the same in the AO order nor considered the copy of account of Commission which was already placed on record while making the addition on the dictate of third party.

19.2 Further, the Commission Account (Paperbook page 328) shows that the assessee company has earned commission income of Rs. 9,13,000/- and this has been duly shown as income by the assessee company in the Profit

and Loss account of the company as at 31.03.2015 (Paperbook Page 4 and 9).

19.3 The aforesaid documents, submitted by the assessee, were neither challenged nor disputed by the department in the appeal. Hence, as rightly contended, any receipt already shown as income in the Profit and Loss Account cannot be added u/s 68 of the Act, without any specific reasons or evidence.

19.4 This Rs. 9,13,000/- includes commission of Rs. 5,00,000/- received from Motia Construction through cheque of Rs. 4,50,000/- and RS. 50,000/- was deducted as TDS by Motia Construction. However, this cheque was not presented / encashed during this year. Thus, Id. CIT(A) has made addition of Rs. 4,13,000/- only on account of commission received and shown as income in the Profit and Loss Account during the year.

19.5 Therefore, the addition of Rs. 4,13,000/- upheld by CIT(A) is already included in the commission income of Rs. 9,13,000/- declared in the Profit and Loss Account. Such double addition cannot be sustained and it is deleted. Ground No. 8 is accepted.

20. Ground No. 9 - Addition of Rs. 1,03,63,000/- u/s 68.

20.1 Out of total additions of Rs.2,09,43,578/- made by the AO on account of unexplained cash deposits in bank, the CIT(A) has confirmed additions to the extent of Rs.1,03,63,000/-, to the extent of Rs.79.50 lacs, holding that the immediate sources of these credits have not been explained in the hands of Shri Keshav Garg, who advanced the money, when he had shown income of only Rs.6,28,550/- ; and to the extent of Rs.20 lacs and Rs.4.13 lacs, holding them to be unexplained in the absence of documentary support.

20.2 The assessee contends that the company submitted the cashflow statements, explanation of each debit and credit entry in the bank account of the Appellant Company along with the Balance Sheet, Affidavit, confirmations, bank statements, ITRs, Balance sheets, copy of accounts etc. but instead of considering each credit entry separately, the AO with a vitiated mind and on the dictate of third party, made additions of all the credit entries in the bank account of the Appellant Company without considering the nature, source, credibility and genuinity of each credit transaction received

in the bank account of the Appellant Company during the year.

20.3 It is seen that the AO, after being fully satisfied with the genuinity of company and sources of credit entries in bank account, sent a detailed note on the comparison of appellant Company with shell companies and explanation of the credit entries as mentioned in points above, (deviation note) to the Deputy Director of Investigation (ADIT), Mohali on 26.12.2019 vide letter (deviation note) note no. 1733. Dated 24.12.2019 at the fag end of assessment proceedings being satisfied by the fact that the sources of the transactions as per evidences / documents submitted and regular books of accounts of the appellant company stood explained by leading cogent and reliable evidence. However, the ADIT(Investigation), Mohali was not authorized but she acted without any jurisdiction and without application of mind and rejected the deviation note in less than 12 hours. It is pertinent to mention that the ADIT (Investigation), Mohali rejected the deviation note sent with detailed replies and evidences in less than 12 hours and observed that the appellant company is a shell company. Thus, the ADIT(Investigation), Mohali exceeded her jurisdiction

knowingly and issued dictates based on Appraisal Report. The ADIT, Investigation, Mohali vide letter no. 1763 dated 27.12.2019 addressed to the Learned Assessing Officer rejected the proposal/deviation note for not proposing the additions despite the fact that ample evidence both reliable and cogent had been produced by the appellant company calling for no addition at all and still proceeded to dictate the Assessing Officer to make additions by assigning flimsy reasons as if the ADIT was an assessing authority; and still further the ADIT by giving reference to the CBDT instructions bearing No. FTS/194840/12 dated 20.11.2012 proved beyond a shadow of doubt that she had exceeded her powers by rejecting the said deviation note.

20.4 The AO acted on the dictate of a third party and on borrowed satisfaction to declare the appellant company as a shell company and made addition of all credit entries in the bank of the appellant company as undisclosed income u/s 68 of the Income Tax Act, 1961 without even issuing any show cause notice to the appellant company for treating it as a shell company. Also, the Learned Assessing Officer neither issued a show cause notice nor mentioned a single word about shell company in any of the questionnaires sent by

him on 19.08.2019 (page 21-22 of paperbook), 07.10.2019 (page 25-28 of paperbook) and 05.12.2019 (page 36-38 of paperbook).

20.5 The Assessing Officer (AO) erroneously made an addition, disregarding the comprehensive evidence provided by the assessee to substantiate its claim regarding the lenders. It is crucial to note that the company extended funds in submitted details as identity, sources, bank A/c, etc of each creditor, and there is no entity, individual or otherwise, that can be deemed as a sham entity. Furthermore, all the lenders executed the transfers from their active and operational bank accounts.

20.6 Further, the CIT(A) in his order has mentioned that-

"It was further explained that the AO has used statement of Sh. Jagdish Rai Gupta selectively in parts by drawing wrong inference that M/S TJR was a shell company. It was submitted that M/s TJR Properties was having land which was purchased during F.Y. 2007-18 for Rs. 1,73,00,000/- and sold during A.Y. 2012-13 for Rs.5,00,05,000/-by executing registered sale deed on 30.11.2011 and after paying stamp duty. Further, M/s TJR paid earnest money of Rs.1,50,00,000/- during F.Y. 2016-17 for purchase of a plot to build flat /apartment and paid TDS of Rs.1,50,000/- @1%. Thus, M/s TJR was having income generating apparatus and was undertaking business activities and was not a shell company.

9.3 Facts and material available on record have been considered in detail. Sh. TN Singla and Sh. Jagdish Rai Gupta are the directors/shareholders of the appellant company. Sh. Sahil Singla is the son, Smt. Kiran Singla is the wife and Smt. Sakshi Singla is Daughter in

Law of Sh. TN Singla .After taking into consideration the above facts, it is observed that the AO has held in his order the appellant company to be a shell company as merely existing on papers and not carrying out any business activities. After perusing the findings of the AO recorded in the assessment order and the material available on record, it is noted that M/s TJR Properties was having land which was purchased during F.Y. 2007-18 for Rs.1,73,00,000/- and sold during A.Y. 2012-13 for Rs.5,00,05,000/-by executing registered sale deed on 30.11.2011 and paying stamp duty. The same AO has assessed Long Term Capital Gain in the hands of M/s TJR from the said transaction. It is not the case of the AO that the said land was a Benami asset held in the name of M/s TJR. Further, M/s TJR paid earnest money of Rs.1,50,00,000/- during FY. 2016-17 for purchase of a plot to build flat/apartment and paid TDS of Rs.1,50,000/- @1%. Thus, on facts, it is observed that M/s TJR was having income generating apparatus in past and future years and was undertaking business activities. There is no definition of shell company given under the provisions of Income Tax Act, 1961 or Companies Act, 1956/2013. Every case needs to be examined on merits as per the peculiar facts and circumstances to draw such inference and consequences out of the same as per the provisions of Income Tax Act. In order to decide the merit of addition made by the AO on account of unexplained bank credits u/s 68 of the Act, it is required to examine the source and nature of credits received by the appellant terms of conditions laid down in the provisions of section 68 of the Act. Thus, it required to examine the identity and creditworthiness of the persons from who's amounts have been received and genuineness of the transactions on merit considering each credit separately. The AO has not discussed each and cred separately on merits in the assessment order before drawing the inference that the credits were unexplained. During the assessment proceedings, it was observed by AO after going through the reply of the appellant dated 19.12.2019 in respect of particular of such persons from whom such credits were received that the appellant had cred amounting to Rs 2,09,43,578/- in its bank account and the appellant could not explain purpose of such credits. Thus, the addition of Rs.2,09,43,578/- was made by the AO on the ground that the appellant has failed to explain the purpose and utilisation of such credits The appellant submitted during the appellate proceedings that it had received credits of Rs. 2,09,43,578/- in its bank account maintained with Bank of Maharashtra and furnished documentary evidence in support of identity and creditworthiness of such persons a genuineness of transaction which have been also furnished during the assessment proceedings. The AO was again directed during appellate proceedings vide letter no.295 dated 12.08.2021 to examine such credits on merit in respect of identity and

creditworthiness of such persons and genuineness of transaction. In the remand report dated 15.07.2022(supra), the AO did not bring on record any adverse findings in respect of identity and creditworthiness of such persons and genuineness of transactions except by stating that appellant is a shell company and doesn't have any profit generating apparatus. It was further stated that one of the group companies, i. e., M/s Evershine Recreation Pvt Ltd was a shell company from whom the appellant has received credits. However, the AO did not make any further enquiry in respect of credits in the bank account during the remand proceedings and relied upon the facts as discussed in the assessment order.

The appellant has discharged its onus as required u/s 68 of the Act. All the above mentioned documents were also furnished before the AO during the assessment proceedings. Although the AO has admitted to have received the said documents during the assessment proceedings yet the same were not taken into account by the AO while making addition. The AO has recorded in his order that the appellant could not explain the purpose and utilisation of such credits. However, the AO failed to take cognisance of the fact that addition u/s 68 of the Act is to be made if the appellant doesn't offer any explanation regarding the source and nature of credits received in the bank account or if the explanation offered is not found satisfactory by the AO. Whereas in this case the appellant has duly furnished its explanation in respect of bank credits received during the year under consideration alongwith necessary documentary evidence. If the AO was not satisfied with the explanation of the AO in respect of source and nature of credits received, he should have recorded such dissatisfaction in the assessment order. However, no 'adverse finding has been recorded in the assessment order in respect of the documentary evidence furnished by the appellant in support of bank credits. The submissions and documents furnished by the appellant during the appellate proceedings were also forwarded to the AO for remand report. In the remand report also, the AO has not even discussed the documentary evidence furnished by the appellant in support bank credits let alone pointing out any defect in the same. In view of the above discussion and after making independent perusal of documents furnished by the appellant, it is noted that the assessment order is non speaking, mechanical in nature and has been passed without discussing merits of the documents.

There is no direct or indirect evidence pointed out by the AO before making such additions. Therefore, after considering the merits of the case, analysis of credits as per the above table and strength of documentary evidence, it is observed that there is no justification in

such addition made in the hands of the appellant u/s 68 of the Act Therefore, the addition of Rs. 1,05,80,578/- is hereby deleted."

20.7 The assessee rightly contends that the AO did not make any adverse findings in the remand report and the entire investigation / proceedings of the AO revolves around stating the appellant company as shell company on the dictate of third party. The AO made addition of all the credit entries in the bank account of the company amounting to Rs. 2,09,43,578/- ignoring all the proofs and documentary evidences submitted by the assessee during the assessment proceeding. However, same documents were submitted before the CIT(A) during the appellate proceedings and the CIT(A) granted relief of Rs. 1,05,80,578/- to the assessee after verification of all the documents and confirmed addition of Rs. 1,03,63,000/- without asking assessee for any other evidence or document by CIT(A) during appellate proceeding continued for three years as no show cause notice was issued or query was raised by the CIT(A). Accordingly, Ground No.9 is accepted and the addition of Rs.1,03,63,000/- is deleted.

21. Ground Nos. 10 - & 11 - Upheld disallowance of loss of Rs. 9,66,547/- and disallowance of depreciation on vehicle to the extent of Rs. 9,01,873/-

21.1 Ground No. 10 states that the CIT(A) has wrongly upheld the disallowance of Rs9,66,547/-/- against loss claimed in the return of income. Ground No. 11 states that disallowance of depreciation on vehicle to the extent of Rs. 9,01,873/- has wrongly been upheld.

21.2 The AO disallowed the depreciation on vehicle to the extent of Rs. 9,01,873/-without making any discussion in the assessment order. The CIT(A) too did not make any discussion in the impugned order while upholding the disallowance.

21.3 The company submitted the following documents has been placed before us, as also furnished before both income tax authorities -

1. Copy of Computation sheet of M/s TJR Properties Private Limited for A.Y. 2015-16 (Paperbook Page 11-12)
2. Copy of fixed asset schedule (Paperbook Page 7)
3. Copy of RC of car (Paperbook Page 14-15)

21.4 The contention of the assessee has all through remained that the car was registered in the name of the assessee company and was used for business purposes only. The copy of the Registration Certificate has been filed in support.

21.5 The documents placed on file by the assessee have not been disputed or challenged by the Department. The Id. CIT(A), though, in para 11 of the impugned order, has observed that the assessee did not furnish any documentary evidence in support of the loss claimed.

21.6 It is seen that as per the Computation of Income (paperbook page 4), loss was of Rs. 9,66,547/-, whereas as per the Profit & Loss Account (paperbook page 4), the loss was of Rs. 10,93,658/-.

21.7 The contention of the Id. Counsel for the assessee has been that the AO wrongly observed that bills and vouchers and books of account were not produced by the assessee and that the AO wrongly disallowed the loss at Rs. 9,66,547/- as per the Profit & Loss Account, without considering the loss claimed in the return of income, at Rs. 10,93,658/-. It has further been contended that the Id. CIT(A) went wrong in

observing that no documentary evidence was filed, whereas the aforementioned papers were filed, as also ITR-V of the assessee company, for assessment year 2015-16 (paperbook page 10) and Balance Sheet of the assessee company as on 31.03.2015 (paperbook page 3-9) were also filed. This has not been disputed before us.

21.8 In the search conducted, at the business premises of M/s Kansal Singla & Associates, regular books of account alongwith bank statements of the assessee company were found, which fact stands duly mentioned at page 357 of the Appraisal Report (paperbook page 144). Copies of all these books of account were taken on CD by the Department, as per Panchnama (paperbook page 299-302).

21.9 The books of account were examined by the AO before sending the Deviation Note dated 24.12.2019 to Investigation Wing. This is evident from the contents of the AO's letter dated 24.12.2019 (paperbook page 320-322). The Dictate by the ADIT (Investigation), on which, however, the AO acted is available at paperbook page 323-325.

21.10 Further, the books of account were also submitted by the assessee before the AO during the remand

proceedings, on 16.02.2022, as available at paperbook page 81.

22. In view of the above, we find merit in Ground Nos. 10 and 11 and these grounds are accepted. The additions of Rs.9,66,547/- on account of loss and of Rs.9,01,873/- on account of depreciation on vehicle are deleted.

In the result, the Appeal is partly allowed.

Order pronounced on 16.02.2024.

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-

(A.D. JAIN)
VICE PRESIDENT

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar