



**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH,
MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 3110/Mum/2023

(Assessment Year: 2021-22)

DCIT
Central Circle-6(1)
Room No.1905, 19th Floor,
Air India Building, Nariman
Point
Mumbai-400 021

(Appellant)

GNP Consultancy and
Solutions Private Limited
Plot No.91, Shop No.1
Channel Classic CHS Sector
4 Kopar Khairne, Thane
Mumbai-400 709

(Respondent)

PAN No. AADCG3716B

ITA No. 2547/Mum/2023

(Assessment Year: 2021-22)

GNP Consultancy and
Solutions Private Limited
Plot No.91, Shop No.1
Channel Classic CHS Sector
4 Kopar Khairne, Thane
Mumbai-400 709

(Appellant)

DCIT
Central Circle-6(1)
Room No.1905, 19th Floor,
Air India Building, Nariman
Point
Mumbai-400 021

(Respondent)

Assessee by : Shri Nishit Gandhi, Advocate
Revenue by : Shri Dr. Kishor Dhule, CIT DR

Date of hearing: 23.01.2024

Date of pronouncement : 20.03.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the cross appeals filed by the parties against appellate order passed by The Commissioner Of Income Tax (Appeals) – 54, Mumbai (The Learned CIT – A) for assessment year 2021 – 22 dated 2/6/2023 wherein the appeal filed by the assessee against the assessment order dated 31/12/2022 passed under section 143 (3) of The Income Tax Act, 1961 (The ACT) by The Deputy Commissioner Of Income Tax, Central Circle – 6 (1), Mumbai (The Learned AO) was partly allowed. Therefore, the learned Deputy Commissioner of Income Tax, Central Circle – 6 (1), Mumbai and the assessee/appellant M/s GNP Consultancy and Solutions Private Limited, both are aggrieved and has filed these appeals.

02. The learned assessing officer in ITA number 3110/M/2023 has raised following grounds of appeal: –

"1. Whether, on the facts and in the circumstances of the case the Learned CIT (A) erred in deleting additions of Rs. 8,28,903/- on account of unexplained opening balance of cash by stating that the same is out of unaccounted business receipts disclosed by the assessee when the assessee did not submit such details and failed to substantiate its claims with any supporting documents during the assessment proceedings?"

2. Whether, on the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting additions of Rs. 73,84,000/- and Rs.

50,00,000/- on account of internal transfer of cash when the assessee had failed to substantiate its claim stating that the same was accepted in AY 2018-19 without appreciating the fact that in the AY 2018-19, the assessee had submitted documentary evidence to prove the same whereas for the year under consideration the assessee did not submit such details thereby the Ld. CIT(A) ignored these facts and adjudicated the ground in favour of the assessee without any supporting documents produced by the assessee to substantiate its claim?

3. "Whether, on the facts and in the circumstances of the case the Learned. IT(A) erred in holding that the transactions appearing in the image of the document retrieved from the mobile of Shri Kaustub Latke Director of assessee company during the course of search belongs Shri Shailesh Patil without appreciating the fact that Shri Shailesh Patil could not identify even a single party: other than the GNP in the said document and he could not substantiate his claim with any supporting documents?.

4. Whether, on the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs. 33,00,000/- and of Rs. 3,50,000/- on the grounds that these pertain to the transaction of other concerns of the assessee group firms viz. of M/s. Ganadhish GNP without

appreciating the fact that the assessee during the assessment proceedings had not explained it and had not submitted supporting documents and also no evidence was furnished by the assessee to show that such income has been included in the income of the group concerns.

5. Whether on the facts and in the circumstances of the case the LD CIT (A) erred in deleting the addition of opening cash balance of Rs.13,41,22,306/- ignoring the fact that the assessee had failed to substantiate its claim with any documentary evidences that the opening balance and the receipts were out of the unaccounted income disclosed by it?"

6. "Whether on the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the additions made u/s 69 C of Rs. 5,48,30,909/- whiteout appreciating the fact that the expenses incurred were not recorded in the books of accounts?"

7. Whether, on the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the additions made u/s 69 C of Rs. 5,48,30,909/- without appreciating the fact that the assessee has not correctly disclosed all the undisclosed business receipts and has failed to co-relate with evidences that the expenses added u/s 69C pertain to the unaccounted income disclosed and had not submitted any details about the

nature of expenses and had not submitted any evidences regarding the source of funds for the expenses?

8. Whether, on the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting additions of Rs. 13,09,93,119/- stating that there is no mention of the word cash in the seized documents ignoring the fact that the assessee has not proved that the payments have been made through cheques?

9. Whether, on the facts and in the circumstances of the case the Ld. CIT(A) erred in accepting the contention of the assessee that the amount of Rs.46.54 crores mentioned in seized document, was paid to the MIDC through cheque in respect of 281 plots whereas the total value of the 281 plots works | out to Rs.60.12 crores. The Ld. CIT(A) ignored the fact that the seized documents do not show that the payments were made by cheques and the amounts mentioned in the seized document do not match with the value of plot as per assessee's submission. Therefore, the transaction mentioned in seized document represent cash receipts by the assessee?

10. Whether on the facts and in the circumstances of the case the Ld. CIT(A) erred in allowing the claim of expenses @ 30% out of unaccounted business receipts offered without appreciating the fact that the assessee has not submitted any

documentary evidences that 30% of the expenses were incurred for the earning of such income and no evidence was submitted by the assessee regarding the claim of expenses?"

03. Assessee M/s GNP consultancy and solutions private limited has raised following grounds of appeal in ITA number 2547/M/2023: –

"1) On Jurisdiction: (Para 5.1 on Page No. 83)

In the facts and circumstances of the case and in law, the Learned CIT (Appeal)-Central erred in partly confirming the order passed u/s 143(3) of Income Tax Act dt.31.12.2022 despite the same being void for want of jurisdiction in as much as no Notice u/s 148 was issued in the present case despite acknowledging the fact that the assessment was conducted pursuant to search.

2) On Merits: Making addition of Rs. 5,95,00,000/- as alleged unaccounted business receipts in the hands of assessee on the basis of loose papers found which belongs to third party (Paras 10.16 & 10.17 on Page Nos. 107 & 108)

2.1) On the facts of the case, in law and under the circumstances, the Learned CIT (Appeal)-Central erred in confirming the addition of Rs. 85,00,000/- on the basis of loose papers

admittedly belonging to third party and not the Assessee.

2.2) On the facts of the case, in law and under the circumstances, the Learned CIT (Appeal)- Central erred in confirming the addition of Rs. 5,10,00,000/- in the hands of the assessee merely on the basis of seized documents which were admittedly belonging to and owned up by third party and therefore no income could be said to be arising to the Assessee on the same.

2.3) The Ld. CIT(A) further erred in confirming the said addition without considering the explanation given and evidences submitted by the assessee before CIT(A) as well as before AO during the assessment proceedings and as such the addition is made in violation of principles of natural justice and therefore unsustainable.

2.4) Without prejudice to the above, in the facts and circumstances of the case and in law, assuming without accepting that the addition of Rs.5,95,00,000/- could have been made, still, the Learned CIT (Appeal)- Central erred in taxing the entire alleged gross receipts of Rs. 5,95,00,000/- as unaccounted business receipts without granting deduction of 30% expenses as claimed by assessee and duly allowed and accepted by CIT(A) in his order on other unaccounted business receipts.

3) Making addition of Rs. 51,32,900 /- as unaccounted business income (Paras 14.1 to 14.6 on Page Nos. 115 to 118 of order)

3.1) On the facts of the case, in law and under the circumstances, the Learned CIT (Appeal)-Central erred in confirming addition of Rs. 51,32,900/- (Rs. 26,72,900/- Rs. 3,80,000/- + Rs. 20,80,000/-) as alleged unaccounted business Income from three land transactions on the basis of the seized documents without considering the detailed submission made by the assessee that no transactions are carried out by them as it did not materialized.

3.2) On the facts of the case, in law and under the circumstances, the Learned CIT (Appeal)-Central erred in confirming the addition of Rs. 51,32,900/- by presuming that assessee has earned alleged unaccounted business income out of said three land transactions without any sustainable basis or any other documentary proof or other corroborative evidence to that effect.

3.3) On the facts of the case, in law and under the circumstances, the Learned CIT (Appeal)-Central erred in confirming the addition in respect of alleged receipts from the said three land transactions merely on the basis of WhatsApp Chat, which is at the most secondary evidence and without any independent

verification made to that effect by the Ld. AO or even the Ld. CIT(A) himself.

3.4) In any case, the addition made by the Ld. AO and as affirmed by the Ld. CIT(A) is unsustainable since the same is made without considering the material and evidences on record in violation of principles of natural justice.

3.5) Without prejudice to the above, in the facts and circumstances of the case and in law, assuming without accepting that the addition of Rs.51,32,900/- could have been made, still, the Learned CIT (Appeal)-Central erred in taxing the entire amount as unaccounted business receipts without granting deduction of 30% expenses as claimed by assessee and duly allowed and accepted by CIT(A) in his order on other unaccounted business receipts.

4) On Interest:

In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in levying interest u/s 234A, 234B and 234C of the Act on the Appellant.

5) The Appellant craves leave to add, amend, alter, delete, modify or withdraw all or any of the above grounds of appeal."

04. Facts culled out from assessment order shows that Assessee Company is engaged in the business of services to industrial clients providing end-to-end solutions right from the understanding of the client's requirements, selecting ideal location for industrial setup, type of plot in industrial belt available, layout for building construction etc. It also carries on business as real estate developer and builder in-group concerns.
05. Assessee filed its return of income under section 139 (1) of the Act on 15/3/2022 at a total income of ₹ 92,782,814/- which was revised on same date at the total income of ₹ 121,592,714/-.
06. A search u/s 132 of the Act was conducted on 23/9/2021 and various premises were covered. The assessee was also covered under the search. Based on documents seized, assessee group disclosed additional income of Rs 26.34 crores as per letter dated 11/2/2022.
07. Case of the assessee was subsequently centralized to the charge of the AO. The case was selected for compulsory scrutiny and notice under section 143 (2) of the act was issued on 30/6/2022 and the notice under section 142 (1) of the act was also issued on same day. The assessee submitted details and subsequently the assessment order was passed by the learned assessing officer under section 143 (3) of the act on 31/12/2022 determining the total income of the assessee at ₹ 711,957,005/-. The

learned assessing officer made several additions to the total income of the assessee. The additions were in nature unaccounted business income and unaccounted expenditure based on documents seized during search. The LD AO made addition of unaccounted business receipt of Rs 56.43 Cr and addition of unaccounted unexplained expenditure of Rs 5.48 Cr.

08. Assessee, aggrieved with assessment order preferred an appeal, which was decided on 2/6/2023 deleting the additions partly, and therefore both the parties are in appeal before us.
09. Ld. AR filed a three-volume paper book, chart of the issues that was considered while deciding cross appeals.
010. First, we deal with the appeal filed by the learned AO, which has almost ten effective grounds.
011. The first ground of appeal is with respect to the addition of ₹ 8,28,903/- deleted by the learned CIT – A . Ld. AO made it on account of unexplained opening balance of cash by stating that the same is out of unaccounted business receipts disclosed by the assessee when the assessee did not submit such details and failed to substantiate its claim with any supporting documents during the assessment proceedings.
012. This aspect has been dealt with by the learned AO in paragraph number 6 wherein the unaccounted business

income and unexplained expenditure under section 69C of the act is considered. During search action in case of the group companies at shop number 1003, Rupa Solitaire, millennium business Park, Mahape, Mumbai – 10, a Sony pen drive belonging to Ms. Harshana Sonavane, Executive Assistant to Shri kaustubh Latke, was found. It contained an excel file named 'GNP Con' having entries of various deposits and payments. Statement of Ms Sonavane was recorded u/s 132 (4) of The Act dated 25/09/2022 where in answer to question number 19 she stated that the file contains the details of cash transactions, which are not accounted in the regular books of accounts. During search action at the residential premises of Mr. Kaustubh latke at flat number 16, son take appeal, Nariman point, Mumbai who agreed with the reply of MS Harsha Sonavane in his statement u/s 132 (4) of the act on 23/09/2021 where in answer to question no 109 he accepted it. The Excel file show transactions for two financial years i.e., F Y 20-21 and FY 21-22 where in opening balance of ₹ 828,903, total receipt of ₹ 2,30,55,400 and the payments of ₹ 23,822,348 are mentioned. Before DDIT (inv) as per letter dated 11/02/2022, assessee explained before him the details of the nature of transactions, income content there in, branch transfer and expenses.

013. Content of the seized document can be summarized as under :-

Sr No	Particulars	Financial Years		Total
		20-21	21-22	
	Opening balance			828903
1	Plot Consultancy income	4227500	2250000	6477500
2	Cluster consultancy income	975000	200000	1175000
3	Internal transfer of funds from one branch site to another branch site	7384000	8018900	15402900
	Expenses	12586500	10468900	23055400

014. During assessment proceedings, the assessee was required to provide explanation of each entry along with the name, permanent account number and address of the parties involved. The documentary evidence in support of the claim were also asked. The assessee submitted that a sum of ₹ 23,055,400/- as reflecting in the evidence is (i) consisting of internal transfers of Rs 73,84,000/- ; (ii) consultancy fees received as income from plot and cluster consultancy. It further stated that out of the above sum ₹ 5,202,500/- and ₹ 2,450,000/- has been declared as consultancy income of the assessee for assessment year 2021 - 22 and 2022 - 23

respectively. Therefore the assessee was issued further questionnaire to explain as to why unaccounted receipts pertaining to the year FY 20-21 under consideration of ₹ 12,586,500/- [Comprising of Rs 42,27500/- MIDC Plot consultancy income + Cluster Consultancy Income + Rs 73,84,000/- branch internal transfer entries] and opening balance of ₹ 828,903 should not be considered as unaccounted business income and a further sum of Rs 130,30,419 [being various expenditure pertaining to F Y 20-21 in that sheet] not be considered as unexplained expenditure.

015. Assessee filed detailed letter dated 09/09/2022 and 30/12/2022 where in it is submitted that :-
- i. MIDC plot consultancy income of ₹ 42,27,500 and cluster consultancy income of ₹ 975,000 amounting to ₹ 52,02,500 has already been offered as income under section 132(4) of the act impugned assessment year.
 - ii. Assessee has claimed deduction of 30% of the expenditure as it is also evident in the seized document. The expenditure is stated in the seized documents are 30% of the receipt.
 - iii. No separate claim of the expenditure out of the unaccounted income is made.

- iv. Separate working of internal transfer of 73,84,000 the internal transfer, movement of funds from one office, branch, resident of partner of resident, branch et cetera of the group, which is not an income, but merely an internal transfer.
- v. Assessee has overall of gross receipt of ₹ 78 .64 crores in various group entities and such of funds are emanating from the same.
- vi. Opening balance of ₹ 828,903 was lying at the office on 03/10/2020, which is also out of the additional income offered of 27.74 crores, which was available with the assessee. This income is already offered for taxation.
- vii. He also submitted fund flow statement of accounted business receipts and application of the same to the assessing officer as well as the deputy director of income tax (investigation) which was also stated. In the fund flow statement, the total disclosure of income of ₹ 25.45 crores was also shown the source of various transactions.
- viii. A seized document clearly reveals the receipt of consultancy fees, internal transfers, opening balance and expenses incurred.

- ix. For assessment year 2018 – 19 internal transfers have been accepted by the AO and addition is made.
- x. Expenses incurred by the assessee are not claimed as deduction, but income offered on gross basis and estimated 30% of gross is claimed as expenditure.
- xi. As the source of income is, expenditure is made from that income. Therefore, when the receipts are tax, the deductions in respect of the expenditure incurred from these receipts are also allowable.
- xii. Therefore, the assessee submitted that income already been offered, no addition with respect to the opening balances, internal transfers as unaccounted business income and of expenditure mentioned therein as unexplained expenditure should be made.

016. After considering the explanation of the assessee, the learned assessing officer rejected the same and made an addition of ₹ 12,586,500/- which was the receipts pertaining to the year under consideration. Further opening balance of ₹ 828,903/- was also added. Thus, the total addition of ₹ 13,415,403/- was made to the total income of the assessee as unaccounted business income. Further from the said document, a sum of ₹ 13,030,409/- is also considered as an unexplained

expenditure and addition under section 69C of the act was made.

017. Thus, the learned AO made the addition for the year of (1) of sum of ₹ 12,586,500/- being the receipt (2) expenditure of ₹ 13,030,409 under section 69C of the act and (3) addition of ₹ 828,903/- opening balance therein.
018. These additions were challenged before the learned CIT – A as per ground number 7 before him. The learned CIT – A appreciated from the seized documents; it is inferred that there is an opening balance for assessment year 2021 – 22 (financial year 2020 – 21) of ₹ 828,903/-. The total receipts are shown of ₹ 13,415,403 for financial year 2020 – 21 and ₹ 1,40,68,904 financial years 2021 – 22 totalling to ₹ 23,055,400. Out of the total receipts the MIDC plot consultancy charges of ₹ 4,227,500 for financial year 2020 – 21 and ₹ 2,250,000 for financial year 2021 – 22 totalling to ₹ 6,477,500/- and further cluster consultancy fees of ₹ 975,004 financial year 2020 – 21 and Rs. 2 lakhs for financial year 2021 – 22 totalling to ₹ 1,175,000/- has been offered by the assessee as net income after claiming expenses at the rate of 30% thereon in his statement under section 132 (4) as well as in the return of income. He further held that there are internal transfer of funds from one office or branch of the assessee to the other office and branch of the assessee which is an internal movement of fund from one office to another office out of the source of the business receipts

and therefore such sum is ₹ 7,384,000/- for financial year 2020 – 21 and 80,18,904 financial year 2021 – 22 totalling to ₹ 15,402,900/-. He further noted that seized documents also shows total expenditure of ₹ 13,030,409/- for financial year 2020 – 21 and ₹ 10,791,939/- for financial year 2021 – 22 totalling to ₹ 23,022,314/-. The learned CIT – A noted that:-

- i. Assessee has already offered a consultancy fees of ₹ 4,227,500/- for financial year 2020 – 21 and ₹ 975,000/- for financial year 2020 – 21 of MIDC plot consultancy and cluster consultancy respectively and therefore the sum of ₹ 5,202,500/- offered by the assessee in the statement as well as in the return of income such sum cannot be added to the total income of the assessee.
- ii. Assessee has claimed expenditure to the extent of 30% out of the gross business receipts. Therefore, such an addition was deleted.
- iii. Further with respect to the addition because of opening balance of ₹ 828,903/- the learned CIT – A noted that assessee is engaged in the business of consultancy for a long time, and it was found that assessee has already offered total additional income of ₹ 27.74 crores. The above disclosure is also supported by the fund flow statement of additional income offered and its application submitted before

him in the form of paper book where the above opening balance is available out of the unaccounted income offered by the group. The above statement of fund flow was also produced before the Deputy Director of Income Tax [Investigation] and the assessing officer to show that there was a sufficient cash balance available with the assessee.

- iv. In reply to the statement under section 132 (4) of the act also wherein in answer to question number 45 Mr. Girish Pawar the director of the company stated that assessee is maintaining the record of receipt and payments of unaccounted transactions and sometimes assessee group has also maintained cash accounts on monthly basis through the various employees at various sites. Further there is no central accounting on daily basis was maintained or found during the search.
- v. unaccounted business receipts during financial year 2020 – 21 of ₹ 25.46 crores and the above opening balance of ₹ 828,903/- is nothing but out of the funds available from the above unaccounted business receipts offered by the assessee and its group.
- vi. AO has made an addition without making any verification, but explanation of the assessee was rejected without any cogent reason.

- vii. Accordingly, he deleted the above opening balance of ₹ 828,903/-.
- viii. With respect to the internal transfer of funds, he found that a sum of ₹ 73,84,000/- is the internal transfer of funds for financial year 2020 – 21 and ₹ 8,018,904 financial year 2021 – 22 totalling to ₹ 15,402,900. The above sum was stated to be internal movement of funds from one office or branches to the other office and branches of the assessee. The claim of the assessee is that this amount contains various entries of movement of funds from one office/branch to another office branch. The assessee is engaged in the business of consultancy and construction business and having different sites of construction and consultancy business in their offices are geographically spread across Maharashtra at Mumbai, Mayhap, Dombivli, Thane, Kalyan, Pune and Kolhapur.
- ix. The seized documents contains that the amount has been transferred from one office to another, which is also found in the same document on various dates.
- x. There is evidence of transfer from one office to another office in the seized document itself that are placed at page number 1057 specifically and page number 1026 – 1053 of the paper books filed.

- xi. These facts are also part of the search proceedings found before the Deputy Director of Income Tax (investigation) which was contained in the letter filed on 11/2/2022 under section 132 (4) of the act.
- xii. Assessee has already disclosed unaccounted business receipts of ₹ 25.46 crores that were available with the assessee during the year and the seized documents also contained the unaccounted disclosure of ₹ 5,202,500/- as consultancy fee, which is offered by the assessee, and therefore there cannot be any addition of the above sum once again.
019. Thus, learned CIT – A deleted the above addition of ₹ 7,384,000 holding that:-
- i. The assessee has already offered the income of ₹ 27.74 crores and therefore relying on the decision of the honourable Supreme Court in case of 66 ITR 722 that in absence of any direct evidence telescoping is permissible in absence of the direct link or connection between the profits and income unaccounted in the books.
 - ii. The AO has not denied that the explanation offered by the assessee that the transaction is recorded therein pertain to the business receipts and were already offered to tax. The

AO did not say that such sum has not been offered for taxation. The assessee has furnished the complete details as to how this income is offered to tax in its return of income filed/revised pursuant to such proceedings.

- iii. In assessee's own case on similar facts and circumstances for assessment year 2018 – 19 where the assessing officer passed an order under section 148 of the act on 31 March 2023, on the similar issue of taxing of the internal transfer of funds, the learned assessing officer himself has not made any addition. Before him, assessee produced seized documents, copy of the show cause notice for that year and reply furnished before the assessing officer on question raised by him. Therefore, it is a fact that the learned assessing officer in earlier year has accepted that internal transfer of funds cannot be taxed in the hands of the assessee.
- iv. Accordingly, the learned CIT – A deleted the above addition of three different nature (1) the addition of opening balance of ₹ 8,28,903/-, (2) addition of ₹ 7,384,000 in respect of internal transfers.

020. The learned assessing officer has challenged the deletion of the addition of ₹ 828,903/- as per ground number {1} and the deletion of the addition of ₹ 7,384,000 covered in ground number {2} of the appeal.
021. The learned departmental representative vehemently supported the order of the learned assessing officer and challenges the deletion of the addition holding that deletion is incorrect. He referred to the assessment order at page number 9 wherein the addition has been discussed by the learned assessing officer and Para number 9.5 of the order of the learned CIT – A for reasons given by him deleting the above addition. He further stated that.
- i. Assessee has to substantiate the benefit and linkage between the amount disclosed by him as total income as undisclosed income and telescoping of such undisclosed income with the amount of addition deleted by the learned CIT – A of opening balance.
 - ii. There is no centralized record of the balance available with the assessee as an opening balance and therefore the benefit given by the learned CIT – A of telescoping by looking at the fund flow statement is incorrect.
 - iii. decision of the honourable Supreme Court relied upon by the learned CIT – A in Commissioner of

income tax versus S Nelliapan (1967) 66 ITR 722 (SC) dated 5/5/1967 is wrongly relied upon. He specifically referred to the last but one Para of the order of honourable Supreme Court wherein it has been held that telescoping of the income is always a question of fact. Therefore, it cannot be granted merely based on the arithmetic calculation but on logical linkage.

- iv. Hence, according to him the telescoping granted by first appellate authority is erroneous.

022. Coming to ground number 2, with respect to the addition of ₹ 7,384,000, he submits that the learned CIT – A has deleted the addition considering that it is out of total disclosure, and it is an internal transfer from one branch to another branch. He submits that.

- i. If the addition is deleted for assessment in assessee's own case for earlier years, it cannot be a basis for deletion in the same year unless complete verification has been done by the learned CIT – A.
- ii. The internal transfer has also to be matched with the transfer from one branch to the receipt in another branch and in absence of any such centralized records maintained by the assessee; such internal transfer cannot be believed.

- iii. learned CIT – A has wrongly stated that it is out of the total disclosure made by the assessee without showing any working of total disclosure made by the assessee.

023. The learned authorized representative in reply referred to page number 1026 of the paper book and submitted that.

- i. Addition of ₹ 8.28 lakhs is not opening balance of the year, but it is during the year.
- ii. Assessee has given a complete explanation of such opening balance, which was shown as a part of the fund flow analysis, and therefore the explanation of the assessee is accepted.
- iii. With respect to the addition of ₹ 73.80 lakhs, there is movement of funds from different sites, which is found from the documents it, date and sites are also given and further the part of the seized documents shows that there is an internal movement of the funds.
- iv. He referred to row wise and column wise reconciliation of these items placed before all lower authorities to substantiate the claim. Connection is found from transfer of one branch to another branch is itself stated in the seized papers.

- v. These facts were also clarified before the learned Deputy Director of Income Tax (investigation) who has also accepted.
- vi. Such transfers are not income at all.
- vii. He further stated that all these documents were made available before the assessing officer along with the reply submitted before the DDIT {investigation} and therefore the addition is correctly deleted by the learned CIT – A.
- viii. Explanation of the assessee during search, before the investigation Wing as well as before the learned assessing officer remains the same.
- ix. identical question arose in the case of the assessee for assessment year 2018 – 19 which is recorded by the learned CIT – A and the learned assessing officer after detailed questioning, considering the explanation of the assessee, made no addition on this account.
- x. There is no infirmity in the order of the learned CIT – A.

024. We have carefully considered the rival contention and perused the orders of the lower authorities. Ground number 1 is with respect to the deletion of addition of ₹ 8.28 lakhs as an opening balance in the seized documents and a sum of ₹ 73.80 lakhs being internal

transfers is part of the ground number 2 raised by the revenue. The facts show that:-

- i. Admittedly, the documents seized are not showing that the opening balance of ₹ 8.28 lakhs belongs to the beginning of the year, the documents seized is for part of the year. Therefore, the opening balance is result of the transaction of the year. Evident from the statement recorded of various persons and the document seized. The opening balance is stated to be a cash balance lying with the office of the 3/10/2020 at Mahape.
- ii. The nonproduction of the documents for the full year cannot disentitle the assessee of the result of the transactions during the year. It is not the claim of the AO opening balance shown by the assessee on 3/10/2020 is higher than the amount of disclosure made or such balance as on 3/10/2020 is not available with the assessee from accounted source as well as from disclosure taken together.
- iii. Assessee has already offered ₹ 27.74 crores, which is not denied. Therefore, assessee cannot be denied capitalization of such disclosure already made. Naturally, income will have the acquisition of the asset in the form of advances, cash on hand, and other assets.

- iv. The fund flow statement shown by the assessee is not disputed. It is produced before the investigation wing and assessing officer. As fund flow statement remains undisputed, respective entries contained therein not been disputed individually.
- v. Statement recorded under section 132 (4) of the staff, the director of the company and investigation/examination of the details during assessment proceedings categorically shown that the above sum is standing as opening balance in the seized documents as on 3/10/2020.
- vi. On the issue of telescoping, honourable Supreme Court in 66 ITR 722 has categorically held that telescoping is a question of fact. Therefore, it is for the revenue to prove that the fund flow statement shown by the assessee is factually incorrect.
- vii. Honourable Gujarat High Court in Aliasgar Anvarali Varteji [2018] 96 taxmann.com 231 (Gujarat) has categorically held that when the assessee has offered unaccounted income, its capitalization or telescoping assessee deserves. Of course, it is for revenue to show that the telescoping is not available because amount of income earned by the assessee have already been invested in other assets. Such fact is not demonstrated before us. Honourable Bombay High Court also in case of 61

taxmann.com 357 has also categorically held that when the income has already been taxed, its subsequent withdrawal cannot be taxed once again.

viii. Thus, in absence of any other adverse fact pointed out by the learned assessing officer, we do not find any infirmity in the order of the learned CIT – A in granting the benefit of telescoping.

ix. Thus, taking into consideration all the factors of disclosure made by the assessee for which telescoping has been granted, fund flow statement of additional income offered of ₹ 27.74 crores, consistent statement of director, staff, and submissions before the investigation Wing and the assessing officer, clearly establishes that the addition of ₹ 828,903/- is correctly deleted.

025. Accordingly, we uphold the order of the learned CIT – A in deleting the addition of ₹ 8,28903/- of the opening balance in the seized documents. Ground number 1 of the appeal is dismissed.

026. Coming to ground number 2, which has two parts (1) addition of ₹ 73.84 lakhs and (2) further addition deleted of ₹ 50 lakhs on account of transfer of cash? The part of the addition of ground number [2] amounting to ₹ 73.84 lakhs has already been discussed while deciding ground number [1] of the appeal. The addition deleted by the learned CIT – A cannot be found fault with because

internal transfers have been accepted by the learned assessing officer in assessment year 2018 – 19 on identical facts and circumstances after examining and questioning the assessee. Before us, it is not shown that there is a change in the facts and circumstances of the case or any of the entries shown as internal transfer has not been recorded in one branch and other connected branch. Over and above the assessee has produced row wise and column wise transfer and receipt of fund between various entities that remains undisputed by the AO, it cannot be said that there is any income contained in the above transfer entries. In view of this, it is apparent that at least to the extent of Rs. 73,84,000/- with respect to the internal movement of funds pertaining to financial year 2020 – 21 relevant to impugned assessment year 2020 – 22, does not contain any income element. This fact has been categorically verified by the learned CIT – A at least for this year. In view of this, we do not find any reason to upset the order of the learned CIT – A wherein he has deleted the addition of ₹ 7,384,000 on account of internal transfers. Accordingly, ground number 2 of the appeal is dismissed to the above extent.

027. The second part of ground number 2 of appeal of the learned assessing officer is with respect to the deletion of ₹ 50 lakhs. Ground number 3, 4 are also based on the

same document. Therefore, all these grounds are dealt with together.

028. An interesting fact has emerged during search on the assessee where a photo was retrieved from the WhatsApp chat between the director of the company and one Mr. Shailesh Patil. This document is sent by Mr. Patil to the director. statement of the directors was recorded on oath under section 132 (4) of the act on 23/9/2021 wherein after explaining some of the transaction he failed to give any explanation stating that he is not able to recall details of such transaction. Ongoing through the said evidence, it was noted that it is a document for the period between 11/3/2021 - 16/3/2021 where the opening balance of ₹ 16.24/- crores, total receipt of ₹ 97,200,000/- and payment of ₹ 19,566,500/- is mentioned. The assessee was asked to provide the details of explanation of each entry along with the name, permanent account number and address of the parties involved along with the documentary evidence. The assessee submitted that that the above document belongs to Mr. Patil and that only some of the transactions are pertaining to the assessee. Statement of Mr. Patil was also recorded by the learned assessing officer who also made similar claim but failed to substantiate the transactions. Mr. Patil categorically accepted that the evidence was prepared by him as he is an Angadia, however, he could not identify even a single

party other than the assessee in those transaction. It is also a fact that Mr. Patil forwarded it to the director of the company over WhatsApp. Mr. Patil stated that the evidence is the running Ledger of the cash with him of different parties however except the assessee he could not provide any explanation in respect of any other party. Therefore, the learned assessing officer issued a show cause notice, which was replied by the assessee but rejected by the learned AO and stated that it cannot be accepted that the said evidence belongs to Mr. Patil. Therefore the learned assessing officer held that these transactions belongs to the assessee and the opening balance of ₹ 16,24,51,306/- is added as unaccounted business income in the hands of the assessee, unaccounted receipt of ₹ 97,228,748/- is also added as unaccounted business income and further the sum of ₹ 195,66,500/- is also added as an unexplained expenditure under section 69C of the act.

029. Assessee challenged the same before the learned CIT – A with respect to total addition of ₹ 259,680,054/- as per ground number 8 of the appeal [Para 10] of the appellate order. The total amount of the addition is tabulated as under:-

serial number	particulars	receipt	payment
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1	Opening balance as per the documents sent by Mr. Sailesh Patil to the director of the assessee company	₹ 162,451,306	
2	Various transactions belonging to Mr. Sailesh Patil	₹ 185 lakhs	₹ 1,70,88,000
3	Construction income and expenses related to group concerns	₹ 3,650,000	₹ 992,752
4	Consultancy income and expenses related to group concerns	₹ 190 lakhs	₹ 407,000
5	Internal funds transferred in the same group	₹ 50 lakhs	₹ 10 lakhs
6	Other business receipts belonging	₹ 510 lakhs	

	to the group		
	Total	₹ 259,601,306	Rs. 1,94,87,752

030. The learned CIT – A categorically noted that the above document is received by the director of the assessee, Mr. Kaustubh Latke from mobile number saved as Mr. Sailesh Patil – 2. During search the director of the assessee was questioned on this document as per question number 80/81 of 132 (4) statement dated 23/9/2021 wherein 25 transactions are found to be recorded. Out of 25 transactions, explanation of 15 transactions was that Mr. Latke does not remember the details of the transaction. Similarly, statement of Mr. Girish Pawar was also recorded under section 132 (4) on 23/9/2021 and in reply to question number 179 he also stated that Mr. Sailesh Patil is an Angadia providing services for movement of cash to the assessee and its group of unaccounted cash generated from construction and consultancy business. Further, in reply to question number 19 – 21 of the statement recorded of Mr. Girish Narayan Pawar at Embassy Centre Nariman point he clarified that Mr. Patil is a businessman working in Kalyan and has carried out Angadia services for movement of cash transaction. The learned CIT – A noted that opening balance of ₹ 162,451,306 is depicted in the document sent by Mr. Patil to the director. Out of the above

transaction, a transaction of ₹ 185 lakhs of receipt and ₹ 17,088,000 of payment belongs to Mr. Sailesh Patil. Further, there is a construction income of ₹ 3,650,000/- construction expenditure of ₹ 9,92,750/-. Further, the transaction also shows that the consultancy income of ₹ 190 lakhs and expenditure of ₹ 4,07,000/- has been recorded. The transaction also shows, as an internal transfer of funds of ₹ 50 lakhs is receipt and payment of ₹ 10 lakhs. There were other receipts of ₹ 51,000,000/- in the statement. Accordingly, total income of ₹ 259,601,306 was stated to be receipt and Rs. 1,94,87,752/- was stated to be outflow.

031. The learned CIT – A has categorically held that transaction that has not been owned up by the group, but which has been owned by on the other hand by Mr. Sailesh Patil cannot be the basis of addition in the hands of the assessee. Accordingly based on the various entries categorized he held that :-

- i. a sum of ₹ 162,451,306/- being the opening balance as per the document and sum of Rs. 1 Crore dated 14/3/2021 where there is no name appearing of any party cannot be added in the hands of the assessee. Accordingly, he deleted the addition of ₹ 172,451,306/- comprising of ₹ 162,451,306/- and Rs 1 Crore out of the total sum of ₹ 259,601,306/- as same has been owned up by

Mr. Sailesh Patil. Therefore, he deleted the addition to that extent.

- ii. With respect to the balance addition of ₹ 87,228,714/- , ₹ 85 lakhs claimed to be belonging to Sailesh Patil, the learned CIT – A held that the said amounts are receipts of the assessee. He referred to the transaction number 7 of 12 March 2021 of ₹ 20 lakhs, transaction number 16 of 15 March 2021 of ₹ 40 lakhs, serial number 17 of transaction dated 15 March 2021 of ₹ 25 lakhs totalling in all to ₹ 85 lakhs. Therefore, he confirmed the addition of ₹ 85 lakhs in the hands of the assessee. He also gave a specific finding that in the statement the director has confirmed that these entries pertain to the amounts received in cash by the assessee and the letter stated that these entries pertain to Mr. Sailesh Patil, such an explanation cannot be accepted without any retraction filed by the assessee. He also refused to grant deduction of expenditure to the extent of 30% thereon since the assessee did not own up these entries.
- iii. He further held that ₹ 190 lakhs have already been offered by the assessee after claiming expenses at the rate of 30% out of the same as per his statement under section 132 (4) of the act. Therefore, he directed to delete the sum of Rs 190 lakhs/- as business receipts by way of a letter

dated 15/11/2022 that the above sum has remained to be incorporated in the total income of the assessee to be assessed finally. Therefore, he directed the AO to make an addition to the extent of 70% of such income of (₹ 190 lakhs -30% of expenditure) ₹ 133 lakhs as addition. Therefore, he confirmed the addition to that extent.

- iv. With respect to the balance sum of ₹ 36.5 lakhs it was stated that a sum of ₹ 33 lakhs has already been offered as income by the assessee in the name of M/s Ganadhish other group concern and ₹ 350,000 in Roshni Enterprises. On verification of the above claim, he directed the AO to delete the addition of ₹ 36.5 lakhs if the claim of the assessee is found to be correct. Therefore, he directed the AO to examine the claim of the assessee and deal with the addition accordingly.
- v. The CIT – A further directed that if the above sum has not been disclosed in those other group concern, then the addition of ₹ 36.5 lakhs and confirmed in the hands of the assessee.
- vi. With respect to the addition of ₹ 50 lakhs it was stated that it is an internal movement of funds from one office to another office of the same assessee through Angadia Mr. Sailesh Patil. Therefore, as it is an internal movement of the funds made by the

assessee from one office to another office, the addition was deleted. Such transaction is recorded at serial number eight wherein on 12 March 2021 that is a reference that the sum of ₹ 50 lakhs has been transferred from Nariman point office. Thus, the learned CIT – A deleted the same.

- vii. With respect to a sum of ₹ 510 lakhs being total of entry at serial number 10 dated 13 March 2021 of sukhaarta clusters of ₹ 210 lakhs stated by the assessee in his statement that it is a cash received by the assessee but he does not remember the details and another entry at serial number 19 dated 15 March 2021 pertaining to Mr. Nilawar of ₹ 300 lakhs containing the deduction of ₹ 8500 stated to be consultancy charges received in cash from Mr. Prashant Nilawar in respect of sale of land in Pune confirmed in the statement of the director of the assessee under section 132 (4) was confirmed as income of the assessee. He rejected the explanation of the assessee that the above amounts were not cash received by the assessee but are received by cheque. The details of the cheques received from these parties of the identical sum were also produced before him. However, he rejected this explanation because in 132 (4) statement the director of the assessee has accepted it to be cash received and subsequently the rate no retraction

filed by the director. He also refused to grant deduction of expenses at the rate of 30% from the above amount. Thus, in addition of ₹ 510 lakhs was confirmed.

- viii. Thus, out of the above addition of ₹ 259,601,306/-, the addition was restricted to ₹ 728 lakhs.
- ix. Therefore, on this document seized, both the parties are aggrieved with the finding of the learned CIT - A has challenged the addition when confirmed, by the assessee and when deleted, by the learned AO.
- x. On this issue, the revenue is aggrieved by part of ground number 2 related to the deletion of only ₹ 50 lakhs being serial number eight dated 12 March 2021 which is transferred from Nariman point office of the assessee for which assessee did not remember any details.

032. On the same facts the learned AO has also challenged ground number 3 stating that the whole transaction should have been added in the hands of the assessee as neither Mr. Sailesh Patil nor Mr. Latke could identify any other party other than the assessee. The ground number 3 did not challenge the deletion of any amount of addition by the learned CIT - A but in principle the addition is challenged. The tax effects stated against that ground is Rs. Nil .

033. The ground number 4 is with respect to the addition deleted in the hands of the assessee of ₹ 33 lakhs and ₹ 350,000 on the ground that these pertain to the transaction of the other concern of the assessee group for the reason that CIT – A deleted without appreciating the fact that the assessee during the assessment proceedings could not explain and had not supported it with any documentary evidences. This ground is related to the disclosure of the sum of ₹ 33 lakhs in the hands of M/s Ganadhish and ₹ 350,000 in the hands of Roshni Enterprises i.e., other concerns of the group.
034. The learned CIT DR collectively argued ground number 2, 3 and 4. He also collectively argued the addition confirmed by the learned CIT – A against which the assessee is in appeal. Such additions are of ₹ 85 lakhs and ₹ 510 lakhs.
035. He referred to the document found during search from mobile phone of the director of the company a document that was sent by Mr. Sailesh Patil. He submits that except the assessee, neither the director Nor Mr. Patel could explain to whom other transactions belongs to. He further stated that why an Angadia will send the details of the other parties to the assessee. He further referred to the statement wherein 25 different entries were found of receipt of cash and payment of cash. Therefore, the whole transaction belongs to the assessee only. He further stated that assessee did not deny that not all the

transactions are belonging to the assessee, but it says that some of the transactions belong to the assessee and some of the transaction does not belong to the assessee without staying to whom it belongs. From the document, it is apparent that Mr. Sailesh Patil is engaged in the movement of cash from and to the assessee. He further referred to the provisions of section 292 of The Income Tax Act wherein it is stated that if the document is found from the premises of the assessee, the assessee is duty-bound to explain the same, of course it is a rebuttable presumption.

036. He further stated that the reference to the cheque to the different transaction and one is cash, and another is bank and therefore they cannot be related. He further referred to a transaction of ₹ 3 crores at serial number 19 of such documents which is found to be the consultancy cheque received in cash from Mr. Prashant Nilawar for sale of land in Pune, which is confirmed by Mr. Kaustubh and further cheque of ₹ 3 crore placed at page number 1021 pertains to different transaction and therefore they cannot be considered the same transaction because of the reason that why one would give a cash through Angadia and also a bank cheque of the identical amount. This was his argument with respect to the addition of ₹ 510 lakhs made by the learned assessing officer confirmed by the learned CIT – A against which the assessee is in appeal.

037. He further submitted that the transaction of ₹ 50 lakhs on 12 March 2021 showing transfer from Nariman point, the assessee himself says that he did not remember the details of this transaction then how the learned CIT – A has believed that this is an inter-office transaction of transfer of funds. He further stated that the addition deleted with respect to the other group entities of ₹ 36.50 lakhs cannot be deleted in the hands of the assessee. He therefore supported the order of the learned AO.
038. The learned authorized representative submitted that Mr. Sailesh Patil is engaged in the business of Angadia. He referred to page number 104 of the order of the learned CIT – A. He further stated that in the assessment proceedings under section 143 (3) of the act passed in the hands of Mr. Sailesh Patil on 10/7/2023 his business is accepted, and he has owned the transactions. He further stated that the learned assessing officer has stated that all the transaction mentioned in the document sent by WhatsApp by Mr. Sailesh Patil to the director of the company belongs to the company. He submits that this finding is without any basis. He stated that it is for Mr. Sailesh Patil to identify who are the other parties other than the assessee. If Mr. Sailesh Patil does not say that all these transactions are pertaining to the assessee, the learned assessing officer has merely drawn adverse inference. Naturally, the document has been sent by Mr.

Sailesh Patil so for such document belongs to Mr. Sailesh Patil and the director is merely a receiver of that document.

039. Coming to second part of ground number 2 of the appeal wherein an addition deleted by the learned CIT – A of ₹ 50 lakhs on account of internal transfer is contested by revenue, he submitted that ₹ 50 lakhs is on account of entry number 8 dated 12 March 2021. He submitted that there is a transfer from Nariman point office of ₹ 50 lakhs in Cash through Mr. Sailesh Patil to another branch. Therefore, there cannot be any income therein. He also referred to paragraph number 10.15 of the order of the learned CIT – A wherein it is mentioned that the learned CIT – A has also accepted that it is an internal movement of fund from one office place to another office place of the assessee through Angadia. Therefore, it cannot be the income in absence of any other evidence available with revenue.

040. On the issue of ground number 4 of the appeal wherein the learned CIT – A has deleted the addition of ₹ 33 lakhs and ₹ 350,000. He submitted that at serial number 22 on 16 March 2021 a sum of ₹ 33 lakhs is received by the assessee. This amount has been offered by the assessee in the return of group concern M/s Ganadhish. He further referred that another sum of ₹ 350,000 mentioned at serial number 6 wherein on 12 March 2021 the assessee has received ₹ 350,000. He submits that

the same income has been offered by the assessee in the hands of M/s Roshini Enterprises as income. He referred to paragraph number 10.14 of the order of the learned CIT – A wherein he has categorically stated that if the assessee has already disclosed this income in the names of the other group concerns, it cannot be added once again in the hands of the assessee. He therefore submitted that even the learned CIT – A has given a categorical finding that if the answer given by the assessee about already included the same in the hands of the group concerns, is found to be correct, the addition cannot be made in the hands of the assessee. It was the claim that even the learned CIT DR also says that it needs to be verified. He produced the assessment order passed under section 143 (3) read with section 147 of The Income Tax Act 1961 dated 29/12/2023 in the name of m/s Ganadhish GNP, sister concern wherein for assessment year 2021 – 22 assessee has disclosed total income of ₹ 84,497,810 which was assessed at ₹ 149,545,378. He submits that there is no dispute with respect to the income in case of that assessee and only addition is made on account of disallowance of expenditure. Therefore, the learned CIT – A has correctly decided this issue for verification of the learned AO. With respect to the addition of ₹ 3.5 lakhs also similar direction is given by the learned CIT – A. Accordingly, he submits that there is no infirmity in the order of the learned CIT – A.

041. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also considered the documents submitted in the paper book filed by the assessee.
042. The second limb of ground number 2 is with respect to the addition deleted by the learned CIT – A on account of internal transfer of cash. This addition entry number 8 dated 12 March 2021 where there is a document that shows that there is a transfer of ₹ 50 lakhs from Nariman point office. The claim of the assessee is that this money has been transferred from Nariman point office in cash by the Angadia Mr. Sailesh Patil. Thus, the claim is that it cannot be the income when the money is transferred from one office to another office. The learned CIT – A in paragraph number 10.15 has deleted the addition holding that this is an internal movement of funds made by the assessee from one office to the another office and therefore it does not have the characteristics of income as it is evident that assessee is operating at various places such as Nariman point, Mahape, Thane , Dombivli and Kalyan . The learned assessing officer also did not dispute the above fact. Therefore, we confirm the order of the learned CIT – A in deleting addition of ₹ 50 lakhs being internal transfer of funds from one office to another office of the assessee. Accordingly, ground number 2 of the appeal of the AO is dismissed.

043. Ground number 3 of the appeal is with respect to the finding of the learned CIT – A that the transaction appearing in the image of the document retrieved from the mobile phone of Mr. Kaustubh Latke Director of the assessee company during the course of search belongs to Sri Sailesh Patil without appreciating the fact that Sri Sailesh Patil could not identify even a single party other than the assessee in the said document and he could not substantiate his claim with any supporting documents. In paragraph number 7 of the assessment order, it is mentioned that during search action the content of aforesaid passage was retrieved between Mr. Kaustubh Latke and one Mr. Sailesh Patil. From the statement recorded of the director of the company the above sheet was found for the period from 11/3/2021 to 16/3/2021. Assessee stated that some of the transactions belong to the assessee from that sheet and further the document belongs to Mr. Sailesh Patil who has sent this message to the director of the company. It was further stated that Mr. Sailesh Patil is an Angadia. Statement of the director was recorded under section 132 (4) as well as of Mr. Sailesh Patil. Both have confirmed the above fact. In the statement of the director also, he did not identify some of the entries belonging to him. Therefore, the learned assessing officer made the addition of the entire sum mentioned in that document.

044. The learned CIT – A was categorically submitted that WhatsApp image was found was received from mobile numbers of Mr. Sailesh Patil – 2 that clearly show that it belongs to him and not to the assessee company. In 132(4) statements of the director of the assessee Mr. Girish Pawar he has categorically stated that Mr. Sailesh Patil is a trusted associate who used to help in movement of cash received and paid in the construction business of the assessee. On the issue of various entries found therein, the director of the company identified some of the entries and stated that only Mr. Sailesh Patil who has sent this message would be able to show to whom it belongs. It was further stated that the Mr. Sailesh Patil is not the employee of the assessee. On the several entries, the director of the assessee also stated that in the assessment, assessee has offered the income with respect to the same. The summons under section 131 was issued to Mr. Sailesh Patil, his statement was recorded. He stated that.

- i. He is into the business of angadia, and he collects cash from one-place office customers and delivers the cash at other place as instructed by his customers.
- ii. He confirmed that he has sent the above WhatsApp message to the director of the company.

- iii. Assessee group is also one of the clients to whom he provides the angadia services.
- iv. He further confirmed that he collects cash from the various offices of the assessee and delivers the cash according to the instruction.
- v. In reply to question number 26 he has categorically stated that the content of the transaction of the WhatsApp image sent by him to the director of the assessee company is related to various persons and groups including the assessee and it belong to various parties.
- vi. The AO made the addition of all the transactions stated therein.
- vii. The learned CIT – A in paragraph number 10 – 10.11 has categorically held that that the statement of the assessee, statement of Mr. Sailesh Patil were not refuted by the learned assessing officer by showing any cogent evidence and in absence of such evidence, the statements given by the assessee as well as third party Mr. Sailesh Patil could not be disregarded. He further categorically held that the transaction with which the assessee group has entered with Mr. Sailesh Patil has been owned by the assessee in its income. The transactions which have not been owned by the assessee, both the parties i.e., assessee as well as

Mr. Sailesh Patil stated that these transactions are not related to the assessee.

viii. Therefore, the addition was merely based on the documents, which have been denied by both the parties partly. Therefore, as far as ground number 3 is concerned, it is apparent that the document has been sent by Mr. Sailesh Patil to the director of the assessee company. This is the statement and finding of the learned CIT – A. Ground number 3 does not deal with any addition which has been deleted by the learned CIT – A.

ix. Before us it is not shown that why the document does not belong to Mr. Sailesh Patil who originated the message and sent to the assessee director. When Mr. Sailesh Patil stated that transactions belong to various other persons also, there is no material available on record to state that transaction belongs to Assessee Company only.

045. Therefore, we do not find any infirmity in order of learned CIT – A in holding so. Accordingly, ground number 3 of the appeal is dismissed.

046. Ground number 4 is with respect to the deletion of addition of ₹ 33 lakhs and ₹ 350,000 on the ground that it pertains to the transaction of other concerns of the assessee group. The learned CIT – A has categorically directed the learned assessing officer to delete the above

addition, only if a sum of ₹ 33 lakhs has been owned by M/s Ganadhish GNP and ₹ 350,000 by M/s Roshani enterprises in their respective return of income. The learned CIT – A in paragraph number 10.14 has categorically held that if the claim of the assessee is found correct, the addition deserves to be deleted. Nothing is shown before us that the above income has not been offered by those entities. Instead of that the assessee has produced the assessment order in case of Ganadhish GNP where assessee has stated that this income has been offered and taxed in assessment proceedings under section 143 (3) read with section 147 of the act. That group concern has offered total income of ₹ 68,197,810/- in its return of income. On careful perusal of that assessment order, we find that only the disallowance of expenses was made and there is no separate addition further of any income. M/s. Ganadhish GNP is also assessed by The Deputy Commissioner of Income Tax, Central Circle – 6 (1), Mumbai i.e., the same assessing officer who is assessing the assessee. Further, the above sum is offered by the group concerns as 'on money' received. That sister concern has in fact offered ₹ 13.65 crore 'on money' income from construction activity. Further, the claim of the assessee that sum of ₹ 3,50,000 has also been similarly assessed in the hands of M/s Roshani Enterprises, another group concern. In view of these facts, we do not find any infirmity in the order of the learned CIT – A in deleting

the addition of ₹ 36.50 lakhs of the income contained in the WhatsApp message which is already offered by the other group concern as per income, subject to verification by the Id. AO, therefore same cannot be added once again in the hands of the assessee. Accordingly, ground number 4 of the appeal is dismissed.

047. Ground number 5 is with respect to the addition of opening cash balance of ₹ 13.41 crores deleted by the learned CIT – A where the AO submits that assessee has failed to substantiate its claim with any documentary evidence that the opening balance and the receipts were out of the unaccounted income disclosed by the assessee.
048. The facts as culled out from Para no 8 of the assessment order relating to this ground show that during search photo of a document was received from the mobile phone of the director Mr. Kaustubh Latke. He was confronted in his statement under section 132 (4) of the act on 23/9/2021 wherein he stated that various columns are the amounts paid and received by the group entities in cash and the transactions are unaccounted in the books of account of the assessee company. Therefore, the learned assessing officer issued a notice under section 142 (1) of the act on 5/8/2022 and assessee was asked to explain the document with documentary evidence. Assessee submitted on 9/9/2022 that assessee has already declared the income of ₹ Rs. 329,500/- as

consultancy charges for the year under consideration. The assessee further stated that a sum of ₹ 136,513,712/- appearing as an opening unaccounted cash balance, which cannot be considered as income and further the receipt of ₹ Rs 329,500/- has already been offered for the income. Further the payment of ₹ 50 lakhs appearing against the consultancy cannot be treated as unexplained and brought to tax in this year. The learned assessing officer rejected the contention of the assessee and made an addition of opening balance of ₹ 134,122,306 and further made an addition of ₹ 329,500 as unaccounted business income in the hands of the assessee. Further sum of ₹ 50 lakhs was also treated as unexplained expenditure and added to the total income of the assessee under section 69C of the act.

049. When the matter reached before the learned CIT – A it was submitted that the assessee is in the business of construction as a builder developer and rendering consultancy services as a group. During the search WhatsApp image was extracted from the mobile phone of the director of the company. The director of the company was questioned. It was stated that documents contain the details of cash balance available with the group at various offices branches out of its unaccounted business receipts. Assessee also submitted that in 132 (4) statement of the assessee that assessee has already disclosed unaccounted business receipts of the assessee

group for various years. It was stated that assessee has offered real estate receipt of ₹ 54.74 crores, consultancy receipt of ₹ 23.67 crores and other receipts of ₹ 2,250,000. Therefore, the total unaccounted income offered by the assessee is ₹ 78.64 crores. Therefore, this addition is already part of the disclosed income of the assessee under section 132 (4) of the act. The learned CIT – A decided this issue as per ground number 9 of appeal before him at paragraph number 12 of appellate order. He held as under:-

"12.2 it is noticed that during the course of search, carried out on the group WhatsApp image was extracted from the mobile phone of Shri cost to latke director of the company and same was confronted to him in reply to question number 45/46 of his statement dated 23/9/2021 recorded under section 132 (4) of the act by the DD IT (investigation). It was replied by him that it is GNP groups consultancy and construction business account and it contains the details of payment made by the GNP group to the contractors and payment received by the GNP group from their clients. All the transactions were stated to be entered into cash and not accounted in the books. It was further clarified in question number 46 that part of the receipts are of projects of the group namely gallery and Arcadia constructed by assessee group concerns and it was found that the said

document dated 26/8/2020 contained cash balances available at various addresses, sites of the assessee group namely at head office, turn a account, Kalyan account, Powai account, Nariman point, Pune et cetera Sanjay Aggarwal et cetera aggregating to the total of the raw at ₹ 134,122,206/-. There were other noting is of contract entry of movement of cash from one office to another office in third row where ₹ 130 lakhs/- was shown to be deposited at Kalyan office transferred from Nariman point office which was found in 10th row and cash balance of ₹ 130 lakhs from balance and Nariman point office. There also similar content entries which were appearing in the said document and there were noting is of expenditure of the purchase of the area which was a project of the assessee group and expenditure related to consultancy and brokerage paid.

12.3 in the assessment proceedings before AO, the assessee had explained that the statement contains the multiple transaction of group entities and cash balance available at a different sites/offices of ₹ 13.41 crore which was available out of source of unaccounted business receipts of construction and consultancy services in which assessee group is involved and which had been duly offered for tax in the disclosure made. Assessee submitted that AO has duly accepted the contract entries of movement of funds from one office to another office and addition

has been made only in respect of cash balance available of ₹ 13.41 crores. Assessee submitted that the only dispute in this ground of appeal is regarding the addition made of ₹ 13.41 crore as unaccounted business receipts (gross) which the assessee has explained as the balance available at various offices of the group out of unaccounted business receipts from construction and consultancy services. According to the assessee, the group had already offered crores unaccounted business receipts during the search of amount in two ₹ 78.64 crore as given in paragraph number 10.9 of the submission of the assessee and total gross receipts from business for the period up to 31/3/2021 at ₹ 63.28 crore and fact of internal movement of funds have been duly explained in the earlier grounds as well. It was also submitted by the assessee that the AO has not brought any evidence on record to show that the assessee group was having any other sources other than that explained above. According to the assessee, the AO had made the addition by only giving the reason that the assessee has not substantiated its claim with the documentary evidences. Other than this, a has not brought any evidence or given findings contrary to the explanation submitted by the assessee during the assessment proceedings. According to the assessee, while the AO has accepted partly the transactions of

contract entries mentioned in the said document, the explanation regarding the amount of ₹ 13.41 crore as cash balance available at different offices as per the sheet has been rejected and addition is made. In this regard is also submitted that the AO cannot accept the content of the document in part and ignore the rest as this is not permitted under the law. In this regard the assessee has relied on the decision of glass lines equipments Co Ltd versus CIT reported in 253 ITR 454 (Gujarat).....

12.4 assessee also submitted that it has filed a fund flow statement of unaccounted income offered by the group and its application on page number 44 of the paper book and there was a cash balance available of ₹ 14.27 crores at the end of the year out of a additional income offered by the group up to 31/3/2021 and the said balance always was available which explains the above cash balances lying at various offices.

12.5 I find that this ground pertains to the addition made by the AO on the basis of certain images retrieved from the mobile of Shri cost to lack a. The said images contain the details of movement of cash from one office of the assessee to another this fact was explained by cost to blockade during statement recorded during search and also during the assessment proceedings. The assessee has himself

admitted that these cash balances are out of business receipts of the assessee which is offered to tax. Moreover, the sheet only describes/records the movement of this receipt from one office to another office of the assessee group. The AO has not doubted this explanation of the assessee and has refuted the claim of the assessee without disputing the source of the cash balance as explained above. In this respect, it is observed that first of all there's no actual cash found seized to the tune of this amount during the course of search. The addition therefore is made only on the basis of this image. The assessee has owned up to the image and in fact explain the content thereafter and accepted the fact that these are out of the source of unaccounted business receipts offered by the group of ₹ 63.28 crores as expendable and there is a sufficient cash balance available with them out of unaccounted income disclosed by the assessee. The AO has accepted the explanation of the assessee only in part to the extent of internal movement/transfer of funds within their offices/branches. However, he has not accepted the other part of the explanation of cash balance of ₹ 13.41 crore available out of source of business receipts and that's these receipts were lying on particular day from internal transfer from one office to another and the source of these receipts had already been offered to tax in the return filed

pursuant to search. This fact had been brought to the notice of the AO per letter dated 9/9/2022, 30/12/2022 and also at the time of disclosure during search and explained in the detail submission made above.

*12.6 In my view, the explanation of the assessee is plausible considering the fact that GM group had cash balance of more than 14.27 crore out of the unaccounted income disclosed.. It was also brought to the notice of the search party as well as the AO wide letter dated 12/1/2022, 9/9/2022 and 30/12/2022 respectively. Further, GM the group as a whole offered ₹ 27.74 crore and (₹ 18.75 crores up to 31/3/2023) as unaccounted income pursuant to search. Keeping this fact in mind along with the fact that no cash for this magnitude had been seized and also that the assessee to whom the documents belonged has explained the contents thereof which are not refuted with any other evidence whatsoever, the addition seems to be springing out of the suspicion. In my view, once income is already offered to tax by various entities of the GNP group, taxing the same again would lead to double taxation and such double taxation is not permitted under the act.
.....*

12.7 Thus it emerges that once the income is already offered to tax, the same cannot be treated as income

again merely because such income is reflected in the form of assets et cetera. Therefore, the addition springing out of assumption of the AO is not permitted under the act. It is also pertinent to note that there is a transfer of cash from one office to another out of the unaccounted business receipts of the group and this is a regular feature and found in various seized documents. On similar facts in assessment year 2018 – 19, such internal movement of transfer of funds being out of business receipts of the group offered to tax has also been duly accepted by the AO in the assessment order dated 31/3/2023 for assessment year 2018 – 19 and the same is dealt in detail in the earlier grounds. Considering all the facts and the explanation submitted by the assessee, I find justification in the submission made by the assessee. Therefore, the addition made by the AO on this ground of ₹ 134,122,360 – is hereby deleted. As regards, the remaining addition of ₹ 329,500/- as unaccounted business income, it is seen that the same has already been made part of the disclosure of additional income by the assessee, the only point of contention is regarding the claim of deduction of expenses at the rate of 30% against this receipt of ₹ 329,500/-. In this regard it is stated that the issue regarding claim of expenses at the rate of 30% has been discussed in detail while deciding ground number 14 and the findings given while deciding that

ground will equally apply here. Accordingly, this addition of ₹ 329,500 is also deleted. This ground of appeal is accordingly allowed."

050. The learned AO is aggrieved with the deletion of the same. The learned departmental representative stated that that there is no reason to subsume the addition of ₹ 13.41 crores in the total disclosure made by the assessee. He submits that Id. CIT (A) has factually incorrectly held that the disclosure subsumes the above addition. Therefore, the only grievance of the learned CIT – DR is that the learned CIT – A has given the benefit to the assessee of the already disclosed income for the purpose of opening balance in the seized document without any evidence.
051. The learned authorized representative submitted that the above sum of ₹ 13.41 crores is added by the learned assessing officer to the total income of the assessee because it has been stated to be a balance available at various branches of the assessee. He referred to page number 44 of the paper book and page number 1162 of the paper book where the complete disclosure made by the assessee has been shown. He further stated that the opening date in the excel sheet is 27/8/2020 and therefore it cannot be said that on that date this is the income of the assessee. It was further stated that it is not the annual statement but daily cash statement of the various branches. Based on this the assessee has already

disclosed income which subsume this. He further referred to page number 314 of the paper book to show that it is a daily cash statement and opening balances are coming from the respective earlier date. With respect to the explanation about the transfer of funds, he referred to page number 1164 of the paper book stating that it is the whole fund flow statement of the group which has already been considered for the purpose of overall disclosure made by the group. With respect to the availability of ₹ 6.45 crores, he referred to page number 45 wherein the above is a cumulative balance out of ₹ 37 crores. Accordingly, it was stated that there is no infirmity in the order of the learned CIT – A holding that the cash balances stated in the statement found during search has already been part of the disclosure made by the assessee. He submitted that total disclosure made by the assessee is ₹ 78.64 crores and out of that, the disclosure on account of consultancy receipt is ₹ 23.67 crores. The balance disclosure of ₹ 54.74 crores consists of real estate receipts. Therefore, there is no reason to disbelieve the explanation of the assessee that the balances stated in the statement have already been considered for the disclosure. With respect to the assessment year 2018 – 19 is submitted that the internal transfer has been accepted by the learned assessing officer in the assessment order itself and therefore now the revenue cannot change it stands.

052. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that there was a document found during search, which is placed at page number 1162 of the paper book. It is an excel sheet for 26/8/2020. It is a cash account on that date of eight locations of the assessee group concerns. It also shows opening balance on that date at Mahape A/c, Thalse A/c, Pune, Kalyan, Powai, etc. total of the opening balance is Rs. 13,41,22,206. On that date sum of ₹ 31,629,500 is received and Rs 1,52,00,000/- has been paid resulting into the closing balance of ₹ 11.04 crores. In the whole document, there are various contra payments and receipt also. Thus, it is a combined cashbook of that date of all the locations. The learned assessing officer has made an addition of ₹ 13.41 crores which is shown as an opening balance as on that date. Therefore, it is evident that it is only the cashbook/ cash statement of the business of the assessee for the day on 26/8/2020. Search took place on 23/9/2020. Thus, it is evident that opening cash on that date of ₹ 13.41 crore and the closing cash as on that date are result of the cash transaction for that day. The learned CIT – A has considered the fund flow statement of unaccounted income offered by the assessee that is part of his order at page number 38 and 55. In the statement recorded under section 132 (4) of the act assessee has disclosed real estate receipt of ₹ 54.74 crores, consultancy receipt of ₹ 23.68 crores and other receipts of ₹ 2,250,000

totalling to ₹ 78.64 crores. Therefore, as the cash recorded as opening balance as on 26/8/2020 is less than the overall disclosure of ₹ 78.64 crores, the learned CIT – A has held that when the income is disclosed, the resultant application of such income naturally either would be in cash or in other assets,, which could not be taxed once again. It is also required to be seen that such cash was found in that cashbook on 26/8/2020. Therefore, naturally, if the income is disclosed which is higher than the amount of cash found in that cashbook, then only it can be said that cash was available with the assessee out of undisclosed income, unless contrary evidence are found that there is investment out of such undisclosed income prior to that date. Apparently, in those circumstances, the assessee did not have such cash available on that date. Such is not the case here. We have examined this aspect and find that for assessment year 2018 – 19 assessee has disclosed gross receipt of ₹ 19.73 crores, for assessment year 2019 – 20 of ₹ 11.60 crores and for assessment year 20-21 assessee has disclosed total receipt of ₹ 6.48 crores. Thus, it is evident that prior to the date for which the cash statement was found the assessee has already disclosed the income of more than ₹ 30 crores. Further, there is no evidence that this sum of Rs 30 Crores is invested prior to 26/08/2020 somewhere else and assessee did not have source of such cash with it. Therefore, it cannot be denied that assessee did not have

the explained or disclosed sources of income resulting into cash on hand on 26/8/2020 of ₹ 13.44 crores. This fact has not been denied that assessee has already offered income for earlier years prior to the date of the cash statement income, which is much more than cash on hand shown on 26/8/2020. It is not the case of revenue that assessee has taken more capitalization of income prior to 26/8/2020 then the amount of disclosure made under section 132 (4) of the act. The assertion that all other days' cash statement has not been found, therefore, it is for the assessee to show that where cash statements of the other days of the year are, is also not correct. It is fact that in search no such cash statements for other days of the year were found. Therefore, it is not an unusual presumption that those statement did not exist on the date of search. It is apparent that only the cash statement of 26/8/2020 was found. It may be possible that assessee must be maintaining all these statements for eachday, and which would be reported to the director of the company. However, that cannot go against the assessee that why cash statements of other days are not found. It is also the fact that for assessment year 2018 – 19 in assessment order dated 31/3/2023, the AO has accepted that there are internal transfers of cash from one branch of the assessee to the other branch of the group. It is also the claim of the AO that no cash was seized of that magnitude during search. We find that search took place on 23/9/2021 and this Statement was

found for the day 26/8/2020. Time of more than 11 months elapsed between the date of cash statement and the date of search. Therefore, naturally, such a magnitude of cash, which was recorded on 26/8/2020, could not have been found on the date of search on 23/9/2021. The reasons given by the learned CIT – A in paragraph number 12 of his order is also sustainable. In view of this, we confirm the order of the learned CIT – A in deleting the addition of ₹ 13.41 crores made by the learned assessing officer based on the cash statement pertaining to 26/8/2020. Accordingly, ground number 5 of the appeal stands dismissed.

053. Ground number 6 is with respect to the deletion of the addition under section 69C of the act of ₹ 54,830,909/-. Ground number 7 of the appeal is also connected to ground number 6.
054. The addition of ₹ 54,830,909 comprises of several additions made by the learned assessing officer during assessment proceedings. These are described hereinafter.
055. During search, a pen drive was found from the employee of the company wherein it was found that that there are internal cash transfers, opening balances and the receipts mentioned in the sheet and the expenses. In paragraph number 6 of the assessment order, it is discussed. This is also discussed while deciding ground number 1 of the

appeal of the AO. In the said document opening balance of ₹ 828903/- and total deposits of ₹ 23,055,400 and the total payments of ₹ 23,822,348/- were disclosed. When confronted the assessee submitted that the total deposits of ₹ 23,055,400/- is pertaining to the internal transfers, consultancy fees received and income from consultancy of clusters. Apart from the internal transfers, it was further stated that some of ₹ 5,202,500/- and ₹ 2,450,000/- has already been disclosed as consultancy income for the respective assessment years. With respect to the opening balance, the assessee submitted that it is part of the disclosure already made. With respect to the various expenses, it was submitted that such expenses should be granted to the assessee as a deduction. The learned AO disbelieved and made an addition of Rs 130,30,409/- as an unexplained expenditure under section 69C of the act.

056. Similarly, statement was found for the period from 11/3/2021 to 16/3/2021 during search which disclose the opening balance of ₹ 162,451,306/-, total receipts of ₹ 97,228,748/- and the total payments of Rs. 195,66,500/-. This was the document, which was found from the mobile of the director of the assessee wherein WhatsApp message was sent by Mr. Sailesh Patil to the director. The content of this document has already been dealt with by us in the order earlier. The learned assessing officer made an addition of opening balance,

unaccounted receipt and made an addition of unexplained expenditure of ₹ 19,566,500/- as per paragraph number 7.6 of the assessment order.

057. An addition of ₹ 50 lakhs was made under section 69C of the act based on WhatsApp message photo retrieved from the mobile of the director of the company wherein a cash statement dated 22/6/ 2020 was found wherein the opening balance of ₹ 13.41 crores, receipt of ₹ 329,500 and unaccounted expenditure of ₹ 50 lakh/- was mentioned. The learned assessing officer made an addition of the opening balance of ₹ 13.41 crores, the addition of receipt of ₹ 3.29 lakhs and further the addition of ₹ 50 lakhs of the unexplained expenditure. This has been dealt with in paragraph number 8.4 of the assessment order.

058. An addition of ₹ 157,000/- was made under section 69C of the act wherein during search document was found which contained of various payments and receipts. The assessee was questioned under section 142 (1) to provide the details of the income contained in the document of ₹ 1 lakh and the expenditure of ₹ 157,000/- . The assessee failed to explain and therefore the learned assessing officer over and above making the addition of ₹ 1 lakh as unaccounted business income made the addition of ₹ 157,000/- as unexplained expenses under section 69C of the act. This is as per Para number 9.3 of the assessment order.

059. Further, during search, backup of mobile phones was found of the director of the company. Digital evidence and images of it were retrieved from mobile phone. In that mobile phone, there were images of various cash vouchers. These were further confronted to the director of the company. The total sum of ₹ 3,692,100/- was confronted in fifteen such images to the director. Director of the company denied the statement stating that there is no signature in the any of the vouchers. The statement of the executive assistant to the directors explained that she used to send these vouchers for the approval and the director was to approve the same over the WhatsApp chat. The AO agreed that though there is no physical signature of the director of the company however same have been approved by the director as confirmed by the executive assistant it was found that several such approvals were found amounting to ₹ 6,683,600/-. These vouchers were pertaining to four different financial years. For financial year 2020 - 21 such sum of ₹ 5 lakhs, the learned assessing officer questioned the assessee, assessee denied stating that payments have been made against these vouchers are unsigned. The learned assessing officer rejected the explanation and made an addition of ₹ 5 lakhs as per paragraph number 11.8 of the assessment order.
060. During search the WhatsApp chat of the directors from iPhone 12 pro-was retrieved wherein some unaccounted

transactions were found. The assessee was questioned as per question number 97 of the statement of the director recorded on 27/9/2021. The director was unable to explain the same. From the document it was found that the above cheques are related to the purchase of land of ₹ 5.345 acres by one Shri Rajesh Shah and the GNP charges mentioned are ₹ 5 lakhs per acre i.e., 26.725 lakhs, which was, rounded off to ₹ 27 lakhs. There are also references in that of amount 'paid'. The title of the sheet shows that it is land purchased for GNP in his name. This according to the AO establishes that Mr. Rajesh is purchasing the land on behalf of GNP. The land is admeasuring 16.5775 acres on behalf of GNP for a total consideration of ₹ 3.31 crores, out of which ₹ 1.65 crores is cash consideration. Therefore, the LD AO treated this amount as an unexplained expenditure under section 69C of the act. This addition is made as per paragraph number 12.3.3 of the order.

061. Thus, the total addition under section 69C of the act is cumulatively of all such transactions totalling to ₹ 54,830,909/- was made.
062. All these additions were challenged before the learned CIT – A as per ground number 13 before him which has been dealt with in paragraph number 15 of the order. The learned CIT – A noted that assessee has offered the income at the rate of 70% of gross business receipts as additional income after claiming estimated expenses

deduction of 30% under section 132 (4) of the act. As per estimation made by the assessee it has presumed that all unaccounted expenditure incurred for earning the income are subsumed in that income so offered and therefore no separate claim of expenditure has been made by the assessee and therefore no separate addition should be made of unaccounted expenditure incurred by the assessee. The assessee submitted these details of such expenditure in the paper book filed, and in the return of income assessee offered that income. During assessment proceedings, the learned assessing officer made a separate addition of ₹ 5.48 crores. The learned CIT – A was requested to consider the argument that assessee has already disclosed the income however has not claimed any such expenditure and therefore no disallowance/separate addition can be made and secondly the addition made by the learned assessing officer has been subsumed in 30% of the total business receipts. The learned CIT – A held that once the receipt has already been taxed, the application of such income in the form of expenditure could not be once again added to the total income of the assessee. He further held that when learned assessing officer has believed the business receipts as per seized documents, the expenditure also has to be believed and therefore the net income is to be estimated and no separate addition is required to be made under section 69C of the act as held by the honourable Bombay High Court in case of Golani Bros

(2017) 85 taxmann.com 355 (Bom). Similar view has also been taken by the honourable Delhi High Court in 349 ITR 85. Accordingly in paragraph number 15.13 after discussing the plethora of judicial precedents the learned CIT – A held that since the entire receipts found as a business receipt under section 28 of the act has been considered, deduction of expenditure must be granted to the assessee and net income is to be estimated. Therefore, separate addition in respect of unexplained expenditure cannot be made. Accordingly, he deleted the entire addition of ₹ 5.48 crores. Thus, the learned assessing officer is aggrieved and is in appeal before us.

063. The learned departmental representative vehemently supported the order of the learned assessing officer and submitted that when each of the document, the income has been added separately, the expenditure which has also been stated in the same documents are also required to be adjusted under section 69C of the act. Argument of the learned departmental representative is that all this expenditure is unexplained expenditure and are not received so the logic given by the learned CIT – A in deleting the addition is incorrect. He further submitted that section 69C bars any deduction in the act. He submitted that the proviso is clear on this account.

064. The learned authorized representative supported the order of the learned CIT appeal. He further referred to the several judicial precedents and the binding judicial

precedents of the honourable Bombay High Court in case of Golani Bros (supra). He submits that assessee has already offered the gross income less 30% expenditure, AO has also taxed the income in the seized documents, in the same document there is reference of expenditure, therefore, it is unfair for the revenue to only tax the income and do not give any credit for expenditure already incurred. He submits that assessee has not claimed any expenditure specifically. In view of this, his argument was that it would amount to double disallowance/addition.

065. We have carefully considered the rival contention and perused the orders of the lower authorities. Looking to all the additions, it is apparent that the learned assessing officer from the statement has investigated the opening balances stated in that particular document and the receipt. The learned assessing officer has made addition of the opening balance as well as the receipt as undisclosed income of the assessee. When in the same document there are references of the expenditure, the learned assessing officer has further added such expenditure under section 69C of the act. It is apparent that only the net addition is required to be made arising out of the seized documents. If the approach of the learned assessing officer is accepted, it will result into the addition of the income as well as the addition of expenditure under section 69C of the act. The learned

CIT - A has also relied upon the decision of the honourable Bombay High Court in case of Golani Bros, (supra). We do not see any infirmity in the order of the learned CIT - A. Even the statement that the logic given by the learned CIT - A is not correct is also not supported by the reason. Further provisions of section 69C of the act applies where in any financial year the assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part there of the explanation offered by him is not in the opinion of the assessing officer satisfactory, then amount covered by such expenditure or part thereof, is the case may be maybe, deemed to be the income of the assessee for such financial year. The proviso also says that when there is an addition under section 69C of the act such unexplained expenditure, which is deemed the income of the assessee, should not be allowed as a deduction under any head of income. In the present case, assessee has incurred certain expenditure, which is found during search in the seized documents, the seized documents also show the amount of undisclosed income and the amount of expenditure incurred for earning such income. In those circumstances, the disclosure of undisclosed income shows the source of such expenditure. Therefore, naturally net income in the seized document can be assessed as income. If the approach of the Id. AO is accepted then in such case, Income and its application both are taxable as income.

This is not correct. In view of this we do not find any infirmity in the order of the learned CIT – A in deleting the addition of ₹ 54,830,909/- under section 69C of the act. Accordingly, ground number 7 of the appeal is dismissed.

066. Ground number 8 of the appeal is with respect to the deletion of addition of ₹ 130,993,119 and further ground number 9 relates to the same issue wherein the same seized document is dealt with.

067. The facts relating to the issue shows that during search proceedings certain images were retrieved from the mobile phone of Mr. Kaustubh latke , promoters of the GNP group, which relates to the on money received against the services provided to various clients for allotment of TTC cluster and AARUL cluster. It is the claim of learned AO that assessee has received ₹ 46.54 crores out of which ₹ 35.95 crores has already been received by the assessee through various brokers. Seized document shows that there is a tabulated sheet mentioning the name of eight brokers in the first column, in the second column rate is mentioned at ₹ 30 lakhs to 15 lakhs, in column number 3 the number of cases related to each of the broker is mentioned. The total of that column shows that there are 282 transactions. The total receivable broker Wise was mentioned in column number four wherein the total amount receivable is mentioned at ₹ 46.54 crores, in column number five total

sum received of each of the broker is mentioned in the total of such column is ₹ 359,490,500/- and in the subsequent column is outstanding balance of each of the broker and the total of such outstanding sum is ₹ 95,206,500/-. Another page was also found wherein the name of four brokers are mentioned showing total of ₹ 16.24 crores as amount received till date and further the name of the brokers is mentioned against them amount received is mentioned. At third page was also found wherein against the name of broker certain figures are mentioned. During search the AO questioned the director who claimed that these are the amounts directly paid by the buyers to Maharashtra industrial development Corporation (MIDC) and those are made through cheque. The director also provided list of units handled by each of the broker. In post search proceedings, director of the company accepted that the assessee has received ₹ 1 lakh per plot as its service fees for total 281 clients. He submitted that two hundred clients are handled by him for AARUL cluster and 81 clients are handled by him for TTC cluster. He submitted that these incomes are offered in assessment year 2020 – 21 and 2021 – 22. The learned assessing officer noted that from the image it is apparent that a sum of ₹ 13 lakhs to ₹ 18.60 lakhs per plot was received or receivable. According to that, he found that all 151-unit holders who are being handled by one broker Mr. Udhay Dahale in two different clusters has different prices. The

AO noted that in case of one cluster, prizes ₹ 5,026,220 and in another cluster, it is ₹ 970,360/- respectively. Thus, the amount stated by the director does not commensurate with the amounts mentioned through cheque payments. The AO issued notice under section 142(1) of the act. Assessee claimed that the transactions appearing in the said evidence is between the buyers and the sellers through various brokers and assessee is neither a buyer nor a seller. Assessee however did not comment and stated that such evidence can be explained by the brokers only. The learned assessing officer rejected the contention of the assessee holding that such evidence has been retrieved from the mobile phone of the promoter of the assessee group and therefore the onus lies on him to explain the content of said evidence along with documentary evidence. As the director of the company has stated that these are cheque payments, but he failed to substantiate with documentary evidence. Therefore, in absence of that evidence, the AO noted that total receivable amount against various brokers for both the clusters for 281 clients are mentioned at ₹ 46.54 crores. The assessee has accepted that unaccounted income of ₹ 81 lakhs in respect of all eighty-one units of TTC cluster at the rate of ₹ 1 lakh per unit. Against the name of Mr. Uday Dahale total number of cases are eighty-one of TTC cluster and seventy of AARul cluster totalling to 151 units. The total amount received mentioned is ₹

244,197,000/- (mentioned in fifth column of the seized document against name of Mr. Uday Dahale). Thus, the AO found that the total amount received for 251 cases is ₹ 244,197,000/- and therefore for eighty-one units the amount would be ₹ 130,993,119/-. When this addition was made AO also issued summons to the broker for recording his statement on oath, but he did not attend because of death of his mother. Subsequently letter dated 22/12/2022 he was asked, and he agreed with the claim made by the director of the company and GNP group. The assessee explained that the said payments were made through cheque by the customers/clients directly to the MIDC. The learned AO did not accept, as the director of the company could not produce the details. The AO also disbelieved the receipt of ₹ 1 lakh per unit being consultancy fee of the assessee. Based on this the learned AO made an addition of ₹ 130,993,119/- and of ₹ 81 lakhs to the total income of the assessee as unaccounted business receipts.

068. The learned CIT – A dealt with this issue as per ground number 5 of his order. The learned CIT – A deleted the addition for the following reasons:-

- i. Assessee is in the business of providing consultancy services in the field of industrial setup in MIDC.

- ii. The WhatsApp images found from the mobile of the assessee director was sent to him by one broker Mr. Pradeep (Uday) Dahale.
- iii. This document was explained by the director of the company in statement under section 132 (4) of the act in reply to question number 50 stating that it is a statement of the parties who wants to purchase land from MIDC by paying directly to the MIDC through various brokers. The assessee earns consultancy fee only after the occupation certificate of the building has been received after construction by those buyers.
- iv. All these payments have been received in cheque by MIDC from various customers buying the plot. The assessee submitted the details of payment made and other documentary evidence in respect of several clients who purchased the property directly from MIDC.
- v. The payments have been made by the parties to the broker as well as to the assessee only after completion of the transaction and possession of the property are handed over to them.
- vi. The document found contains the names of the broker who brings clients to the assessee and respective payments made by the clients to the

MIDC for purchase of the property in various clusters.

- vii. The total 281 clients purchased through various brokers property in MIDC for which assessee has charged a lump-sum fee of ₹ 1 lakh per unit and accordingly for eighty-one client's ₹ 1 lakh has been considered for each cluster. Accordingly, Rs. 2.81 crore is already offered for the transaction.
- viii. AO has enquired directly from the brokers about the above transaction who also confirmed the statement made by the director of the company.
- ix. AO made addition of the screenshot/images pertaining to the amounts receivable or received by the MIDC. The image contains name of broker, rate for each of the properties, total number of cases with respect to each of the brokers, total amount receivable from each of the brokers for transaction of their client, total amount received of each of the brokers with respect to the client and outstanding balance. The amount is received by MIDC through cheques from various clients who have acquired the plots of land with MIDC through brokers. Thus, assessee has no role to play in the transaction except to the extent of service fee of ₹ 1 lakh per unit.

- x. The learned AO has accepted the declared income of ₹ 100,000/- for each unit as unaccounted consultancy fee income of the assessee for all the 281 units.
069. The learned AO is aggrieved and is in appeal before us against the deletion of the above sum. The learned CIT DR vehemently supported the order of the learned assessing officer. He submits that there is no reference of the rates submitted in the seized document of ₹ 15 lakhs to ₹ 13 lakhs stated in the seized documents. Therefore, this aspect has not at all been considered. He extensively referred to the seized document as well as the finding of the learned assessing officer.
070. The learned authorized representative specifically referred to the seized document placed at page number 556 of the paper book. It was stated that the brokerage is not added to the total income of the assessee, but the total sale price is added to the total income of the assessee. He submits that as the land belongs to the MIDC and not to the assessee the sale price cannot be considered as income of the assessee. Therefore, according to him it is not the income of the assessee. He submitted that the assessee has already disclosed the consultancy charges of ₹ 1 lakh per unit for 281 units

therefore the learned CIT – A is correct in deleting the addition.

071. We have carefully considered the rival contention and perused the orders of the lower authorities. During search WhatsApp image was found from the mobile phone. The WhatsApp image is an excel sheet where the name of various brokers, the rate of the land, number of cases handled by each of the broker and amount receivable for the transaction and total amount received until date along with the outstanding balance is mentioned. The explanation of the assessee is that the name of the broker is mentioned who have dealt with in purchasing the land by the clients brought in by broker for MIDC allotment. Thus, on careful perusal of the document it is apparent that there are seven brokers who have brought in 282 clients. Out of these 282 clients , one client is directly brought in by the assessee. Therefore, the brokers in turn have brought 281 clients. For all these clients the total amount receivable for allotment of land is ₹ 46.54 crores, out of which ₹ 35.95 crores is received and balance of ₹ 9.52 crores is outstanding. The assessee has charged fees of ₹ 1 lakh per unit for 281 units sold through all these brokers for which occupation certificate is received and possession is granted to those parties. The explanation of the assessee before the AO was same, such statement was also confirmed by the broker, the land transferred to the

various parties did not belong to the assessee therefore naturally the sale consideration of that land could not be the income of the assessee. As the land does not belong to the assessee the rates mentioned in the column number 2 of the seized documents is irrelevant for the taxation in the hands of the assessee. The assessee has shown that this is the amount payable by these unit acquired to the MIDC, and sample cheques details is provided. Therefore, as the land is transferred by MIDC to the respective unit holders through all these brokers for which the assessee has received consultancy fees of ₹ 100,000/- for each unit, the whole of the sale transaction of the land cannot be taxed in the hands of the assessee. Merely because the assessee failed to provide the documentary evidence of payment of cheque by the unit acquired to the MIDC, the whole income cannot be taxed in the hands of the assessee when assessee is not shown to be the owner of such land. In the hands of the assessee, a sum of Rs. 2.81 crores have already been taxed on basis of this document. In view of this we do not find any infirmity in the order of the learned CIT – A in deleting the total addition of ₹ 13.09 crores in the hands of the assessee. Accordingly, ground number 8 and 9 of the appeal is dismissed.

072. Ground number 10 is with respect to the direction of the learned CIT – A of allowing the claim of the assessee of expenses at the rate of 30% out of unaccounted business

receipts offered. The claim of the assessing officer is that the learned CIT – A has failed to consider that assessee has not submitted any documentary evidence that the 30% of the expenses were incurred by it for earning of such income. In addition, in absence of any evidence, such claim cannot be entertained.

073. This issue came up before the learned CIT – A as per ground number 14 of the appeal wherein the assessee claimed that out of the gross income offered for taxation, 30% of such income should be granted as a deduction on ad hoc basis to the assessee for the expenditure incurred for earning such income. The fact shows that during search numerous evidence of unaccounted business receipts and expenditure were found which were not recorded in the books of accounts of the assessee. In the statement recorded of the director, he has accepted and owned various unaccounted business receipts. Assessee offered 70% of such income as net income during statement recorded under section 132 (4) of the act. It was also explained by letter dated 11/2/2022 claiming that the net income is to be estimated based on the evidence found. It was also claimed by the assessee that during search itself, various documents were found which itself shows that there is various expenditure incurred by the assessee for earning that income. The learned assessing officer rejected such claim and did not give any reason that why the claim of the assessee of net income

offered should be rejected. The learned CIT – A found that the AO has made the addition of the entire gross receipts without allowing any claim of the expenditure such evidence is available in the recorded statement and seized documents. It is the claim of the assessee that the gross income offered by the assessee for taxation is ₹ 71,577,000/- out of which 30% of the expenses should be granted as deduction and net income of ₹ 50,103,900/- can only be taxed. Before the learned CIT – A several arguments were raised stating that even direct evidence correlating the expenditure may not be available but reasonable estimate based on the seized documents should be made. Several judicial precedents were also pressed into service. The learned CIT – A examined details of net income offered by the assessee in the return of income filed were furnished by the assessee. Ongoing through the above details, it was noticed that the assessee has offered that income from consultancy business in the audited books of accounts for the period assessment year 2017 – 18 till 2022 – 23 in the range of 28% to 62% and average net profit of all the years amounting to 53% as against the net income offered by the assessee at the rate of 70%. Further on perusal of the unaccounted gross receipts and the unaccounted expenditure for which evidences were found in the seized documents during the course of search which has been owned up by the assessee, it is apparent that gross receipts amounting to ₹ 23.67 crores the

unaccounted expenditure stands at ₹ 7.19 crores which showed that such expenditure is 30.3% of the unaccounted receipts. Therefore, the assessee has taken the approximate figure of 30% of such income as the expenditure. Based on this factual analysis, the learned CIT – A allowed the claim of the assessee for granting deduction at the rate of 30% of the gross receipt.

074. Learned AO is aggrieved with the same and is in appeal. The learned CIT DR vehemently supported the order of the learned assessing officer and submitted that no such expenditure can be granted as deduction on estimated basis in the absence of any expenditure incurred wholly and exclusively for earning of such income.
075. The learned authorized representative vehemently supported the order of the learned CIT – A.
076. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that in paragraph number 16.7 of the appellate order the learned CIT – A has categorically noted that assessee has incurred expenditure in its regular business at the rate of 28% to 62% and average net profit for all the years' amounts to 53% of the gross receipts. Further in the seized documents, unaccounted receipts were found of ₹ 23.67 crores and unaccounted expenditure was found at ₹ 7.19 crores which is almost 30.03% of the unaccounted receipts and therefore the claim of the assessee is

reasonable and can be accepted that the gross receipts 30% of deduction should be allowed for the expenditure incurred by the assessee. Accordingly, we do not find any infirmity in the order of the learned CIT – A which is based on the financial statements of the assessee for past year as well as based on evidence found during search in the seized material. Accordingly, ground number 10 of the appeal of the AO is dismissed.

077. In the result, appeal filed by the learned AO is dismissed.
078. Now we come to the appeal filed by the assessee.
079. Ground number 1 of the appeal of the assessee is challenging the assessment order on legal ground, it was not pressed, and therefore it is dismissed.
080. Ground number 2 of the appeal is with respect to the addition of ₹ 85 lakhs and ₹ 5.10 crores confirmed by the learned CIT – A while deciding ground number two and three of the appeal of the revenue. The addition relates to ground number eight raised before the learned CIT – A which has been dealt with in paragraph number 10. The ground before the learned CIT – A was of addition of the alleged business receipts of ₹ 25.97 crores based on loose paper found. During search WhatsApp image was found from the mobile phone of the director Mr. Kaustubh latke containing the name of the Sailesh Patil – 2. It is a chat between Mr. Sailesh Patil and director of the assessee company. The chat has been sent by Sri

Sailesh Patil -2. In the above chat at serial number 10, on 13 March 2021 a sum of Rs. 2.10 was stated to have been received on account of Sukhakarta cluster. There were no other charges mentioned in the statement. Second sum of ₹ 3 crore was received on 15th of March 21 being consultancy charges received from Mr. Prashant Nilawar in respect of sale of land in Pune. For this transaction then is an Angadia charge of ₹ 8500 in the seized document.

081. The learned CIT - A has dealt with this issue in paragraph number 10.17 wherein it has been mentioned that assessee contended before him that the above sum of ₹ 5.10 crores has already been recorded in the books of accounts of the assessee. Such submissions were placed on 15/11/2022 and 30/12/2022 before the assessing officer, which was not considered. The learned CIT - A look that the statement recorded of the director of the assessee company under section 132 (4) recorded on 23/9/2021 wherein for the transaction the director of the assessee company has given explanation. With respect to the first transaction dated 13 March 2021 of Rs 2.10 crores it is stated by the director that cash is received but he does not remember the details of the payer. With respect to the second entry of 15 March 2021 of ₹ 3 crores he specifically says that this is a consultancy charges received in cash from Mr. Prashant in respect of sale of land in Pune. The learned CIT - A

categorically recorded that as the director of the assessee company at the time of search had admitted that these entries pertain to amount received in cash by the assessee and later on before the assessing officer saying that these entries pertain to cheque payments cannot be accepted without any retraction filed by the director. Accordingly, he confirmed the addition of ₹ 5.10 crores in the hands of the assessee. As the assessee has not owned up this amount of ₹ 5.10 crores as the business income of the assessee company, he also refused to grant deduction at the rate of 30% of such income as expenses also. Therefore, in fact he confirmed the addition of ₹ 5.10 crores in the hands of the assessee based on the two entries stated in the seized document on 13 March 2021 and 15 March 2021.

082. Another sum of ₹ 85 lakhs was also confirmed wherein it was found that there are three entries dated 12th March 21 and 15th March 21 of ₹ 20 lakhs, 40 lakhs and ₹ 25 lakhs respectively totalling to ₹ 85 lakhs. The answer given by the director during statement recorded under section 132 (4) with respect to the sum of 20 lakhs is that it is a consultancy charges received in cash from the agent Mr. Umang Jain. With respect to the sum of ₹ 40 lakhs on 15 March 2021, it was stated that these payments were received in cash, but he does not recall the exact details. With respect to another payment of ₹ 25 lakhs on 15 March 2021 is given the same explanation

that the payments were received in cash, but he does not recall the exact details. Accordingly, the learned CIT – A noted that as in the statement of the director itself it is confirmed that these entries pertain to the amount received in cash, but he does not recall the details, the addition is required to be upheld in the hands of the assessee. Accordingly, he upheld the addition of ₹ 85 lakhs giving a reason that the explanation of the assessee that these documents belong to Mr. Sailesh Patil and therefore addition cannot be made in the hands of the assessee is not acceptable in absence of any retraction filed by the director of the company. Accordingly, he also did not give any benefit of deduction for expenditure at the rate of 30%, as the assessee has not owned this income.

083. Assessee is in appeal before us on this issue. With respect to the addition of ₹ 85 lakhs the assessee submitted that the statement belongs to Mr. Sailesh Patil who sent that particular message to the director of the assessee and therefore based on that document, the addition cannot be made in the hands of the assessee. It was further stated that Sailesh Patil has owned this transaction and therefore as assessment order in the hands of Mr. Sailesh Patil has already been passed, this addition cannot be made in the hands of the assessee. Alternatively, it was further argued that if the addition is sustained in the hands of the assessee the respective

deduction at the rate of 30% of the gross income offered should be granted to the assessee with respect to that expenditure.

084. The learned CIT DR vehemently supported the order of the learned CIT – A and stated that there is no explanation given by the assessee during assessment proceedings and merely stated that the document belongs to Mr. Sailesh Patil. It was further stated that in the hands of the Sailesh Patil only the commission income of Angadia charges is added. Further the assessee has given a categorical answer during search under section 132 (4) of the act that the money has been received by the assessee and therefore now the assessee cannot escape from the taxation of the same. He further stated that as the assessee has not owned up this income, there is no question of granting any benefit of expenditure at all from such income.
085. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that on 12 March 2021 the assessee has received a sum of ₹ 20 lakhs from one Mr. Umang Jain which has been confirmed in the 132 (4) statement of the director of the assessee that this sum is a consultancy charges received in cash from that particular agent. There is no evidence that such income has not been received by the assessee. Merely because Mr. Sailesh Patil who is an Angadia has been assessed on the above sum, albeit on commission

on this sum, it cannot be said stated that he has owned the ownership of the sum of ₹ 20 lakhs. Accordingly, we do not have any hesitation in confirming the order of the learned CIT – A to the extent of including the income of ₹ 20 lakhs as income of the assessee from consultancy charges. We further hold that as the assessee is charged to tax of consultancy fees of ₹ 20 lakhs, as held in deciding ground number 10 of the appeal of the learned assessing officer, assessee is entitled to the deduction of the expenditure at the rate of 30%. Therefore, the learned assessing officer is directed to tax 70 percent of ₹ 20 lakhs as income of the assessee.

086. With respect to the addition of ₹ 40 lakhs and ₹ 20 lakhs received on 15 March 2021 where the assessee has stated that these payments were received in cash but he does not recall the exact details, and the learned CIT – A has confirmed the addition merely on the basis of the statement of the director of the company recorded under section 132 (4) of the act and further the statement of Angadia Mr. Sailesh Patil. In fact, Mr. Sailesh Patil is the right person to inform to whom this money belongs to. Because he is the person who has given this money to the assessee which has been confirmed by the director in his statement. If the income does not belong to anybody else, it will necessarily become the income of the assessee who received it. However, during statement recorded of Mr. Sailesh Patil, no such specific questions

were raised with respect to these two entries. Therefore, in the interest of justice we restore this issue back to the file of the learned assessing officer with a direction to the assessee to produce Mr. Sailesh Patil before the assessing officer and to show that whom this money belongs to and why this money has been paid to the assessee and by whom. The learned assessing officer may examine the claim and then decide the issue afresh. Assessee is directed to produce necessary evidence with respect to its claim. If the learned assessing officer reaches at the conclusion that the sum belongs to the assessee and is income chargeable to tax in the hands of the assessee, he is also directed to grant deduction of 30% of expenses of the gross receipt of ₹ 65 lakhs as deduction for expenditure.

087. The third issue is with respect to the addition in the hands of the assessee of two entries totalling to ₹ 5.10 crores. The first entry is dated 13 March 2021 of Rs 2.10 crores being amount received for Sukhakarta cluster. In 132 (4) statement director of the assessee stated that he does not remember the details of the payer. Therefore, this argument is similar to the addition of ₹ 65 lakhs from the said document of Mr. Sailesh Patil.

088. The learned authorized representative referred to page number 1150 of the paper book stated that assessee has explained that this amount is a collected by Sailesh Patil from Sukhkarta general engineering private limited on

account of premium on allotment of CFC plot payable in their favour of MIDC by above company. Letter confirming the receipt of cheque was also submitted along with the copy of cancelled cheque, which was returned back due to variation in the premium amount subsequently calculated by MIDC. The copy of letter was also submitted. It was the claim of the assessee company was hired by that company for rendering services to transfer of CFC plot in the name of the said company, which is a promoter of CFC, who supervises and provide the services to clusters. Therefore, claim of the assessee is that the above amount of cheque is issued by the said company in favour of MIDC is premium charges stated above and consultancy fee of ₹ 11 lakhs received by the assessee for rendering such services has duly been accounted in the regular books of accounts. Assessee also supported the same by submitting the Ledger account. The assessee also stated that the same facts were clarified during search to the DCIT (investigation) wide letter dated 12/1/2022 submitted on 11/2/2022. Accordingly, the claim of the assessee is that above sum is not received in cash but is a transaction with MIDC of that Buyer.

089. The learned departmental representative vehemently supported the order of the learned assessing officer and the learned CIT – A state in that the WhatsApp message of Mr. Sailesh Patil relates to cash transaction only and

therefore the explanation of the assessee is not correct. He further submitted that why an Angadia will deal with cheque transaction. He submits that on the same date there is a transaction of ₹ 8500 charges by the Angadia. Therefore, such charges are only for giving ₹ 210 lakhs to the assessee and on the same Angadia charges of ₹ 8500 is deducted by Mr. Sailesh Patil.

090. On careful consideration of above facts, it is apparent that the learned assessing officer and the learned CIT – A has made the addition to the total income of the assessee considering the same as cash received from Mr. Sailesh Patil by the assessee. Both the lower authorities have not dealt with the above explanation, which is placed at page number 1150 of the paper book and placed before the investigation wing. The learned lower authorities have also not carried out any enquiry whether the above amount is receipt of cash by the assessee or as stated by the assessee in the above explanation. Assessee has produced the copy of cheque of Indian overseas Bank bearing check number 673807 dated 13/3/2021 issued by Sukhakarta general engineering cluster private limited in favour of Deputy Chief accounts officer, MIDC as a proof that the above transaction is a cheque transaction. The letter dated 13 March 2021 issued by that company to the assessee was also produced wherein the issue of the cheque is stated that it is an earnest money deposit for premium of CFC plot

admeasuring 4000 m². This is placed at page number 1014 of the paper book. Further at page number 1012, assessee has produced the letter dated 18 March 2021 of the assessee to the Sukhkarta general engineering cluster private limited wherein the complete fact of this transaction is also mentioned. Assessee has also produced letter dated 18 March 2021 to that party wherein the complete detail of the scope of what is mentioned and the amount of fees chargeable by the assessee for the entire work was ₹ 11 lakhs is also mentioned. Lower authorities did not examine these aspects. Therefore, facts that emerges is

(i) Sukhakarta General Engineering Limited has to pay a sum of Rs 2.10 Crores to MIDC for premium of a plot.

(ii) In the WhatsApp message there is reference of cash payment of Rs 2.10 cr by Mr. ShaileshPatil to Assessee on account of Sukhkarta. Thus, Mr. Sailesh Patil is the correct person to state whether , he delivered cash to assessee received From Sukhkarta Engineering Limited and who paid him such cash.

(iii) Assessee has already recorded commission income of Rs 11 lakhs on this transaction of purchase of land by Sukhakarta

Thus, it is not clear whether the amount mentioned in the WhatsApp message on identical date of the identical amount from the identical party is cash or cheque

Transaction. Whether both the transaction is same or different. Further, whether the above sum is income of the assessee over and above ₹ 11 lakhs recorded in the books of account or not is required to be examined. As we have restored the issue of the addition of ₹ 65 lakhs back to the file of the assessee involving similar facts, we also restore the addition of this sum of Rs 2.10 Cr also back to the file of the learned assessing officer with similar direction. Assessee may produce relevant details in support of its claim. The LD AO may examine the facts and decide issue afresh.

091. The next entry is dated 15 March 2021 of ₹ 3 crores wherein the name of the party is mentioned as Nilawar and when the statement of the director is recorded under section 132 (4) he submitted that it is a consultancy charges received in cash from Mr. Prashant Nilawar in respect of sale of land in Pune. Therefore, the addition was made by the learned assessing officer in the hands of the assessee. The learned CIT – A has also confirmed the same. Before the lower authorities' assessee submitted (paper book page number 1131) that consultancy income is part of the total receipt of ₹ 3.24 crores accounted in the regular books of account during the financial year 2020 – 21. Therefore, the claim of the learned authorized representative is that the above sum has already been offered for taxation in the books of accounts. This is also the explanation given at the time of

explaining the seized documents and reply to question number 80 and 81 of the directors of the company. Undoubtedly, in statement recorded of director of the company in answer to question number 84 was confronted to Mr. Sailesh Patil, that transaction of ₹ 3 crores on 15 March 2021 is the consultancy charges received in cash from the above party by the assessee for the purpose of sale of land in Pune, Mr. Patil in answer to question number 27 he submitted that the amount of ₹ 3 crores was collected by him on account of GNP group from Prashant Nilawar and he has also received ₹ 8500 as Angadia charges from GNP group.

092. Assessee has claimed before us that that assessee has provided consultancy services to M/s Rucha Consultancy LLP. The copy of the account of that party is placed at page number 1022 of the paper book. According to that Ledger account, it is apparent that assessee has recorded the consultancy income of ₹ 32,496,316/- from the above party. Towards the above payment the assessee has received a cheque of ₹ 3 crores being cheque number 529754 of Nanded merchants cooperative bank Ltd , Nanded dated 15 March 2021 of ₹ 3 crores. Photocopy of cheque is placed at page number 1021 of the paper book. It is the claim of the assessee that the WhatsApp of Mr. Sailesh Patil refers to this transaction. The facts of this transaction are identical to the facts of the case where the addition of Rs 2.10 crores is

contested in the same ground. As we have already set-aside the issue back to the file of the learned assessing officer for examination of these facts and to ascertain whether the assessee has received the professional income over and above the above sum mentioned in the cheque or not. With similar direction, we restore this issue back to the file of the learned assessing officer to decide it afresh.

093. Accordingly, ground number two of the appeal is allowed with above direction.

094. Ground number 3 of the appeal is with respect to the addition of ₹ 5,132,900/- comprising of three amounts (1) sum of ₹ 2,672,900/-, (2) ₹ 380,000/- and (3) ₹ 2,080,000/-. All of these are treated as unaccounted cash receipts of the assessee. The fact of the case shows that that the learned assessing officer based on the images of the diaries found from the WhatsApp image of Mr. Kaustubh latke has made the above addition.

095. The amount of addition of ₹ 2,672,900 is concerned, it pertains to the transaction of the assessee carried out by one Mr. Rajesh saboo on account of purchase of 5.345 acres of land where the assessee was supposed to get remuneration of ₹ 500,000 per acre. It is the submission of the assessee that the above transaction has not at all materialized and this was merely a proposal with a rough working of the total probable price. The learned

assessing officer has made an addition of ₹ 2,672,900/- on this account. The learned CIT – A also confirmed the same because the word 'paid' is used in the document. The argument made by the assessee that assessee is not a partner, and the assessee should get a benefit of this noting because the document says that the assessee is not a partner. Further, it does not prove that the cash payments were made for transaction. Therefore, assessee is in appeal.

096. The learned authorized representative referred to the document, which is at page number 20 of the assessment order. He submits that that assessee was supposed to get the professional fees of ₹ 5 lakhs per acre on the registration of the document. The transactions have not been completed by the parties as it did not materialize, assessee also did not get any fees. Therefore, the above amount cannot be added in the hands of the assessee.

097. The learned CIT DR vehemently supported the orders of the lower authorities and submitted that both the lower authorities have rejected this contention because there is a mention of amount 'paid' in the seized documents. He further submits that there is no evidence placed by the assessee before any of the lower authorities that the above transaction did not materialize. Therefore, the above addition is correctly made.

098. We have carefully considered the rival contention and perused the document, which is placed at Para number 12.2 of the assessment order. Two pages of the diary are placed therein wherein it is found that Mr. Rajesh Saboo was to purchase from farmers for his own purposes land admeasuring 5.345 acres at the rate of Rs 25 L of Rs 133,62,500/-. Out of that, cheque amount is mentioned at ₹ 2,713,750/- and cash was mentioned at ₹ 10,648,750/-. Registration and other charges were also mentioned at ₹ 51,250/-. The total amount of transaction mentioned therein is ₹ 107 lakhs. On the second page it is mentioned under the heading " Rajesh saboo A/c' that the purchase of 5.345-acre land from farmers for other purchase purposes. The GNP is not a partner. For the charges of the land, it is mentioned that GNP charges would be ₹ 5 lakhs per acre totalling to ₹ 26.725 lakhs. The paper also shows as under:-

"Payment to Lahane

5.345 * 20L	=	1,06,90,000
Cheque		27 13 750

		79,76,250
Registration Charges		23,750

		80,00,000

Paid by GNP by deducting

27 lakhs Service charges 63,00,000

Balance 17,00,000

(Will be paid by Saboo to Lahane on 19th Jan at the time of registration)"

Thus, based on the above document it is clear that there is a transaction which has been agreed for purchase of 5.345 acre of land by one Mr. Rajesh Saboo. Claim of the assessee is that such transaction ultimately did not materialize. The lower authorities have made the addition of ₹ 2,672,900/- in the hands of the assessee. The document shows that the assessee has paid ₹ 63 lakhs by deducting ₹ 27 Lacs as its service charges. Therefore, assessee was to receive service charges of ₹ 5 lakhs per acre. However, as the claim of the assessee is that transaction has not materialized and therefore the above sum cannot be taxed in the hands of the assessee as no income has accrued. This statement of the assessee has not been appreciated by the lower authorities. Undoubtedly, it is for the assessee to show that what is the land that was being discussed for purchase and to show that the transaction did not materialize. This fact could have been examined by examining Mr. Rajesh Saboo, who allegedly entered the transaction for

purchase of the above land. The lower authorities have not at all examined purchasers. If the LD AO had examined the purchaser, it could have been ascertained with evidence that whether such transaction has materialized or not. In view of this we set-aside the whole issue back to the file of the learned assessing officer with a direction to the assessee to substantiate that such transaction has not at all materialized. Naturally, if the above transaction has not materialized, no income can be taxed in the hands of the assessee. Then the assessee is required to explain transaction of ₹ 63 lakhs mentioned in that seized document also. It is also to be noted that assessee has categorically stated before the assessing officer (page number 1247) that seized documents pertain to some land transaction in the name of Mr. Rajesh Saboo. The cheque has been given by him. As the transaction as claimed by the assessee has not materialized, naturally no cheque payments were made by Mr. Rajesh Saboo. Therefore, in nutshell the above transaction can be verified whether it materialized or not by examining Mr. Rajesh who has issued a cheque. Assessee has during assessment proceedings also made a request to examine Mr. Rajesh. If no such cheque is issued by him, naturally the transaction has not materialized. If he issued the cheque, it is for the assessee to show that how it says and submits that the above transaction has not materialized. In view of this, we set-aside this addition back to the file of the learned

assessing officer with a direction to the assessee to substantiate that the transaction has not materialized, the learned AO may examine and carry out inquiries to ascertain whether such transaction has materialized or not. Thereafter only, the income arising in the said document of the assessee can be taxed.

099. The second addition is related to ₹ 380,000 of cash receipt as business income. As per Para number 12.4 of the assessment order, the document found from the WhatsApp chat is stimulated. According to that chat it is found that total cash involved in the deal is ₹ 3,995,000/- out of the total cash amount shri Umang Jain has given ₹ 10 lakhs as an advance and expected to give ₹ 2,995,000/-. There is further instruction to pay ₹ 2,615,000/- out of this transaction to Shri Thackeray. From the above cash movement, the learned assessing officer found that out of the total cash transaction ₹ 380,000/- being difference of ₹ 2,995,000 and ₹ 2,650,000 is the GNP charges, which are unaccounted cash receipt of the assessee. During assessment proceedings, the assessee claimed that these are merely proposals, but the learned assessing officer has categorically noted that as Mr. Umang Jain has given ₹ 10 lakhs, it shows that the transaction has already taken place. On appeal before the learned CIT – A he confirmed the same.

0100. The claim of the learned authorized representative is that before the assessing officer it has been categorically stated that this was the proposal only and the transaction has not materialized. It was further stated that the message only says that somebody has paid ₹ 10 lakhs as an advance. Merely from that, it cannot be presumed that there is an income of ₹ 380,000 in the hands of the assessee to be taxed.
0101. Before us, it was also stated that the same transaction may also be examined from Mr. Umang Jain whether he has already paid a cheque of ₹ 5 lakhs and another cheque of Rs 2,35,000/- or not. If these cheques are not paid, naturally the transaction has not materialized.
0102. The learned CIT DR vehemently submitted that when there is reference of ₹ 10 lakhs already paid by Mr. Umang Jain the transactions have concluded, and the income of the assessee has been correctly determined.
0103. We have carefully considered the rival contention and perused the orders of the lower authorities. It is the claim of the assessee before the lower authorities that the transaction remains unconcluded and did not materialize. The facts are identical to the addition of ₹ 2,672,900/- as discussed above. Whether the transaction has materialized or not would be evident if Mr. Umang Jain has paid cheque of ₹ 5 lakhs and ₹ 135,000/- for the above land purchase. If such cheques were paid, it would

be known for what land the above transaction has happened, and the addition in the hands of the assessee to the extent of ₹ 380,000 would be justified. However, such taxation would only happen if the transaction has materialized. Therefore, this issue needs an examination. In view of this, we restore this addition back to the file of the learned assessing officer with a direction to the assessee to substantiate its stand that the transaction has not materialized by producing Mr. Umang Jain or by any other evidence. The AO may examine the same, may carry out any enquiry and then decide the issue afresh.

0104. The third edition is with respect to the unaccounted cash receipt of ₹ 2,080,000/-. This addition has arisen from WhatsApp document extracted at Para number 12.5 of the assessment order. The document is titled "Umang Jain". As per the content of the above chat, the total cash consideration involved in deal is ₹ 6,080,000. The GNP charges in the deals are recorded at ₹ 2,080,000/-. Ld. AO noted that the balance sum of ₹ 40 lakhs is to be paid to the actual sellers. Therefore, the addition of ₹ 2,080,000 was made in the hands of the assessee. The learned CIT – A confirmed the same.

0105. The explanation of the learned authorized representative before us is also that the above transaction is not materialized and therefore no income has accrued in the hands of the assessee. It was also submitted that a request was made before the assessing officer that such

information can be called from the broker for further verification if required. Therefore, it is apparent that the explanation of the assessee is similar to the above two additions.

0106. The learned CIT DR vehemently supported the order of the AO and stated that in the said document there is a specific reference of GNP charges of ₹ 2,080,000/- and therefore such income has been added and confirmed by the learned CIT – A.

0107. We have carefully considered the rival contention and perused the extract of the document placed at page number 24 of the assessment order. The transaction related to the land at Gate number 1269 having an area of 104 R (2.6 acre) to be purchased from four farmers where the total consideration is ₹ 72.80 lakhs out of which a cheque payment of ₹ 12 lakhs is to be made and the balance payment is to be made in cash. In the same document the charges of assessee were mentioned at ₹ 2,080,000/-. In this case, the land is identified, and document says that the land would be registered on 'fourth'. It is further stated that the balance amount would be the charges of the GNP, which would be collected in due course of time. Similar to the other transactions there is also a cheque transaction of ₹ 12 lakhs to be paid to four farmers. Broker involved is also Mr. Umang Jain. As the claim of the assessee is that such transaction did not materialise, it can be examined from

the broker, from Registrar as land is identified, and from farmers who are also named. Therefore, as these examinations is not made by lower authorities, with similar direction as in other addition in this ground, we restore issue back to the file of the ld. AO, with direction to assessee to show whether this transaction has materialized or not by producing necessary evidence. LD may examine the same and decide it afresh.

0108. In the result, ground no 3 of the appeal is partly allowed with above directions.
0109. Ground no 4 is against charging of interest u/s 234 A , B and C which is consequential in nature , therefore, same is dismissed,
0110. In the result, ITA No 2547/M/2023 filed by assessee is partly allowed for statistical purposes.
0111. Thus, for Ay 2021-22, appeal of the LD AO is dismissed and of The Assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 2.03.2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.03.2024

Dragon/ Sudip Sarkar, Sr.PS/ Dragon



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai