

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**  
**BENCH 'B' CHANDIGARH**

**BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND**  
**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 5/CHD/2023**

निर्धारण वर्ष / Assessment Year : 2017-18

M/s TJR Properties Pvt. Ltd., SCO 80-81, 3 <sup>rd</sup> Floor, Sector 17-C, Chandigarh.	Vs. बनाम	The DCIT, Central Circle-2, Chandigarh.
स्थायीलेखासं./PAN No:AACCT8364R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

**आयकर अपील सं./ITA No. 145/CHD/2023**

निर्धारण वर्ष / Assessment Year :2017-18

The DCIT, Central Circle-2, Chandigarh .	Vs. बनाम	M/s TJR Properties Pvt. Ltd., SCO 80-81, 3 <sup>rd</sup> Floor, Sector 17-C, Chandigarh.
स्थायीलेखासं./PAN No:AACCT8364R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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

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

तारीख/Date of Hearing : 16.01.2024

उद्घोषणा की तारीख/Date of Pronouncement : 19.03.2024

**HYBRID HEARING**

**आदेश/ORDER**

**PER A.D.JAIN, VICE PRESIDENT**

ITA No.5/CHD/2023 and ITA No.145/CHD/2023 are  
cross appeals filed by the assessee and the Revenue,

respectively, against the order dated 15.12.2022 passed by the Id. CIT(A)-3, Gurgaon pertaining to Assessment Year 2017-18.

**ITA 5/CHD/2023**

2. In ITA No. 5/CHD/2023, the assessee has raised the following Grounds of appeal :

1. *That the order of Learned C.I.T. (Appeals) is bad and against the facts and Law.*
2. *That the assessment completed u/s 153A of the Income Tax Act, 1961 is against the provisions of the law as neither any search was conducted on the company nor any Panchnama was prepared in the name of the company.*
3. *That on the facts and in the circumstances of the case, the Order of assessment passed under Section 153A of the Act is wholly illegal and without jurisdiction as no search had been conducted under Section 132 of the Act in any of the business premises of the appellant - company.*
4. *That on the facts and in the circumstances of the case, the finding recorded in the assessment Orders that search and seizure operations were carried out under Section 132 of the Act in the case of the appellant -company, is perverse and wholly erroneous and therefore, the Order of assessment passed under Section 153A of the Act is without jurisdiction.*
5. *That the additions made in the assessment Order are not based on any corroborative and relevant incriminating material stated to have been unearthed during the course of any search by the Assessing Officer, though no search has taken place on the appellant and therefore, the Order of Assessment is wholly illegal and without jurisdiction in view of the judgment in the case of Commissioner of Income-tax (Central)-III v. Kabul Chawla [2016] 380 ITR 573 (Delhi)/[2015] 281 CTR 45 (Delhi).*
6. *That the learned CIT(A) has wrongly upheld addition of Rs. 3,70,000/- received from Sh. Vashisht Kumar Goyal without any justification.*

7. That the learned CIT(A) has wrongly upheld addition of Rs. 10,50,000/- on account of Income deposited in cash by the appellant without any justification.

8. That the learned CIT(A) has wrongly upheld addition of Rs. 14,20,000/- u/s 68 of the Act on surmises and conjectures.

9. That the learned CIT(A) has wrongly upheld disallowance of loss of Rs.50,231/- without discussing the same in the impugned order.

10. That the learned CIT(A) has wrongly upheld disallowance of depreciation on vehicle to the extent of Rs.5,62,672/- without any justification.

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

2.1 The following additional Grounds have also been taken by the Assessee:

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

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

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

4. Ground Nos.1 and 11 are general in nature.

5. As per Ground No.2, since neither any search was conducted on the Assessee company, nor any 'Panchnama' was prepared in its name, the provisions of section 153A of

the Income Tax Act, 1961 (in short 'the Act') are not applicable and so, the assessment completed u/s 153A of the Act is against the provisions of law. This Ground corresponds to Ground No. (b) raised by the Assessee before the ld. CIT(A). The Assessing Officer passed the assessment order dated 30.12.2019 u/s 153A(1)(b) read with section 143(3) of the I.T. Act, making various additions. Before the ld. CIT(A), the Assessee raised this issue by way of Ground No. (b).

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

Assessee; and that, therefore, the A.O. was justified in initiating assessment proceedings u/s 153A of the Act.

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

8. It has been contended that the assessment u/s 153A of the Act was completed against the provisions of the law, as neither any search u/s 132 was conducted on the Assessee

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

Associates; that on the request of the Assessee company, the ld. CIT(A), vide letter dated 7.9.2022, directed the A.O. to furnish a copy of the search warrant / 'Panchnama' prepared, on the basis of which, the assessment u/s 153A had been completed in the case of the Assessee company; that the ld. CIT(A), in the impugned order, has similarly mentioned that the "Assessing Officer furnished the copy of the warrant which was duly executed in the name of the appellant on 16.2.2018 in respect of the premises situated at SCO 80-81, 4<sup>th</sup> Floor, Sector 17-C, Chandigarh. The said warrant was found containing the name of the appellant"; that the ld. CIT(A), by simply observing so, agreed with the action of the Assessing Officer and held that the Assessing Officer was justified in initiating assessment proceedings u/s 153A of the Act; that the ld. CIT(A) did not provide the Assessee with the copy of the warrant, nor reproduced the same in the order; that since none of the Income Tax Authorities provided the Assessee with the copy of the search warrant, the Assessee company was suspicious that its name was not mentioned in the search warrant.

9. In the above situation, the Bench had called for the original search warrant from the Department, which was

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

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

(Delhi), wherein, it has been held in para 24, that it will be salutary and proper that a copy of the search warrant be furnished to the occupant or the person searched; and that this would curtail any allegation of interpolation, addition of names, etc. On the issue as to whether it is necessary to have the names of the person searched in the 'Panchnama', the ld. DR has sought to place reliance on 'MDLR' (supra), wherein, the Hon'ble Delhi High Court has held that since the 22 parties whose names were not mentioned, did not object to the order u/s 153A in the petition u/s 264 pursuant to the assessment order, such objection was not justified in the writ petition filed; that the assessment order under section 153A cannot and should not be permitted to become a matter of writ petition as the First Appellate Forum; and that the First Appellate Statutory Authority could deal statutorily with the questions and issues raised in the writ petition the jurisdiction of the First Appellate Authority having not been invoked with the appeals preferred by the writ petitioners.

11. Concerning the issue of absence of signatures of the main person on the search warrant, the ld. CIT (DR) has contended that there is no reequipment of service of warrant

on the main person, who is usually occupied at other premises, that the search warrant is required to be served on the witnesses.

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

13. 'Now, coming to Ground Nos. 3, 4 and 5, these Grounds correspond to Additional Ground Nos. 1, 2 taken by the Assessee before the ld. CIT(A). The matter pertaining to Ground Nos. 3 and 4 has been effectively decided by us in the preceding paragraphs, where we have found that the search warrant did contain the name of the Assessee company. Therefore, the grievance of the Assessee by way of Ground Nos. 3 and 4 also does not contain any merit and, accordingly, Ground Nos. 3 and 4 are rejected.

14. According to Ground No.5, the additions made are not based on any incriminating material found during the search. In this regard, the ld. CIT(A) has held that the

Assessing Officer was having jurisdiction to assess the income of the Assessee on the basis of the material available at the time of the assessment and he was not to restrict the additions subject to the incriminating material found during the search. For holding so, the ld. CIT(A) has placed reliance on the decision of the Hon'ble Kerala High Court in the case of "CIT vs. KPUmmer", (citation not given) in the impugned order; the decision of the Hon'ble Allahabad High Court in the case of 'Rajkumar Arora', 367 ITR 517 (Allahabad) ; the decision of the Hon'ble Kerala High Court in the case of 'EN Gopakumar vs. CIT', (2016) 75 taxman.com 215 and the decision of the Hon'ble Allahabad High Court in the case of 'CIT vs. Kesarvani Zarda Bhandar', ITA No.270/2014. The ld. Counsel for the Assessee, on this issue, has contended that the A.O. issued notice u/s 153A of the Act on 09.03.2019, against which, the company filed return and challenged the initiation of proceedings u/s 153A vide letter dated 03.05.2019 (APB-1); and that the additions made by the Assessing Officer are not emanating out of the search proceedings, as no incriminating material or evidence was found during the course of the alleged search related to the Assessee company for the year under consideration.

Reliance in this regard is placed on the order of the Hon'ble Apex Court wherein, the SLP filed by the Department in the cases of 'Meeta Gutgutia' 96 [taxmann.com](http://taxmann.com) 468/257 Taxman 441 (SC) and 'Kabul Chawla' were dismissed by the Hon'ble Apex Court. The relevant portion is re-produced below -

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

*The Tribunal however held that once the SLP is not admitted, the decisions given by the High Court in the case of Kabul Chawla and Meeta Gutgutia became final and binding."*

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

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

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

18. It has been contended that the Assessing Officer has wrongly made addition u/s 153A(1)(b) r.w.s. 143(3) of the Act on the direction of the third party without having any incriminating material on record, as no incriminating material/document was unearthed by the Department during the search proceeding. Hence, assessment u/s 153A(1)(b) r.w.s. 143(3) of the Income Tax Act, 1961 has been wrongly made, against the provisions of the law.

19. It has been submitted that the Assessing Officer wrongly made additions in the hands of the company, of all credit entries in the bank, regarding which, sufficient and credible information including the source by way of evidence had been submitted during the assessment proceeding for discharging its burden and which additions, are not sustainable in law, as no inquiry has been undertaken by the Assessing Officer and/or any material brought on record establishing the amount of bank entries as unexplained, thereby inviting the application of provisions of the Section 68 of the Act.

20. It has been submitted that the Id. CIT(A,) in his order, on Page 126, has observed that a letter dated 07.09.2022 was sent to the A.O., requiring him to produce a copy of the search warrant executed / 'Panchnama' prepared on the basis of which proceedings u/s 153A were initiated on the company. The CIT(A) observed that the AO was justified in initiating proceedings u/s 153A of the Act, as warrant of authorization u/s 132(1) was executed in the name of the company on 16.02.2018 at SCO 80-81, 4<sup>th</sup> Floor, Chandigarh.

21. It has been submitted that the CIT(A), on pages 127 & 128 of his order, has observed that the Assessee has stated that the additions made in the order u/s 153A of the Act cannot be sustained in the absence of any incriminating material found during the search proceedings; that the CIT(A) observed that consideration of above ground of appeal, it had been noted that in terms of the provisions of section 153A(1)(b), the Assessing Officer was required to assess/reassess the total income for the year under consideration; that the CIT(A) observed that it has been held by the Hon'ble Kerala High Court in the case of 'CIT vs KP Ummer' that when a notice u/s 153A is issued, it enables the Department to carry out assessment/re-assessment with respect to 6 immediate prior years and this does not require any incriminating material recovered during search relating to those prior years in which there is no time left on the date of search for an assessment u/s 143 (3); that the CIT(A) observed that the same view has been up-held by the Hon'ble Allahabad High Court in the case of 'Rajkumar Arora'; that the CIT(A) observed that the Hon'ble Kerala High Court, in the case of 'EN Gopakumar vs CIT', (2016)75 [taxman.com](http://taxman.com) 215 and the Hon'ble Allahabad High Court, in the case of

'CIT vs Kesarwani Zarda Bhandar', (2016), ITA No. 270/2014, had also held similarly; that the ld. CIT(A) observed that keeping in view of the provisions of the Act and the ratios of the decisions mentioned, it was observed that the Assessing Officer was having jurisdiction to assess the income of the Assessee on the basis of material available at the time of assessment and was not to restrict the additions subject to incriminating material found during the course of search and that it was in the manner that Additional Grounds of appeal No. 3 & 5 were dismissed by the ld. CIT(A). It has been contended that in view of the decisions in 'Kabul Chawla' (supra), 'Meeta Gutgutia' (supra), 'Sandeep Agarwal (HUF)' (supra) and 'Ahhisar Buildwell' (supra), Ground No.5 be accepted and the A.O. be held not to have had jurisdiction to make the additions in the absence of incriminating material found in the search.

22. On the other hand, the ld. DR, supporting the impugned order in this regard, has contended that as correctly stated by the ld. CIT(A) and not rebutted on behalf of the Assessee, the search warrant was duly executed in the name of the Assessee on 6.2.2018 in respect of the premises situated at SCO 80-81, 4<sup>th</sup> Floor, Sector 17-C, Chandigarh; that,

therefore, the Assessing Officer was well justified in initiating assessment proceedings u/s 153A of the Act; that as correctly noted by the ld. CIT(A) in terms of the provisions of section 153A (1)(b) of the Act, the Assessing Officer was required to assess / re-assess the total income of the Assessee for the year under consideration; that as held by the Hon'ble Kerela High Court in the case of 'CIT vs. KP Ummer' (supra), when a notice u/s 153A of the Act is issued, it enables the Department to carry out assessment / re-assessment with respect to the six immediate prior years and this does not require any incriminating material recovered during the search relating to those prior years, in which, there was no time left on the date of search for an assessment u/s 143(3) of the Act; that the same view has been taken by the Hon'ble Allahabad High Court in the case of 'Raj kumar Arora', (supra), the Hon'ble Kerela High Court in the case of 'EN Gopakumar vs. CIT', (supra) and the Hon'ble Allahabad High Court in the case of 'CIT vs. Keserwani Zarda Bhandar', (supra); that the ld. CIT(A) has correctly held that in view of the provisions of the Act and the ratios of these decisions, the Assessing Officer was indeed having jurisdiction to assess the income of the

Assessee on the basis of the material available at the time of the assessment and he was to restrict the additions subject to incriminating material found during the course of search. The ld. DR has contended that in this view of the matter, there being no merit therein, Ground Nos. 3 to 5 may be rejected.

23. We have heard the parties on Ground No. 5 raised before us.

24. This assessment was abated, as the search was conducted on 16.02.2018. The appellant brought to our notice that no incriminating material was found during the search and provisions of section 153A were not applicable in this case. As the search was conducted on 16.02.2018 and as per Section 153A the assessment for 2017-18 and 2018-19 were abated and the Assessing Officer was competent to pass assessment order u/s 153A r.w.s. 143(3) of the Act for these years. Hence ground Nos. 2, 3, 4 and 5 are hereby rejected.

25. Concerning Ground No.6, here again the addition was made by the AO without considering each credit separately on merit, while making addition of Rs.3,70,000/-, holding

that the purpose and utilization of funds which had not been explained by the assessee.

26. AO Observation - Page 10-11 of AO Order.

27. The Assessing Officer made addition of all the credit entries in bank of Rs. 2,02,23,250/-without considering each credit separately on merit and on the plea that purpose and utilization of funds not explained by assessee.

27.1 Documents submitted before AO were also submitted before the CIT(A) vide reply dated 21.03.2020 (Paper book page 46, 47, 50-51) :-

1. Bank Account statements of Sh. Vashist Kumar Goyal for A.Y.2017-18 (Paperbook Page 50-51)
2. ITR-V of Sh. Vashist Kumar Goyal for A.Y.2017-18 (Paperbook Page 47)
3. Copy of account of Sh. Vashisht Kumar Goyal in the books of M/s TJR Properties Private Limited for A.Y.2017-18 (Paperbook Page 46)

28. The AO in the assessment order has wrongly made addition of Rs. 2,02,23,250/- including Rs. 3,70,000/- received from Sh. Vashisht Kumar Goyal on the plea that the assessee company could not explain the purpose and sources of funds without mentioning deficiency on the part of assessee to prove the utilization of funds and also without

mentioning the documents submitted by the assessee during the assessment proceedings in the assessment order.

29. CIT Observation - Point 1, Page 92 of CIT Order

29.1 The ld. CIT(A) made addition of Rs. 3,70,000/- received from Sh. Vashisht Kumar Goyal alleging that - "In the absence of any documentary evidence, the same remains unexplained."

29.2 Documents submitted before CIT(A) vide reply dated 21.03.2020 (page 71, 72 and 77 of CIT(A)'s order)

29.3 Documents submitted before ITAT (Paper book page 45-51) :

1. *Confirmation of Sh. Vashisht Kumar Goyal (Paperbook page 45)*
2. *Copy of account of Sh. Vashisht Kumar Goyal in the books of M/s TJR Properties Private Limited for A.Y.2017-18 (Paperbook page 46)*
3. *ITR-V of Sh. Vashist Kumar Goyal for A.Y.2017-18 (Paperbook page 47)*
4. *Computation of Sh. Vashist Kumar Goyal for A.Y.2017-18 (Paperbook page 48-49)*
5. *Bank Account statements of Sh. Vashist Kumar Goyal for A.Y.2017-18 (Paperbook page 50-51)*

29.4 The assessee company contends that the company received advance of Rs. 3,70,000/- from Sh. Vashisht Kumar Goyal on 25.05.2016 and 07.11.2016. the appellant company

submitted copy of ITRV, copy of bank account statement and copy of account of Sh. Vashisht Kumar Goyal in the books of the company before the AO and CIT(A) which were not considered them while finalizing their orders. Neither the AO or the CIT(A) asked the appellant company to submit any other document nor pointed out any discrepancies in the documents submitted by the appellant company. The AO and CIT(A) simply ignored the documents submitted by the appellant to substantiate its claim and made addition of Rs. 3,70,000/- in the hands of the appellant company.

29.5 The appellant company filed written submission before CIT(A) in 2020, the CIT(A) had more than 2 years to examine the documents submitted by the assessee company and ask the assessee to submit any other document, if required. But neither the CIT(A) nor AO asked the assessee to submit any other documentary evidence in this regard.

29.6 The ld.CIT(A) has reproduced the entire written submission of the assessee company in its order, and on page 71, 72 and 77 of the CIT(A) order, the following facts were mentioned by the assessee in its submission which were reproduced by CIT(A) :-

Page 71 of CIT(A)'s Order

DATE	RECEIPT INWARD (CR)		REMARKS	PROOF OF IDENTITY, GENUINES AND CREDIT WORTHINESS OF THE PARTY
	AMOUNT (IN RS)	PARTY NAME/ ACCOUNT NO.		
25/05/2016	2,50,000/-	VASHISHT KUMAR GOYAL (FRIEND OF DIRECTOR)	UNSECURED LOAN RECEIVED FROM VASHISHT KUMAR GOYAL	BANK ACCOUNT, ITR, LEDGER ACCOUNT

Page 72 of CIT(A)'s Order

DATE	RECEIPT INWARD (CR)		REMARKS	PROOF OF IDENTITY, GENUINES AND CREDITWORTHINESS OF THE PARTY
	AMOUNT (IN RS)	PARTY NAME/ ACCOUNT NO.		
07/11/2016	1,20,000/-	VASHISHT KUMAR GOYAL (FRIEND OF DIRECTOR)	UNSECURED LOAN RECEIVED FROM VASHISHT KUMAR GOYAL	BANK ACCOUNT, ITR, LEDGER ACCOUNT

Page 77 of CIT(A)'s Order

DATE	RECEIPT INWARD (CR)		REMARKS	PROOF OF IDENTITY, GENUINES AND CREDITWORTHINESS OF THE PARTY
	AMOUNT (IN RS)	PARTY NAME/ ACCOUNT NO.		
25/05/2016	2,50,000/-	VASHISHT KUMAR GOYAL (FRIEND OF DIRECTOR)	UNSECURED LOAN RECEIVED FROM VASHISHT KUMAR GOYAL	BANK ACCOUNT, ITR, LEDGER ACCOUNT

DATE	RECEIPT INWARD (CR)		REMARKS	PROOF OF IDENTITY, GENUINES AND CREDITWORTHINESS OF THE PARTY
	AMOUNT (IN RS)	PARTY NAME/ ACCOUNT NO.		
07/11/2016	1,20,000/-	VASHISHT KUMAR GOYAL (FRIEND OF DIRECTOR)	UNSECURED LOAN RECEIVED FROM VASHISHT KUMAR GOYAL on 07/11/2016	BANK ACCOUNT, ITR, LEDGER ACCOUNT
Total	Rs. 3,70,000/-			

29.7 The above documents were submitted before the ld.CIT(A) which were neither considered by the ld. CIT(A) nor discussed by the ld.CIT(A) in his order. The CIT(A) wrongly confirmed the addition made by AO without carrying out any verification with regard to the copy of account submitted by the company and wrongly confirmed the addition of Rs. 3,70,000/- by taking a plea that no documentary evidence was submitted by the company to establish the creditworthiness of Sh. Vashisht Kumar Goyal.

29.8 The AO found the documentary evidence furnished by the assessee company to be unsatisfactory while the ld.CIT(A) observed that the creditworthiness cannot be established due to non-submission of documents, the AO and CIT(A) could have initiated proceedings under Sections 133(6) or 131 of the Act for further investigation. However, it is noteworthy that neither the AO nor the CIT(A) extended any such notice to the lender for additional inquiries. Instead, an addition of Rs. 3,70,000/- was made based on the directive of a third party. Neither enquiry was made by CIT(A) / AO before confirming the addition of Rs. 3,70,000/- nor any documentary evidence were sought from the assessee company, therefore the assessee company has now submitted

copy of computation and confirmation of Sh. Vashisht Kumar Goyal (Paperbook page 45, 48-49) as additional evidence. The submission of said documents are neither challenged nor disputed in the appeal by the department. Hence the addition of Rs.3,70,000/- as advance received from Sh. Vashisht Kumar Goyal confirmed by Id.CIT(A) without considering the documents submitted by the assessee company should be deleted. Accordingly, ground of appeal No. 6 is accepted.

30. Ground No 7 relates to addition of Rs. 10,50,000/- made by the Assessing Officer and upheld by Id. CIT(A) on account of Income deposited in cash by the assessee without any justification.

31. AO Observation - Page 10-11 of AO's Order.

31.1 The AO made addition of all the credit entries in bank of Rs.2,02,23,250/- (which includes cash deposit of Rs. 10,50,000/- by the company in its bank account) without considering each credit separately on merit and on the plea that purpose and utilization of funds not explained by assessee.

31.2 The ld. CIT(A) confirmed the addition of Rs. 10,50,000/- (Page 108-109, point 10 of CIT(A)'s Order) on account of cash deposit made by the assessee company by mentioning that - "*However, no evidence/details giving the particulars of person from whom such cash was received, nature of transaction with them have been furnished. Therefore, cash source deposits and of Rs. 10,50,000/-remain unexplained.*" The assessee company submitted copy of income account along with copy of cash account, bank account statement, profit and loss account and copy of hire charges account in the books of the company for AY 2017-18 before the ld. CIT(A) and AO which were not considered by any of the authorities before confirming the addition of Rs. 10,50,000/-. No explanation or documentary evidence, whatsoever was ever asked by ld. CIT(A) or AO either by way of Show Cause Notice or during the personal hearing, before confirming the addition.

31.3 It was submitted that the ld. CIT(A) while confirming the addition made by AO, wrongly mentioned that no evidence/details giving the particulars of person from whom such cash was given, nature of transaction with them have been furnished, without even going through the written

submission and documentary evidences submitted by the assessee company during appellate proceedings. The assessee company submitted the completed reply before the ld. CIT(A) in the year 2020, and it took the ld. CIT(A) more than 2 years to realize that the assessee failed to submit some of the documentary evidences to substantiate its claim. Moreover, even after that the ld. CIT(A) did not ask the assessee to submit any documents, wrongly confirmed the addition made by AO on the dictate of third party.

31.4 The assessee company has laid emphasis on the fact that as per bank statement of the company (paperbook Page 18), it is clear that the company has withdrawn Rs.2,50,000/- on 25.05.2016 and the same were re-deposited on 30.05.2016, remaining Rs.8,00,000/- was declared as income of Rs.8,03,250/- by the assessee company (refer P/L A/c on Paperbook page 4). The assessee company earned income of Rs. 8,00,000/- from leasing of vehicle of the company. This fact was explained to the AO during the assessment proceeding, which the AO completely ignored while making the said addition. The copy of income account in the books of the company is available at paperbook page 303, which was also submitted before the AO during

assessment proceedings. The AO neither discussed the same in the assessment order nor considered the copy of account which was already placed on record, while making the addition on the dictate of third party ignoring the fact that it has been duly recorded by the assessee company in the Profit and Loss account of the company as at 31.03.2017 (Paperbook Page 4). The aforesaid documents submitted by the assessee were neither challenged nor disputed by the department in the appeal. Hence, any receipt already shown as income in the Profit and Loss Account cannot be added u/s 68 of the Act, without any specific reasons or evidence. Therefore, the addition of Rs. 10,50,000/- is wrong and needs to be deleted as it includes an amount Rs. 2,50,000/- withdrawn and re-deposited by the company and Rs. 8,00,000/- which was already declared by the company as income in its Profit and Loss Account for AY 2017-18. Accordingly, Ground No. 7 stands accepted.

32. Ground No 8 relates to addition of Rs. 14,20,000/- u/s 68 of the Act. The assessee contended that the company submitted the cashflow statements, explanation of each debit and credit entry in the bank account of the assessee company along with the Balance Sheet, Affidavit,

confirmations, bank statements, ITRs, Balance sheets, copy of accounts etc. but instead of considering each credit entry separately, the Assessing Officer with a vitiated mind and on the dictate of third party, made additions of all the credit entries in the bank account of the assessee company without considering the nature, source, credibility and genuinity of each credit transaction received in the bank account of the assessee company during the year.

32.1 The Assessing Officer after being fully satisfied with the genuinity of company and sources of credit entries in bank account, sent a detailed note on the comparison of assessee company with shell companies and explanation of the credit entries as mentioned in points above, (deviation note) to the Deputy Director of Investigation (ADIT), Mohali on 26.12.2019 vide letter (deviation note) note no. 1733, dated 24.12.2019, at the fag end of assessment proceedings being satisfied by the fact that the sources of the transactions as per evidences/documents submitted and regular books of accounts of the assessee company stood explained by leading cogent and reliable evidence. However, the ADIT(Investigation), Mohali acted without any jurisdiction and without application of mind and rejected the

deviation note in less than 12 hours. It is pertinent to mention that the ADIT (Investigation), Mohali rejected the deviation note sent with detailed replies and evidences in less than 12 hours and observed that the assessee company is a shell company. Thus, the ADIT (Investigation), Mohali exceeded her jurisdiction knowingly and issued dictates based on Appraisal Report. The ADIT, Investigation, Mohali vide letter no. 1763 dated 27.12.2019 addressed to the Ld. Assessing Officer rejected the proposal/deviation note for not proposing the additions despite the fact that ample evidence both reliable and cogent had been produced by the assessee company calling for no addition at all and still proceeded to dictate the Assessing Officer to make additions by assigning flimsy reasons as if the ADIT (Investigation) was an assessing authority; and still further the ADIT(Investigation), by giving reference to the CBDT instructions bearing No. FTS/194840/12 dated 20.11.2012, proved beyond a shadow of doubt that she had exceeded her powers by rejecting the said deviation note.

32.2 The Assessing Officer acted on the dictate of a third party and on borrowed satisfaction to declare the assessee company as a shell company and made addition of all credit

entries in the bank account of the assessee company as undisclosed income u/s 68 of the Income Tax Act, 1961, without even issuing any Show Cause Notice to the assessee company for treating it as a shell company. Also, the ld. Assessing Officer neither issued a Show Cause Notice nor mentioned a single word about shell company in any of the questionnaires sent by him on 14.08.2019 (page 21-22 of paperbook), 07.10.2019 (page 25-28 of paperbook) and 05.12.2019 (page 35-37 of paperbook). The Assessing Officer erroneously made an addition, disregarding the comprehensive evidence provided by the assessee to substantiate its claim regarding the lenders. It is crucial to note that the company extended funds in submitted details as identity, sources, bank A/c, etc of each creditor, and there is no entity, individual or otherwise, that can be deemed as a sham entity. Furthermore, all the lenders executed the transfers from their active and operational bank accounts. Notably, within the same fiscal year, the assessee company repaid all lenders except Sh. Baldev Singh and advance received from Dharma Wires Private Limited was repaid in the subsequent year. The CIT(A) in his order has mentioned as under :

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

9.3 *Facts and material available on record have been considered in detail. Sh. TN Singla and Sh. Jagdish Rai Gupta are the directors/shareholders of the appellant company. Sh. Sahil Singla is the son, Smt. Kiran Singla is the wife and Smt. Sakshi Singla is Daughter in Law of Sh. TN Singla. After taking into consideration the above facts, it is observed that the AO has held in his order the appellant company to be a shell company as merely existing on papers and not carrying out any business activities. After perusing the findings of the AO recorded in the assessment order and the material available on record, it is noted that M/s TJR Properties was having land which was purchased during F.Y. 2007-18 for Rs.1,73,00,000/- and sold during A.Y. 2012-13 for Rs.5,00,05,000/-by executing registered sale deed on 30.11.2011 and paying stamp duty. The same AO has assessed Long Term Capital Gain in the hands of M/s TJR from the said transaction. It is not the case of the AO that the said land was a Benami asset held in the name of M/s TJR. Further, M/s TJR paid earnest money of Rs.1,50,00,000/- during F.Y. 2016-17 for purchase of a plot to build flat/apartment and paid TDS of Rs. 1,50,000/- @1%. Thus, on facts, it is observed that M/s TJR was having income generating apparatus in past and future years and was undertaking business activities. There is no definition of shell company given under the provisions of Income Tax Act, 1961 or Companies Act, 1956/2013. Every case needs to be examined on merits as per the peculiar facts and circumstances to draw such inference and*

*consequences out of the same as per the provisions of Income Tax Act. In order to decide the merit of addition made by the AO on account of unexplained bank credits u/s 68 of the Act, it is required to examine the source and nature of credits received by the appellant terms of conditions laid down in the provisions of section 68 of the Act. Thus, it required to examine the identity and creditworthiness of the persons from who's amounts have been received and genuineness of the transactions on merit considering each credit separately. The AO has not discussed each and cred separately on merits in the assessment order before drawing the inference that the credits were unexplained. During the assessment proceedings, it was observed by AO after going through the reply of the appellant dated 19.12.2019 in respect of particular of such persons from whom such credits were received that the appellant had credit amounting to Rs 2,02,23,250/- in its bank account and the appellant could not explain purpose of such credits. Thus, the addition of Rs.2,02,23,250/- was made by the AO on the ground that the appellant has failed to explain the purpose and utilisation of such credits The appellant submitted during the appellate proceedings that it had received credits of Rs. 2,02,23,250/- in its bank account maintained with Bank of Maharashtra and furnished documentary evidence in support of identity and creditworthiness of such persons a genuineness of transaction which have been also furnished during the assessment proceedings. The AO was again directed during appellate proceedings vide letter no.295 dated 12.08.2021 to examine such credits on merit in respect of identity and creditworthiness of such persons and genuineness of transaction. In the remand report dated 15.07.2022(supra), the AO did not bring on record any adverse findings in respect of identity and creditworthiness of such persons and genuineness of transactions except by stating that appellant is a shell company and doesn't have any profit generating apparatus. It was further stated that one of the group companies, i. e., M/s Evershine Recreation Pvt Ltd was a shell company from whom the appellant has received credits. However, the AO did not make any further enquiry in respect of credits in the bank account during the remand proceedings and relied upon the facts as discussed in the assessment order.*

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

*There is no direct or indirect evidence pointed out by the AO before making such additions. Therefore, after considering the merits of the case, analysis of credits as per the above table and strength of documentary evidence, it is observed that there is no justification in such addition made in the hands of the appellant u/s 68 of the Act. Therefore, the addition of Rs. 1,88,03,250/- is hereby deleted."*

32.3 The assessee contended that the AO did not make any adverse findings in the remand report and the entire investigation / proceedings of the AO revolves around stating the assessee company as shell company on the dictat of third party. The AO made addition of all the credit entries in the bank account of the company amounting to Rs. 2,02,23,250/- ignoring all the proofs and documentary evidences submitted by the assessee during the assessment proceeding. However, same documents were submitted before the ld. CIT(A) during the appellate proceedings and the ld. CIT(A) granted relief of Rs. 1,88,03,250/- to the assessee after verification of all the documents and confirmed addition of Rs. 14,20,000/- without asking assessee for any other evidence or document during appellate proceeding for three years as no Show Cause Notice was issued or query was raised by the ld. CIT(A). Accordingly, ground of appeal No. 8 is accepted.

33. Ground No 9 & 10 : Ground No. 9 pertains to disallowance of loss of Rs.50,231/- and Ground No.10 is relating to disallowance of Rs.5,62,672/- upheld by the ld. CIT(A).

34. AO Observation - Page 10 of AO's order.

35. CIT(A) Observation - Page 106-107 of CIT(A)'s order.

35.1 Ground No. 9 states that the ld. CIT(A) has wrongly upheld the disallowance of Rs. 50,231/- against the loss claimed in the return of income. Ground No. 10 states that disallowance of depreciation on vehicle to the extent of Rs. 5,62,672/- has wrongly been upheld.

35.2 The AO disallowed the depreciation on vehicle to the extent of Rs. 5,62,672/-without making any discussion in the assessment order. The CIT(A) too did not make any discussion in the impugned order while upholding the disallowance. The assessee company has submitted the following documents before us, as also furnished before both the Income Tax authorities:

- 1. Copy of Computation sheet of M/s TJR Properties Private Limited for A.Y. 2017-18 (Paperbook Page 10-11)*
- 2. Copy of fixed asset schedule (Paperbook Page 6)*
- 3. Copy of RC of car (Paperbook Page 14-15)*

35.3 The contention of the assessee has, all through remained that the car was registered in the name of the assessee company and was used for business purposes only. The copy of the Registration Certificate has been filed in support. The documents placed on record by the assessee have not been disputed or challenged by the Department.

The Id. CIT(A), though, in para 11 of the impugned order, has observed that the assessee did not furnish any documentary evidence in support of the loss claimed. It is seen that as per the Computation of Income (paperbook page 10-11), loss was of Rs. 50,231/-, whereas as per the Profit & Loss Account (paperbook page 4), the loss was of Rs. 3,92,340/-. The contention of the Id. Counsel for the assessee has been that the AO wrongly observed that bills and vouchers and books of account were not produced by the assessee and that the AO wrongly disallowed the loss at Rs. 50,231/- as per return of income. It has further been contended that the Id. CIT(A) went wrong in observing that no documentary evidence was filed, whereas the aforementioned papers were filed, as also ITR-V of the assessee company, for assessment year 2017-18 (paperbook page 9) and Balance Sheet of the assessee company as on 31.03.2017 (paperbook page 3-8) were also filed. This has not been disputed before us. In the search conducted, at the business premises of M/s Kansal Singla & Associates, regular books of account alongwith bank statements of the assessee company were found, which fact stands duly mentioned at page 357 of the Appraisal Report (paperbook

page 116). Copies of all these books of account were taken on CD by the Department, as per Panchnama (paperbook page 276-279). The books of account were examined by the AO before sending the Deviation Note dated 24.12.2019 to Investigation Wing. This is evident from the contents of the AO's letter dated 24.12.2019 (paperbook page 297-299). The Dictat by the ADIT (Investigation), on which, however, the AO acted, is available at paperbook page 300-302.

35.4 Further, the books of account were also submitted by the assessee before the AO during the remand proceedings, on 16.02.2022, as available at papebook page 52.

36. We found that the very basis of the disallowance made is unsustainable in law and we hold so. Accordingly, the additions of Rs.50,231/- and Rs.5,62,672/- are deleted, found to be based on no material, whatsoever and in direct opposition to the documentary evidence furnished by the assessee. Accordingly, Ground Nos. 9 and 10 are also accepted.

37. In the result, the appeal is partly allowed, as indicated.

**Department Appeal - 146/CHD/2023**

38. This is cross appeal filed by the Department to the assessee's appeal in ITA 5/CHD/2023, for assessment year 2017-18. The following grounds have been raised :

*i) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in not appreciating the fact that the amount of Rs. 1,88,03,250/- credited in bank account of assessee during F.Y. 2016-17 was to be considered as unexplained cash credit u/s 68 of the Act as the assessee did not establish its genuineness during the course of assessment proceedings ?*

*ii) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in allowing the appeal of the assessee by holding that identity and creditworthiness of the persons from whom such credits were received, were proved, however, genuineness of the transactions was not established as the purpose of such credit was not explained?*

*iii) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in allowing the appeal of the assessee on the issue of credit entries even when all three limbs of Sec 68 was not proved/ established by the assessee?*

39. The single issue raised by the Department in its appeal is the action of the ld. CIT(A) in deleting the addition of Rs.1,88,03,250/- credited in the bank account of the assessee company during the year under consideration. According to the Department, the ld. CIT(A) erred in not appreciating the fact that the amount of Rs. 1,88,03,250/- was to be considered as unexplained cash credit u/s 68 of the Act, since the assessee did not establish its genuineness during the assessment proceedings. The Department has

contended that the ld. CIT(A) erred in holding that the identity and credit worthiness of the persons from whom the credits comprising the amount of Rs.1,88,03,250/- were received, stood proved, whereas the genuineness of the transactions had not been established by the assessee, since the purpose of the credits had not been explained and thereby all the three limbs of the provisions of Section 68 of the Act did not stand proved by the assessee.

40. The Assessing Officer himself has accepted the identification and source of depositor in the deviation report dated 24-12-2019. The AO sent the deviation note only after verifying the sources and merits of the documents submitted by the assessee company. However, on receipt of letter from DDIT, the AO made addition of the total credits in the bank account of the company and declared a genuine company as shell company without issuing any show cause notice. The complete verification was also done by CITA and found that ingredients of section 68 were, satisfied and hence the CIT(A) granted relief of Rs. 2,77,01,650/- to the assessee company.

41. Further, the CIT(A) in his order has mentioned that :

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

9.3 *Facts and material available on record have been considered in detail. Sh. TN Singla and Sh. Jagdish Rai Gupta are the directors/shareholders of the appellant company. Sh. Sahil Singla is the son, Smt. Kiran Singla is the wife and Smt. Sakshi Singla is Daughter in Law of Sh. TN Singla .After taking into consideration the above facts, it is observed that the AO has held in his order the appellant company to be a shell company as merely existing on papers and not carrying out any business activities. After perusing the findings of the AO recorded in the assessment order and the material available on record, it is noted that M/s TJR Properties was having land which was purchased during F.Y. 2007-18 for Rs.1,73,00,000/- and sold during A.Y. 2012-13 for Rs.5,00,05,000/-by executing registered sale deed on 30.11.2011 and paying stamp duty. The same AO has assessed Long Term Capital Gain in the hands of M/s TJR from the said transaction. It is not the case of the AO that the said land was a Benami asset held in the name of M/s TJR. Further, M/s TJR paid earnest money of Rs. 1,50,00,000/- during F.Y. 2016-17 for purchase of a plot to build flat/apartment and paid TDS of Rs. 1,50,000/- @1%. Thus, on facts, it is observed that M/s TJR was having income generating apparatus in past and future years and was undertaking business activities. There is no definition of shell company given under the provisions of Income Tax Act, 1961 or Companies Act, 1956/2013. Every case needs to be examined on merits as per the peculiar facts and circumstances to draw such inference*

*and consequences out of the same as per the provisions of Income Tax Act. In order to decide the merit of addition made by the AO on account of unexplained bank credits u/s 68 of the Act, it is required to examine the source and nature of credits received by the appellant terms of conditions laid down in the provisions of section 68 of the Act. Thus, it required to examine the identity and creditworthiness of the persons from who's amounts have been received and genuineness of the transactions on merit considering each credit separately. The AO has not discussed each and cred separately on merits in the assessment order before drawing the inference that the credits were unexplained. During the assessment proceedings, it was observed by AO after going through the reply of the appellant dated 19.12.2019 in respect of particular of such persons from whom such credits were received that the appellant had cred amounting to Rs 3,22,01,650/- in its bank account and the appellant could not explain purpose of such credits. Thus, the addition of Rs.3,22,01,650/- was made by the AO on the ground that the appellant has failed to explain the purpose and utilisation of such credits The appellant submitted during the appellate proceedings that it had received credits of Rs. 3,22,01,650/- in its bank account maintained with Bank of Maharashtra and furnished documentary evidence in support of identity and creditworthiness of such persons a genuineness of transaction which have been also furnished during the assessment proceedings. The AO was again directed during appellate proceedings vide letter no.295 dated 12.08.2021 to examine such credits on merit in respect of identity and creditworthiness of such persons and genuineness of transaction. In the remand report dated 15.07.2022(supra), the AO did not bring on record any adverse findings in respect of identity and creditworthiness of such persons and genuineness of transactions except by stating that appellant is a shell company and doesn't have any profit generating apparatus. It was further stated that one of the group companies, i. e., M/s Evershine Recreation Pvt Ltd was a shell company from whom the appellant has received credits. However, the AO did not make any further enquiry in respect of credits in the bank account during*

*the remand proceedings and relied upon the facts as discussed in the assessment order.*

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

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

*the appellant u/s 68 of the Act. Therefore, the addition of Rs. 1,88,03,250/- is hereby deleted."*

42. Further, the CIT(A) in his order on page 103-104 has mentioned that - "The AO was again directed during appellate proceedings vide letter no. 293 dated 12.08.2021 to examine such credits on merit in respect of identity and creditworthiness of such persons and genuineness of such transaction. In the remand report dated 05.09.2022 (supra), the AO did not bring on record any adverse findings in respect of identity and creditworthiness of such persons and genuineness of such transaction, except by stating that appellant company is a shell company and does not have any profit generating apparatus."

43. The assessee contends that the AO did not make any adverse findings in the remand report and the entire investigation / proceedings of the AO revolves around stating the appellant company as shell company on the dictate of third party. The AO wrongly made addition of all the credit entries in the bank account of the company amounting to Rs. 2,02,23,250/- ignoring all the proofs and documentary evidences submitted by the assessee during the assessment

proceeding. However, same documents were submitted before the CIT(A) during the appellate proceedings and the Id. CIT(A) granted relief of Rs. 1,88,03,250/- to the assessee after verification of all the documents.

44. It is despite the above inability of the Department to repel the evidence based stand taken by the assessee, that the Department has raised the issue that the genuineness of the transactions had not been established. We, on the basis of the preceding discussion, find ourselves unable to subscribe to this view of the Department. Accordingly, finding no merit therein, all the grounds raised by the Department are rejected and the appeal filed by the Department is dismissed.

45. In the result, whereas ITA-5/CHD/2023 is partly allowed, as indicated above, the Department's appeal in ITA-145/CHD/2023 is dismissed.

Order pronounced on 19.03.2024.

Sd/-

**(VIKRAM SINGH YADAV)**  
**ACCOUNTANTMEMBER**

Sd/-

**(A.D.JAIN )**  
**VICE PRESIDENT**

“Poonam

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

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

आदेशानुसार/ By order,  
Assistant Registrar