आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos.81 to 85/Ind/2014
A.Ys. : 1988-89 to 1992-93

Shri Kamal Panjwani, (L/H of Late Shri Namdev Panjwani), 61,Kesar Bagh Road, Indore. (PAN:ALHPP0723F)	बनाम/ Vs.	ACIT, 3(1), Indore.
(Appellant/Assessee)		(Respondent/Revenue)

Assessee by	Shri Kailash Agrawal, CA& AR
Revenue by	Ms.Simran Bhullar, CIT-DR

Date of Hearing	31.01.2024
Date of Pronouncement	18.03.2024

आदेश/O R D E R

Per Bench:

Feeling aggrieved by five separate appeal-orders all dated 29.11.2013 passed by learned Commissioner of Income-tax (Appeals)-I, Indore ["CIT(A)"], which in turn arise out of respective assessment-orders dated 30.06.2011, 31.10.2011 & 30.12.2011 passed by ACIT, Circle 3(1), Indore ["AO"] u/s 143(3)/254 of Income-tax Act, 1961 ["the Act"] for Assessment-Years ["AY"] 1988-89 to 1992-93, the assessee has filed the captioned five (5) appeals.

2. Since these appeals relate to the same assessee, are represented by same counsels and majority of the issues are of identical nature; they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity.

3. Learned Representatives of both sides have made vehement oral arguments and also submitted written notes from time to time. We have peacefully heard both sides on several dates. Lastly, we also asked learned Representatives to file Concise-Synopsis of their submissions under service to other side which the learned Representatives did. We have carefully considered the relevant submissions made by both sides.

4. At the outset, we may take note of the background facts leading to present appeals as follows : This is the *3rd round of litigation* before us. The original assessee in this case was "Shri Namdev Panjwani". A search u/s 132 of the Act was carried upon original assessee and its group concerns on 10.08.1992 to 13.08.1992, the flagship company of assessee-group is "M/s Panjwani Packings Pvt. Ltd. ["PPPL"]. During search, statements of assessee were recorded on 11.08.1992/12.08.1992 u/s 132(4) wherein a surrender of undisclosed assets/income of Rs. 51,57,000/- was made by assessee. Post-search, the AO recorded reasons dated 30.04.1993, issued notices dated 27.05.1993 u/s 148 and thereby took action u/s 147 for AY 1988-89 to 1992-93 as per provisions of the Act existing at the relevant time to deal search-cases. In response, the assessee filed returns of income. Ultimately,

the AO passed assessment-orders u/s 147/144 on 04.07.1997 after making certain additions. Aggrieved, the assessee went in first-appeal before CIT(A) whereupon the CIT(A), vide order dated 31.12.1997, set aside the assessment-orders for making *de novo* assessments after hearing assessee. *The 1st Round ended here*. Pursuant to direction of CIT(A), the AO made *de novo* assessments u/s 143(3)/250 vide orders dated 27.03.2000 again after making certain additions. Aggrieved by such *de novo* orders, the assessee filed first-appeal to CIT(A). The CIT(A) decided appeals vide order dated 15.02.2007 granting part-relief to assessee. Dissatisfied with orders of CIT(A), the assessee and revenue both filed cross-appeals to ITAT, Indore whereupon the ITAT vide order dated 07.04.2010 in ITA No. 321, 322, 343, 340 & 341/Ind/2007 and C.O. No. 56 to 60/Ind/2007 set aside the *de novo* orders passed by AO and directed the AO to re-frame assessments after bringing legal heirs on record since the original assessee "Shri Namdev Panjwani" had expired on 21.08.2009 and also to decide the issues afresh. *The 2nd round ended here.* Pursuant to ITAT's directions, the AO re-framed assessments vide orders dated 30.06.2011, 31.10.2011 & 30.12.2011 respectively for AY 1988-89 to 1992-93 u/s 254/143(3) in the name of "Shri Kamal Panjwani L/H of Late Shri Namdev Panjwani". Aggrieved by such re-framed assessments, the assessee again went in first-appeal whereupon the CIT(A) decided appeals by five separate orders all dated 29.11.2013 giving part-relief to assessee. Still unsatisfied with orders dated 29.11.2013 of CIT(A), the assessee has come before us in the captioned five (5) appeals;

thus the orders of CIT(A) are 'impugned orders'. *Thus, this is the 3rd Round of litigation*.

Original grounds:

5. Originally, the assessee raised following grounds in Form No. 36:

ITA No. 81/Ind/2014 – A.Y. 1988-89:

1. *The appellant submits that the Ld. CIT(A)-I, Indore, was not justified to reject the contention of the appellant that reassessment proceedings so initiated by the AO was invalid, void and bad in law.*

2. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of household expenses at Rs. 1,00,000/- .*

3. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of investment in Shares of Panjwani Plastics and Polyester at Rs. 2,32,000/-.*

4. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in sustaining the addition made on account of investment made in car no. MBN-425 at Rs. 67,000/-.*

5. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in sustaining the addition made on the basis of Loose Paper M/s. Kamal Enterprises (Prop. Shri Kamal Panjwani) at Rs. 2,13,450/-.*

ITA No. 82/Ind/2014 – A.Y. 1989-90:

1. *The appellant submits that the Ld. CIT(A), Indore, has erred in maintaining the addition made on account of household expenses at Rs. 50,000/-.*

2. *The appellant submits that the Ld. CIT(A), Indore, has erred in sustaining the addition made on account of investment made in car at Rs. 82,000/-.*

3. *The appellant submits that the Ld. CIT(A), Indore, has erred in sustaining the addition made on the basis of Loose Paper M/s. Kamal Enterprises (Prop. Shri Kamal Panjwani) at Rs. 1,30,000/-.*

4. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of investment in domestic items as surrendered at Rs. 1,00,000/-.*

5. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of Foreign Tour expenses at Rs. 1,50,000/-.*

6. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of income of Panjwani Polypropleyene at Rs. 43,73,100/- and Rs. 2,500/-.*

ITA No. 83/Ind/2014 – A.Y. 1990-91:

1. *The appellant submits that the Ld. CIT(A), Indore, has erred in maintaining the addition made on account of household expenses at Rs. 50,000/-.*

2. *The appellant submits that the Ld. CIT(A), Indore, has erred in sustaining the addition made on account of investment made in domestic items as surrendered at Rs. 1,00,000/-.*

3. *The appellant submits that the Ld. CIT(A), Indore, has erred in sustaining the addition made on account of income of Panjwani Polypropeleyene Limited at Rs. 29,20,000/-, Rs. 50,000/-, Rs. 6,045/- and Rs. 5,000/-.*

4. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of cash credits in the cash book of M/s. Panjwani Polypropleyene (Prop. Shri Kamal Panjwani) at Rs. 4,20,000/-.*

5. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of Foreign Tour expenses at Rs. 58,000/- & 35,000/-.*

6. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of Marriage Expenses of the daughter of the appellant at Rs. 2,25,000/- and Rs. 1,28,000/- made on protective basis.*

7. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of bogus liability shown in the computation of Wealth at Rs. 4,30,000/-.*

ITA No. 84/Ind/2014 – A.Y. 1991-92:

1. *The appellant submits that the Ld. CIT(A)-I, Indore, was not justified to reject the contention of the appellant and reassessment proceedings so initiated by the AO was invalid, void and bad in law.*

2. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in sustaining the addition made on account of household expenses at Rs. 50,000/-.*

3. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of income of Panjwani Polypropeleyene Limited at Rs. 16,23,000/-, Rs. 53,843/- and Rs. 13,784/-.*

4. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of cash credits in the cash book of M/s. Panjwani Polypropleyene (Prop. Shri Kamal Panjwani) at Rs. 10,000/-.*

5. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of Foreign Tour expenses at Rs. 25,000/-.*

6. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of investment in share of M/s. Panjwani Packagings Limited at Rs. 10,00,000/-.*

ITA No. 85/Ind/2014 – A.Y. 1992-93:

1. *The appellant submits that the Ld. CIT(A)-I, Indore, was not justified to reject the contention of the appellant and reassessment proceedings so initiated by the AO was invalid, void and bad in law.*

2. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in sustaining the addition made on account of household expenses at Rs. 50,000/-.*

3. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition made on account of investment in Panjwani Packaging Limited as Promoter Quota Shares at Rs. 13,00,000/- and Employee Quota Shares at Rs. 5,00,000/-.*

4. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in maintaining the addition of 2,00,000/- wherein the same has already been explained in the hands of Smt. Jayshree Panjwani (wife of the appellant) and hence not liable for addition in the hands of the appellant.*

Additional Grounds for AY 1989-90 & 1990-91:

6. Subsequently, Ld. AR for assessee moved an application for admission of following additional grounds in AY 1989-90 & 1990-91:

1. *The appellant submits that the Ld. CIT(A)-I, Indore, has erred in not allowing proper opportunity for raising legal issue before him.*

> *2. The appellant submits that the Ld. CIT(A)-I, Indore was not justified to reject the contention of the appellant that reassessment proceedings so initiated by the AO was invalid, void and bad in law.*

7. Ld. AR prayed that these additional grounds are legal, go to the root and can be decided on the basis of material held on record; therefore they should be admitted and adjudicated as per *National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)*.

8. On a careful scrutiny of impugned orders, we find that the assessee raised the very same grievance in first-appeal before CIT(A) through following grounds:

> *"On the facts and in the circumstances of the case, the learned Assessing Officer has erred in passing order without complying with the provision of section 147/148."*

But, during the hearing of first-appeal, the assessee himself made following submission which is re-produced by CIT(A) on Page No. 17 of order of AY 1989-90 / Page No. 9 of AY 1990-91:

> *"The issue is not being pressed for adjudication and same may please be treated as withdrawn."*

Taking into account this submission of assessee, the CIT(A) dismissed assessee's grounds by mentioning thus:

> *"The appellant did not press this ground for adjudication and accordingly this ground of appeal is dismissed."*

Thus, the assessee himself withdrew this very grievance/issue in first-appeal before CIT(A) and at the assessee's own request for withdrawal, the CIT(A) dismissed assessee's grounds. Despite this, now the assessee is

attempting to blame the CIT(A) by claiming that (i) the CIT(A) has erred in not allowing proper opportunity for raising legal issue, and (ii) the CIT(A) was not justified to reject assessee's contention that the reassessment-proceedings initiated by AO was invalid, void and bad in law. Interestingly, the assessee pursued exactly same grounds in other three assessment-years, namely AY 1988-89, 1991-92 & 1992-93 and got decided from CIT(A). Therefore, this is a bad attempt of assessee not only to blame the CIT(A) for AY 1989-90 & 1990-91 but also to re-raise his self-withdrawn grievance/issue again before us and that too by way of additional grounds. Since the assessee has consciously closed this issue before CIT(A), we are afraid that we can re-admit the same at this stage and that too by way of 'additional grounds'. Therefore, we are not inclined to admit the additional grounds raised by assessee. On merit also, we may mention that even if we would have admitted these additional grounds, which though we are not inclined at all, then also these grounds would have been dismissed by us in view of the fact that in subsequent paragraphs we are going to dismiss identical grounds in other three AYs 1988-89, 1991-92 & 1992-93. Thus in any case, the assessee is not going to succeed. Consequently and therefore, these 'additional grounds' are dismissed.

9. Now, we proceed to adjudicate the original grounds taken in Form No. 36. For smoothness and brevity in discussions, we shall proceed year-wise/ground-wise but, however, take up common grounds of different years together.

Ground No. 1 of AY 1988-89, 1991-92 & 1992-93 – Challenge to proceedings u/s 147:

10. In these grounds, the assessee claims that the CIT(A) was not justified to reject assessee's claim that the re-assessment proceeding done by AO was invalid, void and bad.

11. This issue is same as raised in 'additional grounds' dismissed above for AY 1989-90 & 1990-91. But, here it requires an apt adjudication by us because this issue was argued by assessee in first-appeal and the CIT(A) also passed a reasoned order. For the sake of clarity, we would like to mention that since we are adjudicating this issue only for three years, namely AYs 1988-89, 1991-92 & 1992-93, we would narrate the facts/figures related to those three years only in the discussions to follow.

12. The CIT(A) rejected assessee's claim and upheld re-opening as valid by observing and holding thus:

> *"First issue is when case was re-opened by AO why it was not objected by appellant at that time. Secondly, evidences of concealment were found during search like unaccounted investment in shares, unexplained deposits in bank account, etc. Thirdly, sufficiency of reasons could not be challenged as held in case of Raymond Woolen Mills Ltd. (SC) 236 ITR 34. This ground of appeal is dismissed and re-opening is held valid."*

13. Before us, Ld. AR made following arguments to support assessee's claim that the proceeding u/s 147 have been invalidly taken:

(i) He drew our attention to the reasons recorded by AO dated 30.04.1993 for undertaking re-assessment proceeding, copy filed at

Paper-Book Page 1-12. Referring to same, he submitted that the AO formed a belief of escapement of income in assessee's case on the basis of surrender made by assessee (Late Shri Namdev Panjwani) in Q.No. 41 & 42 of statements recorded by authorities during search u/s 132(4). Then, Ld. AR carried us to the copy of the statements filed in Paper-Book at Page 24-47 and referring to the preliminary paragraph of statements at Page 24, he showed that the statements were taken by authorities from assessee, Shri Namdev Panjwani as managing director of "PPPL" and not in personal or individual capacity of assessee. Referring further to the last page of statements at Page 47, Ld. AR submitted that the assessee made surrender of income of Rs. 51,57,000/- in different years by stating that he earned impugned income from business of "PPPL". By showing this, Ld. AR contended that the impugned surrender was made by assessee in the hands of "PPPL" and not in his personal or individual capacity. He submitted that that "PPPL" is a company incorporated under the provisions of Companies Act having its separate identity. Therefore, the AO is very much wrong in recording belief of escapement in the case of assessee-individual. While arguing, Ld. AR also made a point that out of surrender of Rs. 8,57,000/- made in AY 1988-89 (forming part of the overall surrender of Rs. 51,57,000/-) on account of benami investment in shares, the AO has assessed undisclosed income of Rs. 6,25,000/- in the hands of "PPPL" and no addition was made in

assessee-individual (for clarity, we may mention that the remaining addition of Rs. 2,32,000/- has been made in assessee-individual). This fact also, Ld. AR submitted, is a clear pointer that the AO has wrongly recorded reasons of escapement by assessee-individual. Ld. AR went on submitting that the Para No. 3 of the reasons itself shows that the AO had a strong doubt and was not sure as to who was right assessee to be assessed. He submitted that in Para No. 4 of reasons, the AO has wrongly relied on *CIT Vs. Steler Investment Ltd. 103 Taxation 100 (Delhi HC)* to mention that in case of doubt, case of other person can be re-opened. He submitted that the said decision was given in a different context. In that decision, it was observed that when share capital is credited and shareholders of a company are identified, the department is free to open the cases of shareholders. Ld. AR submitted that the decision given by ITAT, Indore in *Anil Mulani (2004) 1 ITJ 463* correctly holds that if the AO is not sure as to the person in whose hands the income is liable to be assessed, the re-opening is not valid, copy of ITAT's order is filed at Paper-Book Page 32-34.

(ii) He submitted that in the reasons, particularly Para No. 3, the AO has himself accepted that the surrenders are not proved by evidence. Relying upon certain judicial rulings filed in a separate Paper-Book of judgements and *CBDT Circular/Instruction dated 18.12.2014*, it is contended that the authorities cannot obtain any confession during

search and also that unless there is any credible evidence to support the surrender, mere surrender in statements u/s 132(4) has no evidentiary value more particularly when the surrender is retracted also. It is pointed out that the assessee retracted surrender subsequently vide letter dated 04.01.1993, copy at Paper-Book Page No. 114-121.

(iii) Then, Ld. AR placed reliance on certain decisions. Firstly, he referred *CIT Vs. Naresh Kumar Agarwal (2014) 369 ITR 171 (AP HC)* to contend that the Hon'ble High Court has held (i) that no addition can be made on the basis of mere statement of assessee and (ii) that the retracted statement cannot be a basis of making assessment. Then, reliance is placed on *CIT & Anr. Vs. Dr. N. Thippa Shetty (2010) 322 ITR 525* to argue that once the statements made u/s 132(4) is retracted, the AO has no authority to make assessment u/s 147. Then, he also relied upon Para 16 of order of *ITAT, Indore in DCIT, Central-II, Bhopal Vs. Shri Sudhir Kumar Agarwal IT(SS)A No. 85/Ind/2021* dated 18.05.2023. Lastly, Ld. AR referred *Hindustan Level Ltd. Vs. R.B. Wadkar (2004) 268 ITR 0332*. Copies of these decisions have also been filed in a separate paper-book.

14. Per contra, Ld. CIT-DR submitted that the AO has recorded detailed analysis and reasoning spanning over 12 pages but the assessee is just referring to small excerpts from those reasons. She submitted that in reply

to Q.No. 41 & 42 of statements u/s 132(4), the assessee has himself admitted/surrendered undisclosed assets of different types representing undisclosed income earned by him. Thereafter in the reasons, the AO has paid due consideration to the nature of assets found with assessee, especially the household goods, cash, jewellery, etc. which by nature could belong only to an individual assessee and cannot be owned by a company. She emphasised that the assets were found in possession of assessee at assessee's residence or locker. Therefore, the AO made a cautious analysis and recorded proper reasons. She submitted that the re-traction is baseless and only to get out of taxation.

15. We have considered rival submissions of both sides and perused the material held on record to which our attention has been drawn. The claim of assessee is such that the re-assessment proceeding initiated by AO u/s 147 was invalid and for this claim, Ld. AR is basically assailing Para No. 2 to 5 of reasons recorded by AO. Therefore, at first, we would like to extract those paras for an immediate reference:

> *"2) This is a case where action u/s 132 was taken in August, 1992.It is notable that the company had never filed any return of income. In the statement recorded u/s 132(4) on 12.8.1992, question No.42 was put to Shri Namdeo Panjwani, in response to which he has surrendered an amount of Rs. 52,57,000/-, the relevant portion of which reads as under :-*
>
> *"प्रश्न (42) - मैंने आपको आयकर धारा 132(4) सहपठित स्पष्टीकरण 5 धारा 271(1)(सी) के प्रावधान आपको समझाया है । क्या आप इन धाराओं के तहत मिलनेवाले लाभ को उठाना चाहेंगे ताकि आपको यदि कोई शास्ति या अभियोजन कर अपवंचन के लिए होता है तो उससे मुक्ति मिल सकती है ।*

उत्तर : हाँ मैं उपरोक्त धारा के प्रावधानों का लाभ लेना चाहता हूँ और मैं पंजवानी पैकेजिंग के व्यवसाय में से जो अघोषित आय अर्जित की है उसकी घोषणा निम्नप्रकार से करना चाहता हूँ:

1) *वित्त वर्ष 1987-88 – रु. 8,57,000/- जो मैंने इसके पहिले शेयर्स में पूँजी निवेश के बारे में आपको बता चुका हूँ ।*
2) *वित्त वर्ष 1988-89 – रु. 1,00,000/- की अघोषित आय जो मैंने छोटे मोटे जंगम मिल्कीयत में तथा अन्य मद हेतु किया है ।*
3) *वित्त वर्ष 1989-90 – रु. 1,00,000/- की अघोषित आय जिसका पूंजी निवेश मैने घरेलू सामान में किया है तथा अन्य मद हेतु खर्चा किया है ।*
4) *वित्त वर्ष 1990-91 – रु. 10,00,000/- का पूँजी निवेश जो मैने पंजवानी पैकेजिंग के प्रमोटर्स के शेअर्स में वर्ष 91-92 में किया है जो मेरी इस वर्ष की अघोषित आय जो पंजवानी पेकेजिंग के व्यवसाय से है ।*
5) *वित्त वर्ष 91-92 – इस वर्ष की कुल अघोषित आय रूपये 20,50,000/- की घोषणा करना चाहता हूँ जिसका पूँजी निवेश निम्न प्रकार से है :-*
   - *i) नकदी रुपया जो बैंक लाकर्स B.O.I. Transport Nagar No.14 में से पाये गये थे, उसको मिलाकर रुपये 50,000/-*
   - *ii) रुपये 13,00,000/- जो मैंने पंजवानी पैकेजिंग से कमाये है जिसका पूँजी निवेश पंजवानी पैकेजिंग के शेअर्स प्रमोटर्स कोटा में हुए है ।*
   - *iii) रु. 5,00,000/- जिसका पूँजी निवेश मैंने हमारे यहा वर्कर्स है इनके नाम से शेअर्स में किया है ।*
   - *iv) दो लाख रूपये के सोने के जेवरात जो लाकर्स तथा घर से पाये गए थे, इसमें पूँजी निवेश ।*
6) *वित्त वर्ष 92-93 - इस वर्ष की कुल रुपये 11,50,000/- की अघोषित आय की घोषणा पंजवानी पेकेजिंग की आय से करना चाहता हूँ जो इस प्रकार से है :-*
   - *i) नगद रुपये 2,50,000/- जो कि स्टेट बैंक ऑफ इंदौर, पलसीकर कॉलोनी तथा स्टेट बैंक ऑफ इंडिया गोधा कॉलोनी के लाकर्स से तथा घर से पाये गये थे ।*
   - *ii) रु. 2,00,000/- रुपये के आभूषण जो बैंक लॉकर्स तथा घर में पाये गये थे।*
   - *iii) 2,00,000/- रुपये का पूँजी निवेश जो घर से विभिन्न सामान पाया गया है उसमें निवेश किया गया है ।*

iv) 5,00,000/- रुपये का भुगतान श्री दिप त्रिवेदी को जो शेयर ब्रोकर है उन्हें पंजवानी प्लास्टिक एंड पोलिस्टर लिमिटेड के प्रमोटर्स के कोटा के प्रायवेट प्लेसमेंट के लिए अप्रैल या मई 1992 में दिये थे तथा उन शेअर्स को खरीदकर रु. 5,00,000/- का चेक श्री दीपकुमार त्रिवेदी ने मुझे मे D.J. Investment का P.N.B का Cheque दिया जो मैंने अपने व्यक्तिगत बैंक खाते में P.N.B जवाहर मार्ग में जमा किया था । ये शेअर्स विभिन्न नामों में है । श्री दीप त्रिवेदी ने रु. 2.50 प्रिमियम वादा प्रति शेयर किया था परंतु अभी दिया नहीं।"

3) It would be seen that the surrender in assessment year 1988-89 is on account of investment in share in benami name; such is the position for assessment year 1991-92 and 1992-93 and 1993-94 in respect of such investments in shares. Though the assessee had surrendered the income in case of company but preponderance of legal view favours such addition in the hands of persons and a person who has provided the funds for being invested as share capital in bogus names. It is a fact that the earning of income to the extent indicated by Shri N.P. Panjwani and surrendered in the hands of company has not been proved by Shri N.P. Panjwani with reference to any proof or evidence. Under these circumstances I have reason to believe that Shri N.P. Panjwani who has admitted making benami investment out of funds from company is having some source of income for making such investments. By now it is an established law that revenue need not locate the source of investment if unexplained investment is detected. Shri Panjwani has clearly admitted making of investment inn bogus names for various years out of income from Panjwani Packagings Limited, but has not given any proof of earning of such income from Panjwani Packagings.

4. The Hon'ble High Court of judicature at Delhi has already cautioned us when they have held in cash reported in (1991) 103 Taxation page 100 that "even if it be assumed that the subscribers to the increased share capital were not genuine, under no circumstances could the amount of share of capital be regarded as an undisclosed income of the assessee company. It might be that there were some bogus share-holders in whose name the share had been issued and the money might have been provided by some other person. If the assessment of the person who were alleged to have really advanced the money was sought to be reopened, that would have made some sense but under no circumstances the share capital amounts could be assessed in the hands of the company itself." In view of this legal position and also keeping in view the fact the assessee has failed to prove earning of income by company with which the benami investment in the shares could be made and also taking into account the facts and circumstances of the case as are on record, it is clear that Shri N.P. Panjwani is the basic operator in activities which have culminated unaccounted investment and income not disclosed to income Tax Department.

5. Rupees one lakh has been surrendered in assessment year 1989-90 for investment in movable property (Jangam Milkiyat) and in assessment year 1990-91 Rs. One lakh has been surrendered by Shri N.P. Panjwani on account of the investment in household goods. Further Rs. 50,000/- has been surrendered in assessment year 1992-93 on account of cash recovered at the time of search and in this year Rs. 2,00,000/- has been surrendered on account of gold jewellery found in locker and residence. In assessment year 1992-93, Rs. 2,50,000/- has been surrendered on account of cash recovered and further Rs. 2,00,000/- has been surrendered on account of jewellery found and further Rs. 2,00,000/- has been surrendered on account of domestic goods. All these amounts have been surrendered in the hands of Panjwani Packaging Limited, which is a company. There is no evidence to indicate the unaccounted income from company which has been utilised for the purpose mentioned above by Shri N.P. Panjwani. The only evidence available for earning unaccounted money from company is available in respect of earning of premium by selling shares of promoters quota, which is in April, 1992 and later on and, therefore, it is in assessment year 1993-94. Moreover the unexplained cash, jewellery and house hold goods are taxed in hands of persons who is found to be their owner at the time of search. Keeping all these facts in view, it is held that these items which have been surrendered in the hands of the company, will have to be considered in the case of Shri N.P. Panjwani as 'Individual' and for this purpose it will have to be seen who has really financed the purchases of such items. Since Shri N.P. Panjwani has surrendered these items in case of company the action is being taken in case of company. In view of the court decisions which have been adduced above which clearly say that in cash of doubt whether particular income belongs to 'A' or 'B', the action under section 147 in the hands of both the persons would be justified for the purpose of scrutinising the matter, I have reasons to believe that for all the years where surrender has been made and time for filing return u/s 139(1) is over, action under section 147 is called for."

16. On a careful consideration, we find that several assets were found in possession of assessee at assessee's residence or locker. Then, we find that that the AO has made a vehement, careful and sensible analysis in the reasons so as to discern as to why those assets belonged to assessee-individual. Some vital aspects observed by AO are such : (i) The benami investment in shares of companies has to be added in the hands of person who has provided the funds. The assessee has, though admitted making of investment in bogus names out of income from "PPPL" but has not given any

proof of earning of income from "PPPL". Hence, the assessee had some source for making investments (Para 3 of reasons); (ii) The surrender made by assessee includes undisclosed assets/income in the form of household goods, cash, jewellery found at residence or in locker. There is no evidence available to indicate that the unaccounted income of "PPPL" has been utilised for these items. The assessee was found to be owner of these items at the time of search (Para 5 of reasons). Thus, on the basis of a reasoned analysis, the AO made a belief that the undisclosed assets/income belonged to assessee-individual, accordingly he re-opened assessment of assessee-individual. While carrying out such exercise, the AO has also carried the rationale held in *CIT Vs. Steler Investment Ltd. (supra)* decided by Hon'ble Delhi High Court holding thus *"If the assessment of the person who were alleged to have really advanced the money was sought to be re-opened, that would have made some sense but under no circumstance the share capital amounts could be assessed in the hands of the company itself"* (Para 4 of reasons). Thus, we find a meritorious sense in the belief made by AO that how can household items, cash, jewellery found in possession of assessee-individual at assessee's residence or locker belong to "PPPL", a company? We may also mention that under section 147, the AO has power to assess or re-assess income once he had a reason to believe that any income chargeable to tax had escaped assessment. In the present case, the AO has made a well-reasoned belief on a careful and meaningful analysis of the material and assets found during search at assessee's residence or locker.

Therefore, even if the statements had been recorded as taken from assessee as managing director of "PPPL", ultimately the AO has made a careful and sensible analysis and based thereon framed a reason to believe that the income chargeable to tax had actually escaped assessment in assessee-individual's hands. The assessment u/s 147 triggers on the basis of formation of belief and for forming such a belief, the AO can take into account information received from any source, whether external or internal like the material found during search in present case. In present case, it can be said that the assets found from assessee and thereafter statements recorded during search constitutes a tangible information for AO but then the AO has to analyse such information in a sensible manner and thereafter take action u/s 147 against a proper person. We may also add here that the assessee-individual was not only found having ownership of assets during search but was also a beneficiary of those assets or unexplained expenses (like expenses on foreign travels) even if the income was earned from business of PPPL. In any case, we may mention that even if there be some technical flaw in recording statements by search-team, there is certainly no mistake in AO's approach in recording reasons since the AO has done a careful exercise. We also agree with Ld. CIT(A) that the sufficiency of reasons cannot be looked into by courts. This is in consonance with the principle laid by Hon'ble Delhi High Court in *CIT Vs. Steler Investment Ltd. (supra)* relied upon by AO in Para No. 4 of the reasons. Therefore, we hardly find

any malice, infirmity or perversity in AO's action. Being so, we are not impressed to accept the first contention raised by Ld. AR.

17. One point raised by Ld. AR that the AO has ultimately assessed an income of Rs. 6,25,000/- in AY 1988-89 in the hands of "PPPL" and not in the hands of assessee-individual on account of benami investment in shares, cannot be a basis to project that the reasons recorded by AO are wrong. We believe that at the stage of recording reasons, the AO has to merely form a belief based on information available but the final assessment (or non-assessment) of any item in the hands of assessee depends upon further scrutiny and analysis during assessment-proceeding. Therefore, if during assessment-proceeding, the AO found that a particular item of income was not taxable in assessee's hands, it was always open, in fact very much fair and correct, for AO to exclude the same in assessee and assess in the hands of PPPL. The facts clearly show that at the time of recording reasons, the AO formed a belief that entire investment of Rs. 8,57,000/- in share-certificates found in possession of assessee during search belonged to assessee but while completing assessment, the AO made an addition of Rs. 2,32,000/- in the hands of assessee (the addition of Rs. 2,32,000/- is also being contested in these appeals, which we shall adjudicate in next issue). But the matter does not stop here. From the orders of lower-authorities, we find that for remaining income of Rs. 6,25,000/-, the AO made 'substantive addition' in the hands of "PPPL" alongwith 'protective addition' of same amount in the hands of assessee. Thereafter, the assessee took a ground

before CIT(A) to contest the 'protective addition' but ultimately when "PPPL" accepted 'substantive addition' without contesting, the assessee requested the CIT(A) to delete the 'protective addition'. It is in such circumstance that the CIT(A) deleted 'protective addition' of Rs. 6,25,000/- made by AO in the hands of assessee. Therefore, it is not a correct claim by Ld. AR that the addition of Rs. 6,25,000/- was made in the hands of "PPPL" only and no addition was made in the hands of assessee.

18. Another contention raised by Ld. AR that there is no corroborative evidence to support the surrender made by assessee, is also far from truth. When the department has found tangible assets like share-certificates held in benami names, household goods, cash, jewellery, etc. in assessee's possession, there is hardly any merit in the claim of assessee that there was no evidence to corroborate the surrender. Hence, the judicial decisions and *CBDT Circular/Instruction dated 18.12.2014* relied by Ld. AR are not appliable to assessee. The argument taken by Ld. AR that the AO, in Para 3 of reasons, has himself observed that there was no proof or evidence to support the surrender, is also a mis-reading because the AO has made such an observation *qua* "PPPL" and not *qua* assessee. A careful reading of entire paragraph shows that the AO stated that there is no proof or evidence for treating the surrender as income of "PPPL". In fact, it conveys AO's meaning that the underlying assets/income pertaining to surrender belonged to assessee-individual.

19. Now, we take up the judicial rulings being relied or rejected by Ld. AR. The decision of ITAT, Indore in *Anil Kumar Mulani (supra)* relied by Ld. AR, was on a different set of facts which is very much clear from Para No. 5 of the order:

> "*5. After considering the rival submissions, we find force in the contention of Ld. AR. Even after amendment in sec. 147 w.e.f. 1.4.1989, the requirement of reasons to believe is still incorporated in the section itself. Thus, this provision would operate where AO finds that some item of income has escaped taxation then notice u/s 148 can be issued but the provision would not extend to a situation just to make roving inquiries. The very fact that ultimately assessment was completed on protective basis shows that revenue was not sure in whose hands such income has escaped taxation. Further Ld. DR admitted before us that notices were issued to the father of assessee also for the purpose of completing assessments on account of undisclosed investment in the hands of father on substantive basis but no action was taken and assessments have become time barred. This fact also proves that AO had no reason to believe that income has escaped assessment. In view of these circumstances, we allow these grounds and annul the assessment which has been made without proper jurisdiction."*

20. The decision in *CIT Vs. Naresh Kumar Agarwal (supra)* relied by Ld. AR is also having different facts. On a careful reading of order, we find the Hon'ble Court's observations that (i) the search was conducted on 09.01.1996 and statement was recorded on 20.03.1996, thus statements cannot be said to be u/s 132(4) [Para 8 of order], and (ii) no material such as books of account, documents, money, bullion, jewellery, etc. was found or discovered during search [Para 9 of order]. The facts in present appeals are quite different. Therefore, this decision cannot help assessee.

21. The case of *CIT & Anr. Vs. Dr. N. Thippa Shetty (supra)* was also on a distinguishable set of facts. It is true that in that case, the AO issued notice u/s 148 to make assessment u/s 147 on the basis of statement of assessee

recorded u/s 132(4) and the assessee had already retracted his statements before issuing notice u/s 148. However, a careful reading of the order reveals that the Hon'ble High Court re-produced the reasons recorded by AO in Para 4, those reasons were running in just 1-2 sentences talking only of surrender made by assessee in statements u/s 132(4). Thereafter, in Para 31 to 33, the Hon'ble High Court observed that the AO was not even able to find out a prima facie case with regard to escapement within the meaning of section 147 or no cogent and valid reasons had been assigned by AO for one of the years. Then, it was observed that there existed no material except the retracted-statement for re-opening of case and therefore the re-opening was without jurisdiction. This is not the facts of present case. In present case, the AO has recorded reasons at length running in several pages. Further, in the reasons, the AO has not only talked of the surrender made by assessee but also made a very careful analysis of various assets found in the possession of assessee during search-proceeding and thereafter came to form a reasoned belief of escapement. Hence, this decision is also not useful to assessee.

22. The case of *Shri Sudhir Kumar Agarwal (supra) relied* by Ld. AR does not deal with validity of proceeding u/s 147 and not going to help present assessee. In that case, the issue was whether the AO could validly make addition on the basis of a conditional surrender by assessee without having any supportive asset or investment. The facts of case, as mentioned in Para 9 and 10 of the order, were such that during search-proceeding, the

assessee made a surrender of Rs. 10.25 crore with specific details of unexplained investments/assets and also declared an additional sum of Rs. 2.50 crore as 'miscellaneous surrender' with a condition that the same shall be confirmed after study of all loose-papers. Subsequently, in the return of income, the assessee declared Rs. 10.25 crore of undisclosed income but did not declare Rs. 2.50 crore of 'miscellaneous surrender' because the assessee did not find any asset or investment supporting the same. However, the AO made addition of Rs. 2.50 crore. It is in that situation that the CIT(A) deleted the addition made by AO and ITAT upheld CIT(A)'s order through Para 16 and 17 re-produced below:

> *"16. On careful consideration of stand of the AO and basis taken by the Ld. CIT(A) for deleting the addition, we may point out that the Hon'ble High Court of Gujarat in the case of* ***Kailasben Mangarlal Choksh vs. CIT(supra)*** *held that merely on the basis of admission of assessee, the assessee could not have been subjected to addition, unless and until some collaborative evidence is found in support of such admission. Meaning thereby addition on the standalone basis of statement of assessee u/s 132(4) of the Act cannot be held as sustainable in absence of collaborative evidence found in support of such addition. Further, the Hon'ble Jharkhand High Court in the case of* ***Shri Ganesh Trading Company vs. CIT(supra)*** *held that mere reading of statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. In this case the Hon'ble High Court noted that the authorities below have not considered a fact that in a case where there was a search operation, no asset or cash was recovered from the assessee, in such a situation what had prompted the assessee to make declaration of undisclosed income of Rs. 20 lakhs.*
>
> *17. In the present case also the assessee during the course of search operation in the statement and subsequently by way of letter dated 08.11.2011, as has been reproduced above, was sure about the surrender of Rs. 10.25 crores under various heads, however regarding remaining Rs. 2.50 crore, the assessee in the said letter clarified that the said amount pertaining to miscellaneous surrender shall be confirmed after study of all papers. Subsequently at the time of filing return u/s 153A of the Act, the assessee-group included Rs. 10.25 crore leaving the amount of Rs. 2.50 crore for the precise reason, which has been clearly accepted by Ld. CIT(A), that the assessee right from search and seizure operation till filing of return could not*

> *find any substantive material or investment which could be considered for supporting the surrender of remaining amount Rs. 2.50 crore. Therefore the Ld. CIT(A) was right in deleting the unsustainable addition made by the AO by relying various judicial rulings as narrated by him. We are unable to see any ambiguity, perversity or any other valid reason to interfere with the findings arrived by the Ld. CIT(A) in this regard. Therefore, we uphold the same. Accordingly, this ground of Revenue is dismissed."*

23. In *Hindustan Level Ltd. Vs. R.B. Wadkar (supra)* relied by Ld. AR, the AO issued notice u/s 148 after expiry of 4 years and the court found that in the reasons recorded, the AO has not even mentioned that there was failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment which was a pre-requisite of proviso to section 147. Therefore, the court was pleased to quash the proceeding of section 147. In present case, in Para No. 5 of the reasons, the AO has mentioned *"...I have reasons to believe that for all the years where surrender has been made and time for filing return under section 139(1) is over, action under sec. 147 is called for".* Further, in Para No. 13 of the reasons, the AO has again mentioned *"13). In view of the foregoing discussion, I have reason to believe that income chargeable to tax for assessment year 1986-87, 1988-89, 1989-90, 1990-91, 1991-92, 1992-93 has escaped assessment for these assessment years to the extent quantified in para-12 above by reason of the failure on the part of the assessee to make a return of income."* Thus, the AO has made vehement recording and even the facts of case do not warrant application of proviso to section 147. Therefore, this decision is also not going to help assessee in any manner.

24. The entire discussion made above brings us to conclude that there is no merit in the claim of assessee that the AO's action of re-opening assessment u/s 147 was invalid. Therefore, we are inclined to approve AO's action and reject the issue raised by assessee. Accordingly, the grounds raised by assessee are dismissed.

Ground No. 2 of AY 1988-89, 1991-92 & 1992-93; Ground No. 1 of AY 1989-90 & 1990-91 – Household expenses:

25. In these grounds, the assessee challenges the addition of Rs. 1,00,000/- in AY 1988-89 and Rs. 50,000/- in each of AY 1989-90 to 1992-93 made by AO on account of unexplained household expenses.

26. The AO has noted that during the course of search at the residence of assessee, luxurious items like T.V., VCR, Air-conditioner, furniture, etc. were inventorised as per Annexure-Q to Panchnama which showed high standard of living of assessee but the withdrawals declared by assessee were very low. Hence, the AO made estimation of household expenses and made additions after giving credit of withdrawals declared by assessee. During first-appeal, the CIT(A) upheld AO's action.

27. Before us, Ld. AR firstly submitted that the Annexure-Q to the Panchnama, placed at Page 55-56 of Paper-Book for AY 1988-89, itself shows the aggregate value of all items at just Rs. 20,300/- and still the AO has inferred high standard of living of assessee? Ld. AR submitted that the

inference drawn by AO is apparently wrong in as much as the assets having a small value of Rs. 20,300/- cannot, by any stretch of imagination, show a lavish life style of assessee. Secondly, he submitted that the AO has made an arbitrary estimation of household expenses at a much higher figure against assessee's disclosure, the AO's estimation is wrong. He submitted that the ITAT, Indore Bench in assessee's own case for AY 1994-95 in *ITA No. 497/Ind/2000 order dated 24.04.2006* has deleted the addition made by AO on account of household expenses. Thirdly, Ld. AR submitted that the assessee was living with his family consisting of assessee himself, his wife (Smt. Jayshree Panjwani), son (Kamal Panjwani) and daughter (Kumari Sujata Panjwani) and all of them were having incomes declared (some have declared in returns also) and had contributed to household expenses. Further, the AO has also made separate additions of estimated profit earned by assessee from a proprietary business 'M/s Panjwani Plastics'. Therefore, the incomes earned by family members and profit of proprietary concern added by AO should also be considered as sources of household expenses. Ld. AR has provided following data in this regard:

AY	Withdrawals declared by assessee	Additions made by AO	Income earned by family members	Profit of proprietary concern separately added by AO	Sources not considered by AO
	A	B	C	D	E = (C+D)
1988-89	24,000	1,00,000	79,997	23,141	1,03,138

1989-90	1,40,000	50,000	47,733	30,000	77,733
1990-91	1,50,000	50,000	38,800	24,000	62,800
1991-92	2,00,000	50,000	40,800	24,000	64,800
1992-93	2,00,000	50,000	--	--	--

With these submissions, Ld. AR requested to delete the additions made by AO in various years.

28. Per contra, Ld. DR for revenue re-iterated the AO's order as well as the order passed by CIT(A). She submitted that the AO has rightly inferred high standard of living being enjoyed by assessee having regard to the luxurious items such as TV, Air-conditioner, etc. found with assessee which were not readily available at that time with general people. Therefore, the AO was very much justified in estimating household expenses having regard to the standard of life of assessee. She submitted that the AO has already given credit of withdrawals declared by assessee and made addition for balance only. Hence, the order passed by AO is perfect and must be upheld.

29. We have carefully considered rival submissions of both sides. Ld. AR has raised multiple arguments to show that the additions made by AO are not wrong. Firstly, Ld. AR has submitted that the Annexure-Q to the Panchnama showed the aggregate value of all items at just Rs. 20,300/- and therefore the AO was not justified to infer high standard of living of assessee. In this regard, when we perused the Annexure-Q filed at Page No. 55-56 of Paper-Book, we find that the search-authorities have also noted the age of 15/10/12 years alongwith individual values of respective items and

thereafter made aggregation at Rs. 20,300/-. Thus at the time of search, those items were much order and that is why the value was just Rs. 20,300/-. Moreover, the AO has inferred high standard of living of assessee on the basis of luxurious nature of items like T.V., Air conditioner, etc. as mentioned in the said Annexure-Q which does not have any connection with the present value of items as on the date of search. Therefore, the first contention raised by Ld. AR is rejected. The second contention raised by Ld. AR that the AO has made a wrong and much higher estimation as compared to assessee's disclosure, is also meritless because in the next contention, the assessee is himself claiming that it was a joint family and assessee's wife, son and daughter were also contributing to household expenses. From the figures shown in the table noted in preceding para, we can easily find that the quantum of additional sources for meeting household expenses as depicted in Column E is more than the additions made by AO as depicted in Column B in AY 1988-89 to 1991-92 (except last AY 1992-93). When it is so, the stand taken by Ld. AR that the estimation made by AO is on higher side is contradictory. So far as Ld. AR's reliance upon assessee's own case in *ITA No. 497/Ind/2000 (supra)* is concerned, we extract below Para 6 of ITAT's order:

> *"6. We have heard the ld. representatives of both the parties at length and have also perused the orders of the authorities below. In our considered view, the ld. CIT(A) was fully justified in quashing the reassessment order. The AO has not brought any material cord to show that the assessee was earning income from a particular source. Furthermore, the AO has estimated the income of the assessee at Rs. 2,50,000/- without any basis. In our view, the Ld. CIT(A) has rightly observed that the action u/s 147 cannot be justified*

> *merely on the ground that assessee was having a high standard of living and lavish life style and might have incurred huge expenditure on maintenance of the family. It is also true that reopening was bad in law because the AO has not recorded proper reasons to the effect that income had escaped assessment. Thus, considering the entire facts of the present case, we do not find any infirmity in the order of the Ld. CIT(A). The Ld. CIT(A) has correctly appreciated the facts of the present case as well as settled legal position and, therefore, no interference is required."*

Thus, the ITAT decided the issue of validity of re-opening of assessment done by AO on the basis of estimation. Further, the quantum of household expenditure is a factual issue and can vary year to year. Therefore, the Ld. AR's pleading that the issue is covered by ITAT's order in assessee's own case is not valid. Hence, the second contention is also rejected. The third and last contention raised by Ld. AR that the incomes shown by family members and extra profit of proprietary business separately assessed by AO as per Column E should also be taken as sources for incurring household expenses is having merit. Ld. DR for revenue has not made any submission to controvert this stand of assessee. On analysis of data given in the table, we find that in AY 1988-89 to 1991-92, the amounts available to assessee in Column E marginally exceed the amount required in Column B. Therefore, no addition is required in those years. However, in AY 1992-93, there is no additional fund. Therefore, the addition of Rs. 50,000/- made by in that year is valid and deserves to be upheld. Hence we delete additions in AY 1988-89 to 1991-92 and uphold addition in AY 1992-93. Accordingly, the respective grounds are allowed or dismissed.

Ground No. 3 of AY 1988-89 – Benami investment in shares of M/s Panjwani Plastics & Polyster Ltd.:

30. In this ground, the assessee challenges the addition of Rs. 2,32,000/- made by AO on account of unexplained investment by assessee in shares of M/s Panjwani Plastics and Polysters Ltd.

31. The AO has dealt this issue in Para 5.4 of assessment-order where he has noted that during search-action, physical share-certificates of M/s Panjwani Plastics and Polysters Ltd. of Rs. 2,32,000/- were found at the residence of assessee and the statements of assessee were also recorded. The impugned shares-certificates were held in the names of 8 different persons. The AO made addition for the reasons that (i) the share-certificates were found in possession of assessee at his residence, and (ii) in the recorded statements, the assessee accepted that the amount of Rs. 2,32,000/- was his unaccounted income. During first-appeal, the assessee submitted the R.O.C. (Registrar of Companies) records of M/s Panjwani Plastics and Polysters Ltd. and an affidavit confirming that the actual paid-up capital of M/s Panjwani Plastics and Polysters Ltd. was only Rs. 700/-. Accordingly, the assessee claimed that when the paid-up capital of company was just Rs. 700/-, the impugned share-certificates were fake and there was no realistic investment made by anyone, neither by assessee nor by any other person. However, the CIT(A) rejected assessee's submission and upheld addition.

32. Before us, Ld. AR made several contentions to object the addition made by AO. Firstly, he submitted that the share-certificates found by authorities were in respective names of 8 persons and none of the certificates bears the name of assessee. Secondly, he invited our attention to the search-report of R.O.C. records given by M/s S. Agarwal & Co., Company Secretaries, Indore dated 23.02.2005, copy at Page No. 66 of Paper-Book, to show that the actual paid-up capital of M/s Panjwani Plastics and Polysters Ltd. was just Rs. 700/- only with authorized capital of Rs. 5,00,000/-. He submitted that the Balance-Sheet as on 31.03.1988 of M/s Panjwani Plastics and Polysters Ltd., copy at Page No. 90 of Paper-Book, showing paid up capital of Rs. 1,00,00,000/- and authorised capital of Rs. 1,00,00,000/- found by search-authorities was a cooked Balance-Sheet only; it does not contain actual and realistic transactions. He submitted that the assessee filed an affidavit dated 26.08.1992 to AO, copy at Page No. 62-64 of Paper-Book, wherein complete facts pertaining to M/s Panjwani Plastics and Polysters Ltd. were informed to AO. He submitted that the Balance-Sheet showing paid up capital of Rs. 1,00,00,000/- was just a paper-work to show better financial standing of M/s Panjwani Plastics and Polysters Ltd. in order to obtain loans from financial institutions. He submitted that the realistic position of company is only a paid up capital of Rs. 700/- and not the position shown in fabricated Balance-Sheet, therefore the share-certificates found by search-authorities was also a paper-work and did not represent realistic investment by anyone. To strengthen his

arguments, he drew our attention to the very next Para 5.5 of assessment-order to show that in earlier round of assessment, the AO also made additions of Rs. 88,35,000/- (+) 9,20,000/- in the hands of assessee *qua* the assets shown in the impugned Balance-Sheet dated 31.03.1988 of M/s Panjwani Plastics and Polysters Ltd. But in first-appeal, the CIT(A) accepted assessee's claim that the Balance-Sheet of M/s Panjwani Plastics and Polysters Ltd. was a fabricated paper-work and accordingly, the CIT(A) deleted the additions of Rs. 88,35,000/- (+) 9,20,000/-. Thereafter, while passing present assessment-order, the AO has accepted the CIT(A)'s finding and did not make any addition. Ld. AR submitted that once in Para 5.5 the AO has accepted that the Balance-Sheet of company M/s Panjwani Plastics and Polysters Ltd. was a fabricated paper-work and therefore refrained from making additions of Rs. 88,35,000/- (+) 9,20,000/-, how can AO insist in preceding Para 5.4 of assessment-order that the assessee had made investment of Rs. 2,32,000/- in shares of very same company? Ld. AR submitted that the stand of AO is self-contradictory and must be rejected. Ld. AR also relied upon a decision of ITAT, Ahmedabad in *ITO Vs. Shri Paragbhai Karamshibhai Dobaria, ITA No. 2084/AHD/2008 dated 26.08.2011* where the addition made by AO on the basis of documents found during survey was deleted by CIT(A)/ITAT for the reason that the documents were only a paper-work created to show fictitious incomes/assets and did not represent any realistic transaction. With these

submissions, Ld. AR prayed that the addition of Rs. 2,32,000/- made by AO must be deleted.

33. Per contra, Ld. DR strongly supported the orders of lower-authorities. She submitted that the share-certificates were found with the assessee at the residence of assessee during search and this fact alone, without proving anything more, is sufficient enough to establish that the assessee was owner of those share-certificates. She submitted that when the assessee was questioned by search-team *qua* the share-certificates, the assessee himself surrendered undisclosed income of Rs. 2,32,000/- in Q.No. 41 of statements. Therefore, the addition made by AO and upheld by CIT(A) must be confirmed.

34. We have considered rival submissions of both sides and carefully perused the documents to which our attention has been drawn. The first contention raised by Ld. AR that the physical share-certificates found during search were in the names of 8 different persons and not in the name of assessee, is not acceptable to us. Admittedly, those certificates were found in possession of assessee at assessee's residence. Therefore, in terms of presumption u/s 132(4A), those certificates were owned by assessee and the assessee does not have any material to rebut the presumption. Therefore, the assessee's contention is rejected. Secondly, Ld. AR is claiming a contradiction in AO's approach by relying upon Para 5.5 of assessment-

order. Therefore, we re-produce the said Para 5.5 for an immediate reference as under:

> "5.5 ***Issue of seized balance sheet:***
>
> *Bunch of loose paper at Sr.No. 76 of annexure-X has been seized. On page no. 138 to 140, Balance sheet of M/s. Panjwani Plastics and Polyesters Ltd has been seized as on 31.03.1988. From the perusal of this balance sheet revealed that share capital of M/s. Panjwani Plastics and Polyesters Ltd. as on 31.03.1988 is Rs. 1 crore which is balanced by expenditure of capital expenditure in process 88,35,000/- and advance to suppliers at Rs. 9,20,000/- and cash balances. Assessee was issued query letter vide letter vide this office letter dated 06.04.2011 asked to furnish the genuineness of this issue with supporting documents for its claim.*
>
> *Assessee vide reply dated 22.04.2011 submitted that assessee had never invested these amount in the shares of M/s. Panjwani Plastic and Polyesters Ltd. It was further contended that this is only paper work and no actual transaction was made. A copy of affidavit was filed wherein it was admitted that the aforesaid company had neither obtained any subscription from its shareholder nor obtained any loan from Bank and financial institution. A search report issued by Shri S. Agrawal and Company was also furnished with their reply. In this certificate it has shown that 7 No. of share of Rs. 100/- each were allotted to seven subscribers. Thus the paid up capital of the company was Rs. 700/- till 23.2.2005. It was further contended that Hon'ble CIT(A)-I have accepted the contention of assessee and deleted the same.*
> *On carefully consideration to the fact advanced by the assessee, the Hon'ble CIT (A)-1 vide their order in appeal no. 312/01-02 dated 15.02.2007 have deleted this addition. The relevant extract of the order is reproduced below :-*
>
> > *"The detailed explanation offered by the appellant is duly supported by a certificate from Company secretary S. Agrawal & Co. The authorised capital of the company stood at Rs. 5 lakhs consisting of 5000 Equity shares each at the incorporation and there were 7 subscribers of 1 share each. Thus, there appears to be sufficient merit in the contention of appellant that the aforesaid balance sheet was a draft balance sheet and do not reflect the actual share capital introduced by the appellant. The copy of balance sheet as appearing on page no.13 of the compilation also supports appellant's case as on the assets side without there being any annexures or detail the capital expenditure is reflected at 88.35 lakhs and advance to the supplier of machinery stand at Rs. 9.20 lakhs and only identifiable balance is cash and bank balance at Rs. 2,09,690/- beside other sundry advances at Rs. 35,910/-. Thus, in these facts, the AO was not at all justified in making huge addition merely based on such draft balance sheet without verification of assets reflected on asset side. It is also worth taking note that the appellant has already surrendered additional income of Rs. 2,32,000/- for investment in the shares of PPPL which has been added as part of consolidated addition of Rs. 14.81 lakhs discussed in ground no. 8. Such addition is not found to be at all sustainable both in fact and in law being not backed by any details or any evidences of assets*

> *appearing in Balance Sheet, merely on the basis of draft/cooked up Balance sheet prepared for any purpose whatsoever. The addition is accordingly deleted."*
>
> *In view of the conclusion arrived in the Hon'ble CIT's order and other submissions of the assessee in support of his claim, no addition is called for on this issue."*
>
> *[Emphasis by underline supplied]*

35. On perusal, we do agree to Ld. AR that the AO has not made additions of Rs. 88,35,000/- (+) Rs. 9,20,000/- by following order of CIT(A). But a careful reading of the order of CIT(A), which is extracted by AO in para 5.5 re-produced above, shows that CIT(A) had accepted some vital aspects, namely (i) There were identifiable balances of cash and bank at Rs. 2,09,690/- and sundry advances of Rs. 35,910/- in the Balance-Sheet of M/s Panjwani Plastics and Polysters Ltd., and (ii) The assessee had already surrendered additional income of Rs. 2,32,000/- for investment in shares of company. With these vital facts, the CIT(A) had deleted other additions of Rs. 88,35,000/- and Rs. 9,20,000/- and the AO followed the tune of CIT(A). When we look into these facts, it becomes very clear that there is no contradiction in the approach of AO as being claimed by Ld. AR. The CIT(A) accepted that the Balance-Sheet of M/s Panjwani Plastics and Polysters Ltd. was genuine to the extent of assets of Rs. 2,09,690/- in the form of cash & Bank balances (+) Rs. 35,910/- in the form of sundry advances; the aggregate of these amounts come to Rs. 2,45,600/-. Notably, these assets held by company at Rs. 2,45,600/- far exceed the impugned subscription of Rs. 2,32,000/- by assessee in shares of company. That means, the subscription made by assessee can be said to be backed by realistic assets

of company. Hence, the contention of Ld. AR is not appealing. We have also paid attention to the search-report of M/s S. Agarwal & Co., Company Secretaries referred by Ld. AR. On perusal, we find that the report shows number of subscribers as 7 with 1 share each and just below that there is a list of "first directors". M/s Panjwani Plastics and Polysters Ltd. was incorporated on 13.08.1986 and the search-report is dated 23.02.2005. We are unable to understand whether the subscribers mentioned in search-report were 'first subscribers' at the time of incorporation of M/s Panjwani Plastics and Polysters Ltd. or current subscribers. The CIT(A)'s finding noted by AO in Para 4.5 of assessment-order, re-produced above, mentions *"The Authorised capital of the company stood at Rs. 5 lakhs consisting of 5000 equity shares each at the incorporation and there were 7 subscribers of 1 share each"*. This indicates that the 7 subscribers of Rs. 700/- paid-up capital were at the time of incorporation. Interestingly, the search-report does not mention the paid-up capital of company. The assessee filed this very search-report to present CIT(A) also but the CIT(A) has rejected by mentioning thus in his order *"The veracity of paid up capital being small as claimed by appellant could not be established."* Therefore, the factum of paid up capital of company at just Rs. 700/- is not successfully established by assessee. At the cost of repetition, we re-mention that the Balance-Sheet of company has been found to be genuine to the extent of assets of Rs. 2,09,690/- in the form of cash & Bank balances (+) Rs. 35,910/- in the form of sundry advances aggregating to Rs. 2,45,600/- which exceed the

subscription of Rs. 2,32,000/- by assessee in shares of company. Therefore, in such circumstance, we are not satisfied to accept assessee's claim that the impugned share-certificates found during search were bogus certificates not representing any actual transaction. For this reason, the case of *ITO Vs. Shri Paragbhai Karamshibhai Dobaria, ITA No. 2084/AHD/2008* relied upon by Ld. AR is also not applicable. This brings us to reject all contentions raised by assessee and accordingly the ground is dismissed.

Ground No. 4 of AY 1988-89 & Ground No. 2 of AY 1989-90 – Unexplained investment in Cars:

36. In these grounds, the assessee challenges the addition of Rs. 67,000/- in AY 1988-89 and Rs. 82,000/- in AY 1989-90 made by AO on account of unexplained investment in cars.

37. At first, we briefly narrate the facts relating to these additions as under:

(a) Addition of Rs. 67,000/- in AY 1988-89 - The AO has dealt this addition in Para 5.3.1 of assessment-order. He has noted that during search, the assessee was found to be owner of a car Maruti-800 MBN 425. When show-caused, the assessee submitted that the papers of Car MBN 425 were not available, therefore the AO made addition of Rs. 67,000/- in AY 1988-89 qua this car. The CIT(A) upheld AO's action.

(b) Addition of Rs. 82,000/- in AY 1989-90 – The AO has dealt this addition in Para 5.9 of assessment-order. He has noted that during search, the assessee was found to be owner of a car Maruti-Van CII-9827. When show-caused, the assessee submitted that the said car was purchased in the financial year 1988-89 relevant to AY 1989-90 and the investment was made by "PPPL". It was further submitted that the books of "PPPL" had been seized by Central Excise Department, copy of seizure-memo was also available as annexure to panchnama prepared by Income-tax Department. Accordingly, the assessee submitted inability to furnish the evidences of "PPPL". The AO, after rejecting assessee's submission, made an addition of Rs. 82,000/- in AY 1989-90. The CIT(A) upheld AO's action.

38. We first deal the addition of Car MBN 425 in AY 1988-89. In this regard, the Ld. AR for assessee harped on the submission made by assessee before CIT(A) that subsequent to assessment-order, during inspection of departmental record, the assessee came to know that the impugned addition was made by AO on the basis of a seized-paper being insurance policy of car. Ld. AR carried us to Page No. 57 of Paper-Book where the impugned insurance policy is filed. Referring to same, Ld. AR submitted that the insurance policy contains "1985 car" which shows that the car was "1985 model". Ld. AR submitted that in the situation, even if any addition was to warranted, it could have been made in financial year 1985-86, AY 1986-87 only and making of addition by AO in AY 1988-89 is illegal and untenable.

To support his stand, Ld. AR submitted that with regard to another car CII-9827, the AO has made addition in financial year 1988-89, AY 1989-90 on the basis of insurance policy of that car, copy at Page No. 122 of Paper-Book, showing "1988 model". Ld. AR submitted that the AO must be consistent in drawing conclusions on the basis of identical papers of two cars seized during search. In crux, the Ld. AR is challenging the year of addition and thereby arguing that the addition could not have been validly made in AY 1988-89 without any basis. After a careful consideration, we find weightage in the submissions of Ld. AR that there should be a consistency in the approach of AO in dealing with identical documents. Ld. DR for revenue is not able to produce any other evidence to justify the sustenance of addition in AY 1988-89 except claiming that the assessee could submit the copy of registration-certificate of car. In the situation, taking into account the evidence available on record, we agree that there is no evidence for supporting addition in AY 1988-89. Hence, the addition made by AO is deleted for the reason of fallacy in the year of addition and accordingly Ground No. 4 of AY 1988-89 is allowed.

39. Now, we proceed to deal the addition of Car CII-9827 in AY 1989-90. Ld. AR relied upon reply given by assessee to Q.No. 9 of the statements u/s 132(4) wherein the assessee stated that the investment was made from funds of "PPPL". Ld. AR submitted that the version of assessee in the statements must be accepted as true. Ld. AR further submitted that the earlier CIT(A), in earlier round of litigation, deleted this addition giving

credence to assessee's statement but the present CIT(A) has wrongly upheld addition by taking a contrary stand that the assessee could not prove the source of investment in car. Per contra, Ld. DR for revenue contended that the assessee has failed to provide any evidence till now to show that the investment was in fact made by "PPPL". Therefore, the addition must be upheld and no leniency be given to assessee. We have considered rival submissions of both sides and perused the orders of lower-authorities. We find that the assessee is solely relying upon his statement u/s 132(4) that the investment was made by "PPPL". However, the assessee has not adduced any evidence to show that the investment was in fact made by "PPPL" or is recorded in the books of "PPPL" despite several rounds of litigation and even before us as of now. Therefore, the assessee has miserably failed to prove his claim that the investment was made by "PPPL". Needless to mention that insurance policy is in the name of assessee which means the car was registered also in the name of assessee. Faced with this situation, we are inclined to uphold the addition made by AO. The addition is thus upheld and Ground No. 2 of AY 1989-90 is dismissed.

Ground No. 5 of AY 1988-89 & Ground No. 3 of AY 1989-90 – Addition on the basis of loose-paper of M/s Kamal Enterprises:

40. In these grounds, the assessee challenges the addition of Rs. 2,13,450/- in AY 1988-89 and Rs. 1,30,000/- in AY 1989-90 made by AO on the basis of loose-papers relating to M/s Kamal Enterprises.

41. The AO has dealt these additions in Para 5.7 of AY 1988-89 and Para 5.12 of AY 1989-90. Basically, the AO noted that during search-action, the Balance-Sheets of M/s Kamal Enterprises (a proprietary concern of Shri Kamal Panjwani, a minor son of assessee in AY 1988-89), one as on 31.03.1988 and other as on 15.05.1988 were seized, copies of those Balance-Sheets are filed at Page No. 70 and 184 of respective Paper-Books. In the Balance-Sheets so seized, the AO found receipts of moneys under will of late Shri Phatandas Panjwani (grand-father of Kamal Panjwani), receipts of gifts and income by way of commission and interest. When the AO show-caused assessee to explain, the assessee submitted that Kamal Panjwani was a separate individual who carried business as proprietor of M/s Kamal Enterprises. Therefore, the receipts/incomes noted in the impugned Balance-Sheets were nothing to do with assessee and they belonged to Kamal Panjwani and taxable in Kamal Panjwani's hands only. It was further submitted that the provision of section 64(1A) requiring clubbing of entire income of a minor child in the hands of parent, was applicable from AY 1993-94 and not applicable to assessment-years 1988-89 & 1989-90 under consideration, therefore clubbing was also not attracted. However, the AO took support from order-sheet dated 07.06.2011 of scrutiny-proceeding in which Kamal Panjwani accepted that it was his father (i.e. assessee) who was looking after activities of M/s Kamal Enterprises. Based thereon, the AO drew an inference that the assessee was merely using his son's name in order to evade/avoid due taxes. The AO further noted that the assessee has

to prove the source of investment in M/s Kamal Enterprises and even genuineness of the gifts received in those years. Accordingly, the AO made additions. During first-appeal, the CIT(A) upheld AO's observations. Further, the CIT(A) also mentioned that the assessee Shri Namdev Panjwani had already expired and Kamal Panjwani was legal heir. Therefore, whether the amount is taxed in Namdev Panjwani's hands or in the hands of Kamal Panjwani, it will be paid by Kamal Panjwani only and hence it is a non-issue.

42. Before us, Ld. AR for assessee basically harped upon the point that Kamal Panjwani was an independent individual although he happened to be a minor son of assessee. He submitted that Kamal Panjwani had filed his own separate return of income of AY 1988-89, copy at Page 48-50 of Paper-Book. Ld. AR submitted that M/s Kamal Enterprises was a proprietary concern of Kamal Panjwani and the assessee is nothing to do with financial affairs recorded in Balance-Sheets of M/s Kamal Enterprises. He submitted that the AO was swayed to tax receipts/income in the hands of assessee only because Kamal Panjwani happened to be a minor son of assessee. Therefore, the AO issued a notice u/s 142(1) dated 06.04.2011, copy at Page No. 67-69 of Paper-Book, wherein vide Point No. 8(iii) the AO confronted assessee for clubbing of income. Ld. AR submitted that the clubbing provision of section 64(1A) was introduced in Income-tax Act, 1961 from AY 1993-94 and prior to that, there were sections 64(1)(iii)/(v)/(viii) which prescribed clubbing in limited cases only, viz. income earned by a minor

child from a partnership firm or income earned by a minor child from any asset transferred by his parents without consideration or for inadequate consideration but these are not the cases in present appeals. Therefore, none of the clubbing provisions was applicable. Ld. AR also pointed out a submission made before AO and accepted by AO in assessment-order that Kamal Panjwani attained majority in immediate next year i.e. AY 1989-90. Ld. AR very forcefully attacked on CIT(A)'s conclusion that how can CIT(A) make an irresponsible/illegal conclusion that it was a non-issue because tax shall ultimately fall upon Kamal Panjwani, whether the income is taxed in the hands of assessee (Shri Namdeo Panjwani) or in personal hands of Kamal Panjwani? He submitted that such a bad conclusion by first appellate authority must be quashed. Ld. AR further submitted that simply because the activities of the said concern might have been taken care of by assessee as father, the income of said concern cannot be taxed in the hands of assessee when the entire investment in concern was made by personal funds of Kamal Panjwani in the form of his opening capital and further sums received by Kamal Panjwani through will and gifts. Ld. AR submitted that when the son was minor, what is wrong in administration of activities by assessee as father? Lastly, Ld. AR drew our attention to the impugned Balance-Sheets seized during search to demonstrate that those Balance-Sheets clearly bear the title "M/s KAMAL ENTERPRISES PROPRIETOR KAMAL NAMDEV PANJWANI". Ld. AR contended that the seized document is presumed to be correct by a specific provision of section 132(4A) and the

AO has no authority to reject the provision of law made by Parliament. Then, Ld. AR also relied upon decision of *ITAT, Mumbai in Mukesh R. Marolia Vs. Addl. CIT (2006) 006 SOT 247* which is upheld by Hon'ble Mumbai High Court and departmental SLP has also been dismissed by Hon'ble Supreme Court. Ld. AR drew our specific attention to following passage of the order of ITAT:

> *"**10.8** For a moment, even if all the above evidences are ignored, one cannot overlook the pressure of the evidence coming out of the survey carried out by the department in the business premises of the assessee. There was a survey carried out by the department in the business premises of the assessee. In the course of survey, contract notes for sale of shares, copies of bills thereof, photocopies of share certificates etc., were found. The purchase and sale of shares were also found recorded in the books of account. The department has no case that the survey was a staged enactment. A survey is always unexpected. So, it is not possible to presume that the assessee had collected certain fabricated documents and kept at his business premises so as to hoodwink the survey party to lead them to believe that the assessee had entered into share transactions. At least such an inference is not possible in law. The department has no defence against the forcible argument of the learned counsel that the survey conducted by the department has out and out upheld the contention of the assessee that he had purchased and sold shares. We find that this solitary evidence collected in the course of survey is sufficient to endorse the bona fides of the share transactions made by the assessee."*

Placing a heavy reliance on observations of ITAT in above Para, Ld. AR argued that the impugned Balance-Sheets of M/s Kamal Enterprises showing Kamal Panjwani as proprietor, seized during search, cannot be said to have been prepared by assessee in the name of his son to hoodwink the search-team in expectation of search-action. He submitted that when the seized documents themselves show that they belonged to Shri Kamal Panjwani, how can authorities claim that they belonged to assessee?

43. Per contra, Ld. DR for revenue has re-iterated the observations made by AO and supported the orders of lower-authorities.

44. We have considered rival submissions of both sides. After a careful consideration, we agree with the various contentions raised by Ld. AR for assessee. Firstly, we find that the seized Balance-Sheets themselves show that the concern M/s Kamal Enterprises was owned by Shri Kamal Panwani. Therefore, the assessee gets full protection/support from section 132(4A) as well as the decision of *ITAT, Mumbai in Mukesh R. Marolia (supra)* relied by Ld. AR. It is also on record from Page 48-50 of the Paper-Book that Shri Kamal Panjwani filed his separate return of income for AY 1988-89 on 19.12.1988 which is prior to search-action on 10.08.1992, paid tax and the department assessed the same and issued a demand notice u/s 156 also. Secondly, the AO basically show-caused assessee for clubbing of income because Shri Kamal Panjwani was a minor child. But the Ld. AR has carried us through legal provisions of Income-tax law according to which there were only sections 64(1)(iii)/(v)/(viii) at the relevant time which required clubbing of income in specific situations which are not there in present case. We find that the full-fledged clubbing of entire income of minor child u/s 64(1A) was brought into law from AY 1993-94 and hence not applicable to AY 1988-89 & 1989-90 under consideration before us. Therefore, the case of assessee did not attract any clubbing provision at that time. Thirdly, the claim of AO that the assessee was taking care of activities of Kamal Panjwani is not sufficient enough for taxing the receipts by way of will/gifts or incomes

belonging to Kamal Panjwani in the hands of assessee. Needless to mention that it is also contrary to the department's own action whereby they have assessed Kamal Panjwani as a separate individual also. Fourthly, we do not find any legality in the conclusion made by CIT(A) that it was a non-issue because the tax liability would ultimately fall upon Kamal Panjwani either as legal heir of assessee or in his personal assessment. Looking at entire conspectus of the matter, we do not find any justification in the additions made by AO in assessee's hands. Therefore, we delete the respective additions and allow the grounds raised by assessee.

Ground No. 4 of AY 1989-90 & Ground No. 2 of AY 1990-91 – Unexplained investment in domestic items:

45. In these grounds, the assessee challenges the addition of Rs. 1,00,000/- in AY 1989-90 and Rs. 1,00,000/- in AY 1990-91 made by AO on account of unexplained investment in domestic items.

46. The AO had dealt these additions in Para 5.4 of AY 1989-90 and Para 7 of AY 1990-91. Basically, the AO has made these additions on the basis of surrender made by assessee in the statements u/s 132(4). The CIT(A) upheld AO's stand.

47. Before us, Ld. AR for assessee made three-fold arguments, viz. (i) The additions have been made merely on the basis of surrender obtained during search but there is no evidence or material found, (ii) The surrender was

also retracted vide letter dated 04.01.1993, (iii) There is no evidence and no panchnama qua this addition; the panchnama has only Annexure-Q for items of aggregate value at Rs. 20,300/- at Page No. 55-56 of Paper-Book for AY 1988-89. Ld. AR placed a heavy reliance on CBDT Circulars and judicial decisions to contend that no addition can be made on the basis of mere surrender without any evidence. After a careful consideration, we find that there is no list or details of domestic items prepared by AO for calculating the additions. The AO has made adhoc additions of Rs. 1,00,000/- in each of the two years equal to the surrender made by assessee but the same are not corroborated by any evidence. Even the Ld. DR has submitted in her counter reply *"no details regarding the aforesaid investment were furnished by the assessee"* which itself shows that there is no detail or evidence to support addition. It is a settled law that no addition can be made on the basis of mere surrender unless there is any corroborative evidence. Therefore, we delete the impugned additions. The grounds are thus allowed.

Ground No. 5 of AY 1989-90, Ground No. 5 of AY 1990-91 & Ground No. 5 of AY 1991-92 – Unexplained foreign travel expenses:

48. In these grounds, the assessee challenges the addition of Rs. 1,50,000/- in AY 1989-90 and Rs. 58,000/- (+) Rs. 35,000/- in AY 1990-91, Rs. 25,000/- in AY 1991-92 made by AO on account of unexplained foreign-travel expenses.

49. At first, we briefly narrate the facts relating to these additions as under:

(a) Addition of Rs. 1,50,000/- in AY 1989-90 – The AO has made this addition in Para No. 5.10 of assessment-order on the basis of a diary at Annexure Z/2 seized during search revealing that the assessee alongwith his family travelled to Singapore, Hong Kong, Tokyo, USA and europian countries during the year. In the first round, the AO estimated expenditure at Rs. 3,00,000/- and made addition. But the CIT(A) reduced quantum of addition to Rs. 1,50,000/-. Following that, the AO ultimately made addition of Rs. 1,50,000/- in last round which the CIT(A) again upheld.

(b) Addition of Rs. 58,000/- (+) Rs. 35,000/- in AY 1990-91 – The AO has made these additions in Para No. 15 of assessment-order on the basis of a loose-paper at Annexure C/2 seized during search revealing that the assessee made travels to USA and Bangkok.

(c) Addition of Rs. 25,000/- in AY 1991-92 – The AO has made this addition in Para No. 10 of assessment-order on the basis of a loose-paper at Annexure C/2 seized during search revealing that the assessee made travel to Bangkok.

50. For all these grounds, the submissions of Ld. AR are identical. Firstly, Ld. AR claims that in the statements itself, it was stated by assessee that

the expenses have been funded from "PPPL"/Group concerns of assessee for business purposes. This argument was also made before AO but no evidence was furnished to show that the expenditure had been recorded in the books of "PPPL"/group concerns of assessee. Therefore, the AO rejected assessee's argument. The position remains same even before us as the assessee has not filed any evidence to show that the expenditure stands recorded in books of account of "PPPL"/group concerns. Therefore, we reject this contention for the very same reasoning as given by AO. Secondly, Ld. AR claims that the estimation of expenditure is on higher side. However, there is nothing concrete to upset the AO's estimation. Therefore, this contention is also rejected. Lastly, Ld. AR claims that the assessee/family members have shown very high withdrawals out of which funds were available for meeting the expenses on foreign travels. This contention of Ld. AR is also rejectable for the simple reason that the withdrawals shown by assessee/family members stand utilised for meeting household expenses (Refer earlier Para No. 27/29 of this order). Further, there is also a serious contradiction in the stand of assessee in as much as on one hand, the assessee claims that the impugned expenditure was fund by "PPPL"/Group concerns of assessee and on other hand, the assessee is trying to show that the expenses have been met out of withdrawals shown by assessee/family members. Therefore, the source of impugned expenditure remains unexplained and the assessee is only trying to take arguments for the sake of arguments. Consequently, we do not find any merit in assessee's

submissions in this regard. The additions made by AO are upheld and these grounds are dismissed.

Ground No. 6 of AY 1989-90 & Ground No. 4 of AY 1990-91 – Additions related to M/s Panjwani Polypropleyene:

51. In these grounds, the assessee challenges the addition of Rs. 43,73,100/- (+) 2,500/- in AY 1989-90 and Rs. 4,20,000/- in AY 1990-91 made by AO in respect of M/s Panjwani Polypropleyene.

52. At first, we briefly narrate the facts relating to these additions as under:

(a) Addition of Rs. 43,73,100/- in AY 1989-90 and Rs. 4,20,000/- in AY 1990-91 - The AO has made these additions vide Para 5.14 of AY 1989-90 and Para 17 of AY 1990-91. These additions have been made on the basis of books of account of M/s Panjwani Polypropylene at Annexure X/66 seized during search. On analysis of books, the AO found that a number of deposits have been taken from different persons; the AO has noted details of such deposits in assessment-order. When the AO show-caused assessee to explain the genuineness of deposits, the assessee made these submissions, namely (i) M/s Panjwani Polypropylene was a proprietary concern of his son Kamal Panjwani and the assessee is nothing to do with the said concern. The assessee submitted that the fact that the said concern was owned by

Kamal Panjwani was proved by several documents seized during search itself like the documents of loan sanctioned by MPFC (Madhya Pradesh Financial Corporation, a Govt. owned statutory corporation) to M/s Panjwani Polypropylene showing Kamal Panjwani as proprietor, (ii) The clubbing provisions of section 64(1A) were applicable from AY 1993-94 and not applicable to AY 1989-90 & AY 1990-91 under consideration, and (iii) Shri Kamal Panjwani had already become major during those years. Accordingly, the assessee requested that no addition should be made in assessee. But the AO rejected assessee's submission mainly by holding that (i) The assessee was looking after activities of his son Kamal Panjwani, and (ii) The assessee has not explained the genuineness of deposit entries. During first-appeal, the CIT(A) upheld additions by approving AO's observations and further observing that the assessee Shri Namdev Panjwani had already expired and Kamal Panjwani was legal heir. Therefore, whether the amount is taxed in Namdev Panjwani's hands or in the hands of Kamal Panjwani, it will be paid by Kamal Panjwani only and hence it is a non-issue.

(b) Addition of Rs. 2,500/- in AY 1989-90 - The AO has dealt this addition in Para 5.13 of AY 1989-90. During assessment, the AO initially asked the assessee to explain source of a FDR of Rs. 1,00,000/- made in cash in the name of assessee's minor son Kamal Panjwani. The assessee explained (i) that the FDR was made by Kamal

Panjwani from the funds withdrawn from bank a/c of his own proprietary concern named M/s Panjwani Polypropylene, (ii) that the clubbing provisions of section 64(1A) were applicable from AY 1993-94 and hence not applicable to AY 1989-90 under consideration, and (iii) that Shri Kamal Panjwani had already become major during the relevant year. Although the AO accepted these submissions of assessee but made an addition of Rs. 2,500/- on the basis of 10% interest earned on FDR. During first-appeal, the CIT(A) upheld addition mainly by observing that Shri Namdev Panjwani had already expired and Kamal Panjwani was legal heir. Therefore, whether the amount is taxed in Namdev Panjwani's hands or in the hands of Kamal Panjwani, it will be paid by Kamal Panjwani only and hence it is a non-issue.

53. Before us, Ld. AR for assessee basically harped upon the point that Kamal Panjwani was an independent individual. He submitted that M/s Panjwani Polypropylene was a proprietary concern of assessee's son Kamal Panjwani and the assessee is nothing to do with the said concern. He submitted that the fact that M/s Panjwani Polypropylene was a proprietary concern of assessee's son Kamal Panjwani was proved by several documents seized during search itself. He referred one of the seized-documents at Page No. 160-164 of Paper-Book for AY 1989-90 which is a loan-sanction letter dated 29.10.1988 issued by MPFC granting a loan of Rs. 30,00,000/- to "Kamal Panjwani proprietor of M/s Panjwani Polypropylene", this document

was also filed at lower-level. Ld. AR further submitted that Kamal Panjwani had already attained majority during the relevant years which is an undisputed fact. He submitted that the AO was swayed to tax income in the hands of assessee on the footing that Kamal Panjwani happened to be a minor son of assessee at that time. Ld. AR submitted that the clubbing provision of section 64(1A) was introduced in Income-tax Act, 1961 from AY 1993-94 and prior to that, there were sections 64(1)(iii)/(v)/(viii) which required clubbing in limited cases only, viz. income earned by a minor child from a partnership firm or income earned by a minor child from any asset transferred by his parents without consideration or for inadequate consideration but these are not the cases in present appeals. Therefore, none of the clubbing provisions was applicable. He submitted that in any case, Kamal Panjwani had already attained majority during AY 1989-90 itself. Therefore, the clubbing could not have been attracted. Ld. AR submitted that the CIT(A) is very much wrong in making an illegal conclusion that the tax shall ultimately fall upon Kamal Panjwani, whether the income is taxed in the hands of assessee (Shri Namdeo Panjwani) or in personal hands of Kamal Panjwani; such a bad conclusion by first appellate authority must be quashed. After a careful consideration, we find merit in all submissions of Ld. AR and therefore, without repeating the same, we agree that the additions made by AO in the hands of assessee are not tenable. Hence, we delete the additions made by AO. These grounds are allowed.

Ground No. 3 of AY 1990-91, Ground No. 3 & 4 of AY 1991-92 – Additions related to M/s Panjwani Polypropleyene Ltd.:

54. In these grounds, the assessee challenges the additions of Rs. 29,20,000/- (+) 50,000/- (+) Rs. 6,045/- (+) Rs. 5,000/- in AY 1990-91 and Rs. 16,23,000/- (+) Rs. 53,843/- (+) Rs. 13,784/- (+) Rs. 10,000/- in AY 1991-92 made by AO in respect of M/s Panjwani Polypropleyene Ltd.

55. At first, we briefly narrate the facts relating to these additions as under:

(a) Additions of Rs. 29,20,000/- (+) 50,000/- (+) Rs. 6,045/- (+) Rs. 5,000/- in AY 1990-91 - The AO has made these additions in Para 19.1 to 19.6 of assessment-order on the basis of a document being the Balance-Sheet as on 31.03.1990 of a company named "M/s Panjwani Polypropylene Ltd." seized at Page No. 173 of Annexure-K/6 during search reflecting paid up capital of Rs. 29,20,000/- and stock-sale of Rs. 4,49,001/-. This Balance-Sheet is filed in Paper-Book at Page No. 92. Further, the AO also found deposits having been made by said company in a/cs with Syndicate Bank and State Bank of Indore. When the AO show-caused assessee to explain, the assessee filed reply. The assessee submitted that the company "M/s Panjwani Polypropylene Ltd." was a separate entity, hence its transactions have to be assessed independently. But the AO rejected assessee's submission with the reasoning that originally there was a concern

named "M/s Panjwani Propylene" in the name of assessee's son Shri Kamal Panjwani which was later converted into the said company and the assessee was the main person behind the activities of company. With regard to the share capital of Rs. 29,20,000/-, the assessee also submitted that the actual paid up capital of company was just Rs. 700/- and the paid up capital of Rs. 29,20,000/- was a window-dressed figure in Balance-Sheet for balance disbursement of loan from MPFC. The assessee submitted copy of ROC document (copy at Page No. 51 of Paper-Book) as an evidence to show the paid up capital of Rs. 700/-. The assessee also filed loan sanction-letter dated 23.10.1989 of MPFC (copy at Page No. 66-74 of Paper-Book). But the AO rejected assessee's submission and made addition of Rs. 29,20,000/- on account of unexplained share capital. With regard to stock-sale of Rs. 4,49,001/-, the assessee again took a plea that there was no real sale, it was only window-dressed in Balance-Sheet for loan from MPFC. The AO rejected this submission and made an addition of estimated profit of Rs. 50,000/- on undisclosed stock-sale. With regard to deposit in Syndicate Bank, the AO treated deposits of Rs. 5,000/- as unexplained and made addition. Lastly, the AO made an addition of Rs. 6,045/- credited in State Bank of Indore on account of interest on FDR.

(b) Additions of Rs. 16,23,000/- (+) Rs. 53,843/- (+) Rs. 13,784/- in AY 1991-92 - The AO has made these additions in Para 11.1 to 11.5 of

assessment-order on the basis of a document being the Trial Balance as on 20.07.1990 of same company reflecting unsecured loans of Rs. 16,23,000/- and stock-sale of Rs. 4,25,737/-. This Trial Balance is filed in Paper-Book at Page No. 67. Further, the AO also found deposits having been made by said company in a/c with State Bank of Indore. When the AO show-caused assessee to explain, the assessee made identical submission as noted above and the AO also rejected assessee's submission by identical reasoning as noted above. Ultimately, the AO made addition of Rs. 16,23,000/- on account of unexplained loans, Rs. 53,843/- as profit on undisclosed stock-sale and an addition of Rs. 13,784/- on account of interest on FDR credited in a/c with State Bank of Indore.

(c) Addition of Rs. 10,000/- in AY 1991-92 – The AO has made this addition in para 11.9 of assessment-order on the basis of a loose cash-book of same company in Annexure-D/84 seized during search reflecting a deposit of Rs. 10,000/- in the name of assessee. When the AO show-caused, the assessee denied having made any such deposit and did not furnish any evidence. Ultimately, the AO made addition.

56. Before us, Ld. AR for assessee raised multiple contentions, the relevant contentions are summed up as under:

(i) Ld. AR mainly harped on the point that the figures mentioned in the seized Balance-Sheet/Trial Balance were fictitious/window-dressed

for balance disbursement of loan from MPFC. The actual paid up capital of company was just Rs. 700/- which is evident from a Search-Report dated 07.08.2023 given by M/s R.S. Yadav & Associates, Advocates filed at Page No. 219 to 222 of Paper-Book of AY 1989-90. Therefore, no addition can be made on the basis of fictitious data. Ld. AR submitted that similar position has already been accepted by AO in assessee's case for AY 1988-89 whereby the AO did not make additions of Rs. 88,35,000/- (+) Rs. 9,20,000/- in the hands of assessee *qua* the fabricated Balance-Sheet of another company M/s Panjwani Plastics and Polysters Ltd. (this aspect is already discussed in earlier paras while adjudicating a different ground). Reliance is also placed on *ITO Vs. Shri Paragbhai Karamshibhai Dobaria, ITA No. 2084/AHD/2008* where the addition made by AO on the basis of documents found during survey had been deleted by CIT(A)/ITAT for the reason that those documents were only a paper-work created to show fictitious incomes/assets and did not represent any realistic transactions.

(ii) It is submitted that M/s Panjwani Polypropylene Ltd. was a separate company/entity incorporated under Companies Act which had come into existence on conversion of a proprietary concern "M/s Panjwani Polypropylene" owned by assessee's son Kamal Panjwani. Therefore, the assessee is nothing to with the transactions of said company. The AO has baselessly and on mere suspicion and presumption treated

the transactions as belonging to assessee-individual. Ld. AR submitted that presumption made by AO is contrary to the record. He submitted that the loan sanction-letter of MPFC clearly shows the name of company. He submitted that the assessee was nowhere involved in the board of directors of company [Para No. 3(viii) of Concise-Synopsis filed by Ld. AR]. Further, the company came into existence on conversion of erstwhile proprietary concern "M/s Panjwani Polypropylene" owned by Kamal Panjwani, son of assessee which is a fact acknowledged by AO himself and also evident from the condition mentioned in Para 32(g) of the loan sanction-letter requiring the company to file an agreement for taking over assets and liabilities of said proprietary concern.

(iii) It is submitted that no question was raised in statements u/s 132(4) and the additions have been made during assessment only.

57. Per contra, Ld. DR for revenue strongly submitted that the seized documents contained realistic transactions but even if it is assumed that the documents were window-dressed, then also it is a fact that the company successfully availed loan from MPFC. Relying upon following decision of Hon'ble jurisdictional High Court in *Suraj Bhan Oil Pvt. Ltd. Vs. DCIT, ITA No. 121/2021 order dated 18.02.2022*, Ld. DR contended that the claim of window-dressing itself goes against assessee since it amounts to commercial immorality, therefore the assessee does not deserve any sympathy at all.

Further, the assessee has not reconciled correct figures vis-a-vis window-dressed figures as required by Hon'ble High Court:

> *".....Even otherwise, as has been held in catena of decisions by different High Courts, the practice followed by Industrialists declaring larger than actual quantity of stock to the Bank for the purpose of getting higher loans or over-draft facility, in fact, is not recognized as conforming to the fiscal discipline by Courts, Authorities and Tribunals. Such a tendency tantamount to commercial immorality for obtaining unjustified gains in the form of higher credit facility or loans etc. by showing incorrect statement of stock position to the Bank.*
>
> *In any case, the burden lies upon the assessee to reconcile the difference of stock position presented to the bank with the stock position mentioned in the books of accounts/audit report (**Dhansi Ram Aga Vs. CIT (201 ITR 192, Gauhati High Court, Ramanlal Kacharulal Tejmal Vs. CIT (146 ITR 368 (Bom), Pooranlal Raj Kumar Vs. CIT (107 CTR Cal. 27), CIT Vs. A. Yunuskunju (189 ITR 672, Kerala), CIT Vs. South India Rubber Products (166 ITR 687 (Kerala) and Coimbatore Spng. & Wvg. Co. Ltd. Vs. CIT (1974)95 ITR 375**, referred to).*
>
> *Once the Assessing Officer finds that there was excess stock, in absence of explanation by the assessee, the conclusion is inescapable that the excess stock, if any, was from undisclosed sources. Further, once the assessee's explanation, if any, has not been accepted, the resultant position is that there was excess stock un-disclosed in the books of accounts and non-disclosure was only with a view to suppress the income.*
>
> *Consequently, this Court upholds the order of Assessing Officer dated 31/3/2013 (Annexure P/4) and that of the Income Tax Appellate Tribunal dated 5/4/2021 (Annexure P/6) taking the view that the excess stock represented the income of the assessee from undisclosed sources. The judgment cited by learned counsel for the appellant, in fact, is distinguishable on facts. In that case, there was no variation or difference in quantity of stocks of raw material etc. shown in the books of accounts and that sent to the Bank, but there was difference in valuation and for the reasons stated in the order of the Tribunal, the Apex Court did not choose to interfere in the said order in its discretionary jurisdiction under Article 136 of the Constitution of India. Hence, the said judgment is of no assistance to the appellant."*

Ld. AR also relied upon lower-authorities' observation that it was the assessee who was main person behind all activities of company even if the said company was a separate entity formed under any law. Therefore, the AO has rightly made additions in the hands of assessee.

58. We have considered rival submissions of both sides and perused the documents to which our attention has been drawn. After a careful consideration, we find that the foremost contention of assessee/Ld. AR is such that the seized Balance-Sheet/Trial Balance were fictitious/window-dressed documents for disbursement of loan from MPFC. To prove this, it is being claimed that the actual paid up capital of company was just Rs. 700/- and not Rs. 29,20,000/- as shown in those documents. Ld. AR initially relied upon a ROC document filed at lower-stage, copy at Page No. 51 of Paper-Book of AY 1990-91, showing paid up capital of Rs. 700/-. But when the Bench pointed out that the said document was an "Application for Company Master Data Correction" submitted by assessee to ROC, the assessee filed a Search-Report dated 07.08.2023 given by M/s R.S. Yadav & Associates, Advocates, copy at Page No. 219 to 222 of Paper-Book of AY 1989-90. This report, though shows paid up capital of Rs. 700/- but it is a new document filed for the first time before us. It is noteworthy that in this search-report, the names of "First directors & Subscribers" have been given wherein name of assessee 'Mr. Namdev Panjwani' is clearly mentioned alongwith other persons. That means, the assessee was one of the first directors in the company. Therefore, the claim of Ld. AR that the assessee was nowhere involved in the board of directors is not very correct. Although it might have happened that subsequently the assessee exited from board of directors but initially he was a director. The argument of Ld. AR that a similar position of fabricated Balance-Sheet of another company 'M/s

Panjwani Plastics and Polysters Ltd.' has already been accepted by AO in assessee's case for AY 1988-89 and therefore the contention of assessee should be accepted here also, is not appealing to us for several reasons, namely (i) each company is independent and it is not necessary that if one company's balance-sheet is fictitious, other company's balance-sheet would also be fictitious, (ii) that the entire Balance-Sheet of another company 'M/s Panjwani Plastics and Polysters Ltd.' has not been accepted as fictitious, there were items of cash & bank balances and sundry advances which have been taken as genuine. In the same way, if we look at the seized Balance-Sheet/Trial Balance, we find that these documents contain transactions of actual loan taken from MPFC, Bank A/cs, Cash balance, Plant & Machinery, etc. Further, the Trial Balance, which is in continuation of Balance-Sheet, is also signed, sealed and dated by a professional Chartered Accountant. Therefore, even if some of the transactions are window dressed, the entire Balance-Sheet/Trial Balance cannot be said to be fictitious. In any case, as per decision of Hon'ble jurisdictional High Court in *Suraj Bhan Oil Pvt. Ltd. Vs. DCIT (supra)*, it was duty of assessee to reconcile the differences of actual figures and window-dressed figures but the same has not been done. Therefore, simply projecting a claim that the seized documents were fictitious cannot be accepted. One factual aspect is, however, observed by AO that the proprietary of assessee's son was converted into the said company. Looking into these aspects and having regard to the decision of Hon'ble jurisdictional High Court, there is a necessity to verify whether the

Balance-Sheet/Trial Balance really contained fictitious data and if yes, to what extent. This exercise has not been done so far. Therefore, we feel that this issue should be remitted back to the file of AO for a deep adjudication after hearing assessee. The AO shall consider the assessee's submissions including the latest search-report filed by assessee before us. Further, the AO may make necessary enquiries from the office of ROC. Once the position is clear, the AO would take an appropriate call of all additions involved in these grounds. Accordingly, we remand these grounds back to AO for a proper scrutiny and adjudication. The relevant grounds can be said to have been allowed for statistical purposes.

Ground No. 6 of AY 1990-91 – Unexplained marriage expenses of daughter:

59. In this ground, the assessee challenges two additions, namely an addition of Rs. 2,25,000/- made by AO *qua* the unexplained expenses on marriage of daughter (+) a further addition of Rs. 1,28,033/- (wrongly mentioned as 1,28,000/- in Grounds) made by AO on protective basis *qua* the unexplained jewellery gifted to daughter on marriage.

60. We first deal the addition of Rs. 2,25,000/- on account of marriage expenses. The AO has made this addition in Para No. 11.1 to 11.3 of assessment-order for these reasons, namely (i) In the statement recorded u/s 132(4), the assessee admitted expenditure on marriage of daughter at Rs. 1,00,000/-; and (ii) The assessee is not able to explain the source of

expenditure. The AO, however, estimated expenditure of marriage at Rs. 2,25,000/- and made addition. During first-appeal, the CIT(A) upheld AO's action. Before us, Ld. AR made two-fold contentions, namely (i) The AO has baselessly made estimation at Rs. 2,25,000/- as against the admission of Rs. 1,00,000/- by assessee in Q.No. 5 of the statements u/s 132(4); and (ii) The assessee/family members have already disclosed a total withdrawal of Rs. 2,12,800/- in AY 1990-91 which is much higher as compared to the withdrawals shown in AY 1988-89, therefore the assessee was having additional funds for meeting the marriage expenses of Rs. 1,00,000/- admitted in statements. In order to adjudicate this issue, we firstly re-produce below the Q.No. 5 of statements u/s 132(4):

> *-5 प्रश्न"कृपया यह बताये कि आपकी पुत्री सुजात पंजवानी का विवाह कब हुआ था ,किसके साथ हुआ था उनका पूरा पता देवे तथा शादी में आप ने कितना रूपया खर्च किया था व कितने रूपये नगद व आभूषण आदि दिए थे ।*
>
> *उत्तर -मेरी बेटी सुजाता की शादी 15.05.89 को हुई थी ,शादी श्री योगेश वर्मा 3/17 ,मनोरमागंज ,इंदौर के साथ हुई थी ,शादी में खर्च करीब रूपये एक लाख खर्च किया था । रूपया सुजाता इंडस्ट्रीज पेकेजिंग व पंजवानी पेकेजिंग लि .से निकाला था । मेरी पत्नी ने लगभग पच्चीस तोले सोने के आभूषण अपनी ओर से दिये थे ।"*

On perusal, we agree to Ld. AR's contention that the assessee admitted having incurred expenditure of Rs. 1,00,000/- on marriage. We further find that the AO has not given any basis for arriving estimation at Rs. 2,50,000/-. Therefore, the first contention raised by Ld. AR has merit and we accept that the expenditure on marriage ought to be taken at Rs. 1,00,000/- and not at Rs. 2,50,000/-. However, the second contention raised by Ld. AR is rejectable for the simple reason that the withdrawals shown by

assessee/family members stand utilised for meeting household expenses (Refer earlier Para No. 27/29 of this order). Further, there is also an ostensible contradiction in the stand of assessee in as much as on one hand in reply to Q.No. 5, the assessee stated that the impugned expenditure was fund by "PPPL"/Group concerns of assessee and on other hand, the assessee is trying to show that the expenses have been met out of withdrawals shown by assessee/family members. Therefore, the source of impugned expenditure remains unexplained and the assessee is only trying to take arguments for the sake of arguments. Consequently, we do not find any merit in assessee's second contention. In final conclusion, we note that that the addition to the extent of Rs. 1,00,000/- admitted by assessee must be upheld and the excess addition deserves to be deleted. Accordingly, we uphold addition of Rs. 1,00,000/- and delete extra addition. This way, the assessee gets part-relief in this issue.

61. Now, we proceed to deal another addition of Rs. 1,28,033/- *qua* gift of jewellery made on marriage of daughter. The AO has made this addition on protective basis in the hands of assessee. Substantive addition was made in the hands of Smt. Jayshree Panjwani, assessee's wife. Ld. AR submitted that once addition has been made in the hands of Smt. Jayshree Panjwani, no addition is called for in assessee's hands. We are not sure about the fate of substantive addition made in Smt. Jayshree Panjwani, whether Smt. Jayshree Panjwani contested the same in further appeals or not and whether it was sustained in her hands or not. Therefore, we remand this

issue back to the file of AO to verify the situation and take a final call. Accordingly, this issue is statistically allowed.

Ground No. 7 of AY 1990-91 - Bogus liability shown in computation of wealth:

62. In this ground, the assessee challenges the addition of Rs. 4,30,000/- made by AO on account of bogus liability shown in computation of wealth.

63. The AO has made this addition in Para 14 of assessment-order on the basis of a sheet titled 'Computation of Wealth' seized at Annexure-Z/6 during search, copy filed at Page No. 93-94 of Paper-Book. The AO has observed that the impugned sheet was for AY 1990-91 in which the assessee had deducted an aggregate liability of Rs. 4,30,000/- payable to three persons, in computing net wealth. The AO asked assessee to explain the genuineness of liabilities. In response, the assessee made two-fold submissions, namely (i) the impugned computation was related to AY 1988-89 and not to AY 1990-91; and (ii) the impugned computation was a rough calculation made by assessee's wife Smt. Jayshree Panjwani but no return of wealth of AY 1988-89 was actually filed to department. However, the AO rejected assessee's submission. Ultimately, the AO made addition observing that the assessee had failed to prove the identity, creditworthiness and genuineness of liabilities of Rs. 4,30,000/-. Although nowhere in entire discussion or conclusion, the AO has referred any section under which the

said addition had been made but in the heading of Para No. 14, the AO has mentioned "Unexplained addition u/s 41(1) on account of bogus liability".

64. Ld. AR for assessee firstly re-iterated the submissions made by assessee before AO. Thereafter, he submitted that the AO has made addition u/s 41(1) but invoking section 41(1) itself is wrong because there is no remission or cessation of trading liability as required by the said section. He submitted that the issue in earlier rounds of proceedings was *qua* section 68 and not section 41(1). He contended that the alleged sheet showing a rough computation of wealth, even if taken as true, cannot give rise to any taxability u/s 68 or 41(1) of Income-tax Act, 1961. Per contra, Ld. DR for revenue relied upon the orders of lower-authorities and requested to uphold the addition.

65. We have considered rival submissions of both sides. We have also perused the seized document at Page No. 93-94 of Paper-Book. Firstly, we find that on the top of document, "1988-89" is clearly mentioned. Secondly, the document is signed at the end by Smt. Jai Shree Panjwani. Therefore, the seized document, on the face of it, neither appears as relating to AY 1990-91 in which the AO made addition nor it relates to assessee. Faced with this situation, we hardly find any merit in the addition made by AO. Hence, the addition is deleted and this ground is allowed.

Ground No. 6 of AY 1991-92 & Ground No. 3 of AY 1992-93 - Investment in shares of M/s Panjwani Packagings Ltd.:

66. In these grounds, the assessee challenges the addition of Rs. 10,00,000/- in AY 1991-92 and Rs. 13,00,000/- in AY 1992-93 made by AO on account of investment in 'promoter quota' shares of company M/s Panjwani Packagings Ltd. The assessee also challenges an addition of Rs. 5,00,000/- in AY 1992-93 made by AO on account of investment in 'employee quota' shares of same company.

67. First we deal the addition of Rs. 10,00,000/- in AY 1991-92 (+) Rs. 13,00,000/- in AY 1992-93 qua 'promoter quota' shares. The AO has made these additions in Para No. 11.7 of AY 1991-92 and Para No. 18 of AY 1992-93, elaborate discussion is made in AY 1992-93. Basically, M/s Panjwani Packagings Ltd. was initially a private company (for clarity, it is the same company which is referred as "PPPP" at various places in this order) which subsequently became a public company and went to public for issue of shares. Under the scheme of public issue, the promoters and relatives/ friends of promoters were required to make subscription to 8,24,200/- equity shares of the value of Rs. 82,42,000/-, a copy of the prospectus containing this requirement is filed at Page No. 105 of Paper-Book. During search-proceeding, a list containing details of subscription received by company towards 'promoter quota' shares was seized as Annexure-Z/5, copy filed at Page No. 77-99 of Paper-Book. The authorities believed that the assessee has made investment in 'promoter quota' shares in the names of other persons. In the statements u/s 132(4), the assessee made a surrender of Rs. 10,00,000/- in AY 1991-92 and Rs. 13,00,000/- in AY 1992-93.

Therefore, while completing assessment, the AO made a substantive addition of Rs. 10,00,000/- in AY 1991-92 (+) Rs. 13,00,000/- in AY 1992-93 = Rs. 23,00,000/- in the hands of assessee and a protective addition of Rs. 23,00,000/- in AY 1992-93 in the hands of company M/s Panjwani Packagings Ltd.

68. Ld. AR for assessee firstly raised a technical issue qua the addition of Rs. 10,00,000/- in AY 1991-92. He submitted that the AO is very much wrong in making addition in AY 1991-92 because the AO has himself accepted in Para 18.4 of assessment-order thus *"Deposits in promoter quota of shares have been received in January, February and March 92 as per list seized in Annexure Z/5".* Further, in the 2nd round of assessment of company M/s Panjwani Packaging Ltd., the AO dealt the entire issue of 'promoter quota' shares of Rs. 82,42,000/- in Para No. 16 of assessment-order dated 24.03.2000 passed u/s 143(3)/250, copy filed at Page 134-150 of Legal Paper-Book, as under:

> *"16. Assessee company had become public limited during the year and public issue was brought out in April,92 Public Issue opened on 6th April, 92, and closed on 9th April, 92, after it was subscribed several times over. Assessee had share capital of Rs. 50,25,000/- as on 31.3.91 before the public issue of Rs. 1,80,00,000/- (Rs. 18,00,000/- shares of Rs. 10/- each). Assessee was required to obtain promoters quota of share of Rs. 82,42,000/- (8,24,200 shares of Rs. 10/- each). The Public Issue consisted of Rs. 2,62,42,000/- (2624200 shares of Rs. 10/- each) out of which 18,00,000/- were offered to public, 131210 shares of Rs. 10/- each were reserved for employees. Balance 1668790 of 10/- each were offered to Indian Public and only Rs. 5/- was to be paid alongwith share application. Shares reserved for employees were fully paid on application (Rs. 10/- per share). Promoters quota of shares 8,24,200 shares were also to be fully paid. Further this contribution of promoters quota of Rs. 82,42,000/- was to be obtained before public issue opened. During the course of search various documents have been seized*

indicating that the investment in promoters quota of shares and employees quota of shares has not been made by the apparent share-holders, but by the assessee company and Shri N.P. Panjwani, Managing Director. In this regard, Shri N.P. Panjwani, M. D. of assessee company in his statement u/s 132(4) had surrendered Rs. 10 lacs in assessment year 1991-92 as his undisclosed income invested in promoters quota of shares. Further income of Rs. 13 lacs was disclosed by him in assessment year 92-93 as undisclosed income invested in promoters quota of shares. Rs. 5,00,000/- in A.Y. 92-93 was disclosed by Shri N.P. Panjwani as undisclosed investment in employees quota of shares. During the assessment proceedings, assessee was asked to submit copy of balance sheet, profit and loss account, manufacturing and trading account. Assessee was also asked to furnish name and address of share-holders of promoters quota, employees quota, number of shares applied, and allotted, amount received, cheque number and date and assessee was also required to prove the genuineness of investment made by share-holders. This information was required by notice dated 8.9.95. However, no reply has been filed even during set aside assessment proceeding. Neither balance sheet, manufacturing trading and profit and loss account as on 31.3.92 as well as on 31.3.93 has been filed nor the information relating to share-holders has been filed. During the course of search list of 8,24,200/- shares of promoters quota had been seized in Annexure –Z/5. This bunch of papers contains 23 pages and number of list which enclosed with it. In all investment of Rs. 82,42,000/- has been made in these shares. List no.1 page – 21 & 22 is of Rs. 2,18,000/- (21,800 shares) showing receipt from various parties in January and February, 92. List no. 2 on page 16 to 20 is of Rs. 19,35,000/- (1,93,500 shares). This list also contains details of payment received in the month of January, 92 and December, 91, 3rr list of page-15 is of Rs. 2,89,000/- (28,900 shares). Similarly, there are other list of Rs. 20,09,000/- (200900 shares) called Vadodra List. There is Ahmedabad list of Rs. 17,90,000/- (179,000 shares). There is Bombay list of Rs. 20,01,000/- (2,00,100 shares). In all total payment of Rs. 82,42,000/- has been received against 8,24,200 shares. Thus the condition mentioned in the prospectus of full receipt of promoters quota of 82,42,000 has been met before the Public Issue opened. ***As is clear from Annexure – Z/5 payment was received in financial year 91-92.*** *Assessee has totally failed to file names and address of share-holders and has also, failed to file confirmatory letter from these share holders. Genuineness of capital received from these parties has not been established even during the course of set-aside assessment despite the fact that the assessee knew that additions were made on this account in the original assessment. Accordingly, even during these proceedings the entire share capital out of promoters quota of Rs. 82,42,000/- remains unexplained on account of the failure of assessee to, prove the genuineness of share capital receipt.*

16.1 Verification of second list of Rs. 19,35,000/- (1193500 shares) with the account in Allahabad Bank, Parliament Street, New Delhi account No. 455358 of the assessee company reveals the many of the entries in this list are deposited in this account. In this regard list of cheques deposited in Allahabad Bank account No. 455358 has been seized in Annexure-K/12. Pay-in-slips corresponding to these list have been seized in Annexure-K/12 and K/17 the

> *second list of Rs. 19,35,000/- reveals that cheque of Rs. 16,22,000/- out of Rs. 19,35,000/- are already deposited in Allahabad Bank a/c no. 455358. Thus out of unexplained share capital of promoters quota of Rs. 82,42,000/- addition of Rs. 16,22,000/- has already been made while considering the unexplained deposits in this bank a/c in Allahabad Bank, Parliament Street, New Delhi. Balance amount remaining to be added is Rs. 66,20,0o00/-. After considering the balance sheet as on 30.9.91, for increase in share application money during the year, addition of Rs. 30,00,000/- has already made. Balance share capital in promoters quota is Rs. 36,20,000/-. During the search Shri N.P. Panjwani, M. D. had surrendered Rs. 10 lacs and Rs. 13 lacs in assessment year 91-92 and 92-93 respectively as his undisclosed investment in promoters quota of shares of assessee company. However, neither in this statement nor during proceedings u/s 132(5) as well as in assessment proceedings of Shri N.P. Panjwani has filed the list of share-holders in whose name investment of Rs. 23 lacs has been made by him. Thus the specific details of investment of Rs. 23 lacs by Shri N.P. Panjwani out of above shares of promoters quota is not known. However, keeping in view his statement u/s 132(4) addition of Rs. 10 lacs in the hands of Shri N.P.Panjwani in assessment year 91-92 and Rs. 13 lacs in assessment year 92-93 regarding investment by him in promoters quota of shares shall be made. Out of Rs. 36,20,000/- addition of Rs. 23,00,000/- is again made on protective basis and balance of Rs. 13,20,000/- on substantive basis."*

Thus, Ld. AR contended, when the subscription of 'promoter quota' shares was received in financial year 1991-92 relevant to AY 1992-93, which is a fact admitted by assessee's AO as well as the AO of M/s Panjwani Packaging Ltd., the assessee's AO is patently wrong in making addition of Rs. 10,00,000/- in AY 1991-92. Ld. AR submitted that the AO has made addition of Rs. 10,00,000/- in AY 1991-92 only and only because of surrender made by assessee in statements. Secondly, on merits of both additions of Rs. 10,00,000/- (+) Rs. 13,00,000/-, Ld. AR raised an important contention. He pointed out the final status of this issue in the hands of company M/s Panjwani Packaging Ltd. He explained that in the 2nd round of company' assessment-order dated 24.03.2000 u/s 250/143(3), re-produced in earlier paragraph, the AO made a protective addition of Rs. 23,00,000/-

(+) a substantive addition of Rs. 13,20,000/- in the hands of company. Against this order, the appeals/cross-objections of revenue/company travelled to ITAT, Indore Bench whereupon the ITAT, vide order dated 21.01.2010, remanded matter back to AO for a fresh adjudication. Pursuant to direction of ITAT, the AO has passed latest assessment-order dated 29.10.2010, copy filed at Page No. 54-70 of a separate Paper-Book, in which the AO has not made any addition whatsoever, neither substantive nor protective, in company' assessment. Thus, Ld. AR submitted that the issue of 'promoter quota' is finally settled and the department has accepted the subscription as genuine by not making any addition in the hands of company. Ld. AR submitted that when it so, the additions made in the hands of assessee also deserves to be deleted. Thirdly, Ld. AR pleaded that the AO has made additions in assessee's hands merely on the suspicion and on the basis of surrender made by assessee but the surrender is not corroborated by any evidence. Ld. DR for revenue, however, defended the orders of lower authorities. After a thoughtful consideration, we find sufficient weightage in the submissions of Ld. AR. We agree that the addition of Rs. 10,00,000/- in AY 1991-92 is not tenable when the AO has himself accepted that the entire subscription of promoter quota was received in the financial year 1991-92 relevant to AY 1992-93. Further, on merits of additions in both years, we also agree with the submission of Ld. AR that once the AO has himself reversed his earlier approach and finally made no addition in the latest assessment-order of company *qua* the issue of

promoter quota, it necessary follows department's acceptance that the subscription to promoter quota was genuine. Therefore, on merits also, no addition is warranted in the hands of assessee. Faced with these vital aspects, we delete the additions of Rs. 10,00,000/- in AY 1991-92 and Rs. 13,00,000/- in AY 1992-93.

69. Now, we would deal the addition of Rs. 5,00,000/- in AY 1992-93 on account of investment in 'employee quota' shares of company. The AO has made this addition in Para No. 19 of AY 1992-93. Basically, under the scheme of public issue brought by company, there was a reservation for preferential allotment of 1,31,210 equity shares of the value of Rs. 13,12,100/- to employees. This requirement is clearly mentioned in copy of prospectus filed at Page No. 105 of Paper-Book. During search-proceeding, a list containing details of subscription received by company towards 'employee quota' shares was seized as Annexure-Z/7. The authorities believed that the assessee has made investment in 'employee quota' shares in the names of other persons. In the statements recorded u/s 132(4), the assessee made a surrender of Rs. 5,00,000/- in AY 1992-93. Therefore, while completing assessment, the AO made a substantive addition of Rs. 5,00,000/- in the hands of assessee in AY 1992-93 and a protective addition of Rs. 5,00,000/- in the hands of company in AY 1993-94.

70. Ld. AR for assessee made a straight forward submission that the company M/s Panjwani Packagings Ltd. opened public issue on 06.04.1992

and the employees were required to pay entire issue price after opening of public issue. These points are clearly mentioned in the prospectus. Further, in the 2nd round of assessment of company M/s Panjwani Packaging Ltd., the AO dealt the entire issue of 'employee quota' shares of Rs. 13,12,100/- in Para No. 17-18 of assessment-order dated 24.03.2000 passed u/s 143(3)/250, copy filed at Page 134-150 of Legal Paper-Book, where he has clearly noted thus *"Unlike promoters quota of shares, subscription to employees quota of shares was received in financial year 1992-93 when the issue opened since the employees quota of shares of Rs. 13,12,100/- were reserved out of public issue of Rs. 1,80,00,000/-."* Thus, Ld. AR contended, when the subscription of 'employee quota' shares was received in financial year 1992-93 relevant to AY 1993-94, the assessee's AO is patently wrong in making addition of Rs. 5,00,000/- in AY 1992-93. Ld. AR submitted that the AO has made addition of Rs. 5,00,000/- in AY 1992-93 only and only because of surrender made by assessee in statements. Secondly, on merit of addition also, Ld. AR raised an important contention. He pointed out the final status of this issue in the hands of company M/s Panjwani Packaging Ltd. He explained that in the 2nd round of company's assessment-order dated 27.03.2000 u/s 250/143(3) for AY 1993-94, the AO made a protective addition of Rs. 5,00,000/- (+) a substantive addition of Rs. 8,12,100/- in the hands of company. Against this order, the appeals/cross-objections of revenue/company travelled to ITAT, Indore Bench whereupon the ITAT, vide order dated 21.01.2010, remanded matter back to AO for a fresh

adjudication. Pursuant to direction of ITAT, the AO has passed latest assessment-order dated 29.10.2010, copy filed at Page No. 110-132 of a separate Paper-Book, wherein the AO has not made any addition whatsoever, substantive nor protective, in company' assessment. Thus, Ld. AR submitted that the issue of 'employee quota' is finally settled and the department has accepted the subscription as genuine by not making any addition in the hands of company. Ld. AR submitted that when it so, the addition made in the hands of assessee also deserves to be deleted. Ld. DR for revenue, however, defended the orders of lower authorities. After a thoughtful consideration, we find sufficient weightage in the submissions of Ld. AR. We agree that the addition of Rs. 5,00,000/- in AY 1992-93 is not tenable when the AO has himself accepted that the entire subscription of employee quota was received in the financial year 1992-93 relevant to AY 1993-94. On merits of additions also, we agree with the submission of Ld. AR that once the AO has himself reversed his earlier approach and finally made no addition in the latest assessment-order of company qua the issue of employee quota, it shows department's acceptance that the subscription of employee quota was genuine. Therefore, on merits also, no addition is warranted in the hands of assessee. Faced with these aspects, we delete the addition of Rs. 5,00,000/- in AY 1992-93.

71. Consequently, these grounds of assessee are allowed.

Ground No. 4 of AY 1992-93 – Unexplained jewellery:

72. In this ground, the assessee challenges the addition of Rs. 2,00,000/- made by AO on account of unexplained jewellery.

73. The precise facts are such that during search-action, a total jewellery worth Rs. 5,02,679/- was found out of which jewellery worth Rs. 4,39,090/- was seized. The assessee made a surrender of Rs. 2,00,000/- in statements u/s 132(4). During assessment-proceeding, when the AO show-caused assessee to explain source of jewellery, the assessee submitted copy of wealth-tax return and wealth-tax assessment-order of his wife, Smt. Jayshree Panjwani for AY 1992-93 and a copy of a letter filed by Smt. Jayshree Panjwani to CIT, Bhopal, to establish that the jewellery belonged to and was already disclosed in wealth-tax return of Smt. Jayshree Panjwani. The AO considered assessee's submission but still made addition. The relevant portion of AO's order is extracted below:

> *"16.4 On careful consideration of the assessee reply and perusal of evidences submitted by the assessee, it is seen that the jewelleries found during the search operation were disclosed in the wealth tax return of Smt. Jaishree Panjwani. In this return of wealth it was disclosed that she possessed the jewellery of Rs. 4,89,957/- that is not more than the jewellery seized in search. It is further seen that an application was also made before the Hon'ble CIT Bhopal by Smt. Jaishree Panjwani vide its letter dated 04.01.1993 wherein it was stated that whatever cash and jewellery found and seized in search was belonging to her. Further, prayer of Smt. Panjwani was accepted vide letter dated 09.07.1993 by the Hon'ble CIT, Bhopal. It was further seen that whatever the wealth disclosed by Smt. Jaishree Panjwani has accepted by the ld. DCWT(Asstt.), Range-II, Indore, dated 06.03.1995. But question is arise that the jewellery found in search was actually belongs to assessee's wife Smt. Panjwani then why assessee surrendered Rs. 2,00,000/- on account of jewellery found from bank locker. If jewellery was actually belongs to Smt. Panjwani then there was no need to surrender. Since, assessee has surrendered the amount of Rs. 2,00,000/- on account of jewellery found and seized in search operation no. 315/01-02 dated 15.02.2007, Rs. 2,00,000/- is added in the total income of the assessee."*

74. Analysing above para, Ld. AR submitted that the AO has himself accepted a clinching fact that the jewellery was already declared in wealth-tax return of Smt. Jayshree Panjwani but still he has made addition merely because there was a surrender by assessee. Ld. AR strongly submitted that the AO's approach is quite wrong. Relying upon *CIT Vs. Naresh Kumar Agarwal 369 ITR 171 (AP HC) and CBDT Circulars,* Ld. AR submitted that no addition can be made on the basis of mere surrender unless there is a corroborative evidence to support the surrender. Per contra, Ld. DR supported the order of AO. After a mindful consideration, we find that in the present case, the AO has himself accepted a clinching fact that the impugned jewellery is already disclosed in wealth-tax return of Smt. Jayshree Panjwani. Still the AO has made addition just because there was a surrender made by assessee and the CIT(A) has upheld AO's action. We find that judicial view is against revenue in such cases. It is by now a well-settled principle that no addition can be made on the basis of mere surrender unless there is a supportive evidence. In the present case, there is an evidence against surrender, instead of supporting surrender, for the very reason that the AO has himself accepted that impugned jewellery stands declared in wealth-tax return of assessee's wife. Faced with this situation, we hardly find any merit in the addition made by AO. We therefore delete the same and this ground of assessee is allowed.

75. Resultantly, all these appeals are partly allowed.

Order pronounced in open court on 18.03.2024.

Sd/-	sd/-
(VIJAY PAL RAO)	(B.M. BIYANI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Indore
दिनांक/Dated :18.03.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore