

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**(DELHI BENCH 'C' NEW DELHI)****BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER****AND****SH. YOGESH KUMAR U.S., JUDICIAL MEMBER****ITA No. 1860/Del/2023 (A.Y. 2012-13)****ITA No. 1861/Del/2023 (A.Y. 2013-14)****ITA No. 1862/Del/2023 (A.Y. 2014-15)****ITA No. 1863/Del/2023 (A.Y. 2015-16)****ITA No. 1864/Del/2023 (A.Y. 2016-17)****ITA No. 1865/Del/2023 (A.Y. 2017-18)****ITA No. 2588/Del/2023 (A.Y. 2018-19)****ITA No. 2589/Del/2023 (A.Y. 2019-20)****ITA No. 2970/Del/2023 (A.Y. 2020-21)**

Kiran Pal Singh House No. 453, Sector- 9, Faridabad, Haryana PAN: AKMPP5108N	Vs.	DCIT Central Circle C. R. Building, Faridabad, Haryana-121001
Appellant		Respondent

ITA No. 2038/Del/2023 (A.Y. 2014-15)**ITA No. 2039/Del/2023 (A.Y. 2015-16)****ITA No. 2040/Del/2023 (A.Y. 2017-18)****ITA No. 2815/Del/2023 (A.Y. 2018-19)**

DCIT Central Circle C. R. Building, Faridabad, Haryana- 121001	Vs.	Kiran Pal Singh House No. 453, Sector-9, Faridabad, Haryana PAN: AKMPP5108N
Appellant		Respondent

Assessee by	Sh. Joginder Singh, CA
Revenue by	Ms. Rajinder Kaur, CIT (DR)

Date of Hearing	04/06/2024
Date of Pronouncement	28/06/2024

ORDER

PER BENCH:

The above mentioned nine Appeals are filed by the assessee and five captioned Appeals are filed by the Department against the order of commissioner of Income Tax (Appeals)-24, ('Ld. CIT(A)' for short) pertaining to Assessment Years 2012-13 to 2017-18 dated 28/04/2023, Assessment Year 2018-19 dated 14/07/2023 Assessment Year 2019-20 dated 31/07/2023 and Assessment Year 2020-21 dated 21/08/2023.

2. Since the above Appeals are pertaining to single assessee involving identical issues, the Appeals are heard together and disposed off in this common order.

3. Brief facts of the case for the Assessment Year 2012-13 has been considered for the sake of convenience. A search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was conducted on 16/10/2019 at the residential as well as office premises of various persons including the Assessee. A notice dated 23/03/2021 u/s 153A of the Act was issued after recording the satisfaction note for reopening of case u/s 153A of the Act beyond six years and served upon the assessee require him to file his return of income in respect of the assessment year under consideration. In response, the assessee has not filed the return u/s 153A of the Act. It is found by the A.O. that the assessee had filed his return of income u/s 139 of the Act on 30/07/2012 declaring income of Rs. 12,45,980/-, therefore, notice u/s 142(1) of the Act was issued to the assessee. As the assessee has not complied with the notice, the income of the assessee was assessed u/s 153A(1) (b) read with Section 144 of the Act on total income of Rs. 1,49,85,980/- by making addition of Rs. 1,37,40,000/- u/s 69 of the Act on account of unexplained investment of the assessee. Various additions have also been made against the Assessee for Assessment Year 2013-14 to 2018-19 u/s 153A (1)(b) of the Act.

4. Aggrieved by the assessment orders for Assessment Year 2012-13 to 2018-19, the assessee preferred Appeals before the CIT(A). The Ld. CIT(A) dismissed the Appeal of the assessee for Assessment Years 2012-13, 2013-14, 2016-17 and partly allowed the Appeal for Assessment Year 2014-15, 2015-16, 2017-18 and 2018-19. Aggrieved by sustaining the additions, for A.Y 2012 -13 to 2020-21 as against the deletion of the additions, the Department of Revenue filed the Appeal for AY 2014-15, 2015-16, 2017-18 & 2018-19.

ITA No. 1860/Del/2023 (A.Y 2012-13) (Assessee)

5. Ground No. 1 and its sub grounds are regarding the addition of Rs. 1,20,00,000/- made by the A.O. by applying peak credit theory on the basis of diary found at the premises of one Sh. Ramesh Kumar Goyal. The Ld. A.O. made the aforesaid addition to the income of the assessee on account of unexplained investment/receipt on the basis of the diary seized from third person Sh. Ramesh Kumar Goyal, who was also searched u/s 132 of the Act on 16/10/2019. As per the Ld. Assessing Officer, in the said diary several entries which were named as 'KP Sector-9' and

when the said documents were confronted to Shri Ramesh Goyal, he admitted that he had done 'money lending loan committee business' transactions out of the books and 'KP Sec.9' denotes Kiran Pal Khatana, who lives in Sector-9 Faridabad. Ld. AO further alleged that, when the documents were confronted to Shri. Ramesh Kumar Goyal, not only did he lucidly and explicitly named the person involved in the business of money lending in cash, but also confessed himself being a commission agent. The Ld. AO further alleged that, during post search enquiries statement on oath was recorded and the said Ramesh Goyal specifically stated the person written as 'KP Sec.9' as 'Kiran Pal' and his phone number. The said facts narrated by Shri Ramesh Goyal in his post search statement and relevant seized documents were confronted to Shri Kiran Pal Khatana at the time of recording his statement on oath u/s 131(1A) of the Income tax Act, 1961. In response to the same, Shri Kiran Pal Khatana, admitted that he knows Shri Ramesh Goyal but denied to have entered into any kind of transaction in cash relating to lending money or receiving back in cash or in installments.

6. During the course of search operation, his a statement of Sh. Ramesh Kumar Goyal was recorded u/s 132(4) of the Act and during the post search enquiries, the said Sh. Ramesh Kumar Goyal has given his statement on oath u/s 131(1A) of the Act. Based on the statement made u/s 131(1A) of the Act coupled with the diary seized during the search conducted u/s 132 of the Act from the custody of Sh. Ramesh Kumar Goyal, the above addition has been made in the hands of the Assessee which has been confirmed by the Ld. CIT(A).

7. The Ld. Counsels for the assessee vehemently submitted that the Ld. CIT(A) has erred in confirming the addition made on the basis of a diary found at the premises of Shri Ramesh Kumar Goyal by applying peak credit theory without appreciating that the seized diary found from the premises of the 'third party' and was not in the handwriting of the assessee. The assessee has specifically denied having any transaction with Sh. Ramesh Kumar Goyal while giving statement u/s 132(4) of the Act. Apart from the same, no such alleged seized diary as copy was given to the assessee and no opportunity of cross examining of Sh. Ramesh Kumar Goyal has

been given to the assessee despite of specific request made by the assessee. Therefore, submitted that the addition made based on the diary found at the premises of 'third party' cannot be sustained.

8. Per contra, the Ld. Departmental Representative submitted that, the assessee has not explained the transaction with Sh. Ramesh Kumar Goyal and based on the diary seized in the premises of Sh. Ramesh Kumar Goyal coupled with the statement on oath u/s 131(1A) of the Act recorded from Sh. Ramesh Kumar Goyal, the A.O. has rightly made the addition, thus, sought for dismissal of the above Ground No. 1 & its sub grounds.

9. We have heard both the parties and perused the material available on record. The above additions have been made based on the diary seized from the possession of the third party i.e. Sh. Ramesh Kumar Goyal and coupled with his statement recorded during the course of post each enquiries u/s 131(1A) of the Act. The only question to be decided as to whether third party statement or entry recorded in the diary in the absence of any corroborative evidence can be ground to make addition in the hands of the assessee?

10. The legal position relating to presumption under Section 132(4A) of the Act is applicable to the person in whose possession or control, the incriminating material is found and seized. The presumption cannot be arrived based on incriminating material found from the 'third party' search but not belongs to the Assessee unless there is any corroborative evidence against the Assessee. The presumption u/s 132(4A) of the Act can be drawn against the person in whose case the search is authorized and from whose possession or control of diary or documents are found in the course of search. The said settled position of law has been laid down and reiterated in following judicial decisions:-

- i) Starptex India Pvt. Ltd. v/s DCIT (2003) 84 ITD 320 (Mum bench).
- ii) ACIT v/s Kishore Lal Balwani Rai (2007) 17 SOT 380 (Chandigarh).
- iii) Pradaap Amrutlal Runwal v/s Tax Recovery Officer, Range-3, Pune ITA No.334/PN/2013.
- iv) DCIT, Central Circle-12, Delhi v/s Yashpal Narinder Kumar ITA No.5340, 5341, 5342/ Del (2012).
- v) Sheth Akshay Pushpavandan v/s Dy. CIT (2010) 130-TTJ-42 (Ahm.).
- vi) Jai Kumar Jain v/s ACIT (2006)-99 TTJ(JP) 744.

11. It is also observed that, during the course search proceedings statement of the assessee was recorded, wherein the original documents seized from the premises of Sh. Ramesh Kumar Goyal was not confronted to the Assessee and the statement of the assessee was recorded u/s 131(1A) of the Act but not u/s 132 of the Act. The assessee has denied having any business transaction either by cash or cheque with said Sh. Ramesh Kumar Goyal. Though the authorities have heavily relied on the statement of the third party i.e. Sh. Ramesh Kumar Goyal, no opportunity of cross examination has been given to the Assessee even though the Assessee has specifically sought for opportunity to cross examine the said Sh. Ramesh Kumar Goyal vide letter dated 12/11/2020 which is placed at Page No. 77& 78 of the paper book. Further while framing the assessment in the case of Sh. Ramesh Kumar Goyal, it has been held that in view of provision of Section 278D read with Section 132(4A) of the Act, the onus was on Sh. Ramesh Kumar Goyal to substantiate the contents of the diary which could not be proved, therefore, entire addition mentioned in the diary has been made in the hands of Sh. Ramesh Kumar Goyal including the amount which is the subject matter of the present addition made in

the hands of the assessee. It is well settled law that the same income cannot be taxed twice. As the entire addition has already been made in the case of Sh. Ramesh Kumar Goyal in whose possession the incriminating documents were seized, the authorities are precluded from making the additions in the hands of the Assessee.

12. Considering the above facts and circumstances, we are of the opinion that the A.O. committed error in making addition on the basis of diary found at the premises of the 'third party'. Accordingly, the additions made by the A.O. which were confirmed by the CIT(A) are here by deleted. Thus, Ground No. 1, 1(a) to 1(d) of Assessee's Appeal for Assessment Year 2012-13 are allowed.

13. In the result, the Appeal of the Assessee in ITA No. 1860/Del/2023 is allowed.

ITA No. 1861/Del/2023 (A.Y 2013-14) filed by the assessee

14. The Ld. Counsel for the Assessee submitted that the Ground No. 1 and its sub grounds of the present Appeal have been mentioned due to oversight, therefore, not pressed the Ground No.

1(a) to 1(d). Accordingly, the Grounds No. 1, 1(a) to 1(d) of the Assessee are dismissed.

15. The Ground No. 2 of the Assessee's Appeal is regarding addition of Rs. 45,500/- made on account of unexplained expenditure u/s 69 of the Act in respect of purchase of mobile in cash.

16. Heard the parties perused the material available on record. The above said addition of Rs. 45,500/- has been sustained/restricted by the Ld. CIT(A) out of the total addition of Rs. 10,45,500/- made u/s 69 of the Act as the assessee has failed to substantiate his submission by furnishing necessary documentary evidence for the source of payment for purchase of mobile. During the First Appellate Proceedings, the assessee vide submission dated 29/04/2022 claimed that the purchase of mobile from Sky connect has been duly recorded in books of account and paid through declared source of income and also provided the ledger accounts of Sky connect which are reproduced at Page No. 28 to 32 and the said payment has been made through declared

source of income. Considering the smallness of the amount involved in the addition and also looking into the documents produced by the assessee to prove the cost of the mobile which has been shown in the statement of affairs for the year under consideration and also considering the ledger account of the Sky connect, we delete the said addition of Rs. 45,500/- by allowing Ground No. 2 of the Assessee.

17. In the result Appeal of the Assessee in ITA No. 1861/Del/2023 is partly allowed.

ITA No. 1862/DEL/2023(Assessee) and ITA No. 2038/Del/2023 (A.Y 2014-15) (Revenue)

18. The Ground No. 1 and its sub Grounds of the Assessee's Appeal are regarding addition made by the A.O. based on the diary found at the premises of third party which has been partly confirmed by the Ld. CIT(A) by applying peak credit theory.

19. The Revenue in its Ground No. 1 to 4 challenged action of the Ld. CIT(A) in restricting the addition made on account of

unexplained receipts and payment in cash from Sh. Ramesh Goyal by applying the peak credit theory.

20. We have already held in the case of the Assessee for AY 2012-13 that the addition made on the basis of diary found at the premises of third party cannot be sustained and deleted the addition made by the A.O. Since there is no change of facts and circumstances, by applying the very same findings and conclusions, we allow the Ground No.1 and its sub grounds of the Assessee.

21. Ground No. 1 to 4 of the Revenue are regarding deleting the partial addition made by the A.O. on account of unexplained receipts and payments in cash from/to Ramesh Goyal by applying the theory of peak credit.

22. In view of deleting the additions made by the A.O. based on the diary found at the premises of third party in the Assessee's Appeal, the Ground No. 1 to 4 of the Revenue's Appeal challenging the partial deletion of the addition by the Ld. CIT(A) has become infructuous, accordingly the ground No. 1 to 4 of the Revenue are dismissed.

23. In the result, Assessee's Appeal in ITA No. 1862/DEL/2023 is allowed and Revenue's appeal in ITA No. 2038/Del/2023 (A.Y 2014-15) is dismissed.

ITA No. 1863/DEL/2023(Assessee) and ITA No. 2039/Del/2023 (Revenue) (A.Y 2015-16)

24. The Ground No. 1 and its sub Grounds of the Assessee's Appeal are regarding addition made by the A.O. based on the diary found at the premises of third party which has been partly confirmed by the Ld. CIT(A) by applying peak credit theory.

25. The Revenue in its Ground No. 1 to 3 challenged action of the Ld. CIT(A) in restricting the addition made on account of unexplained receipts and payment in cash from Sh. Ramesh Goyal by applying the peak credit theory.

26. We have already held in the case of the Assessee for AY 2012-13 that the addition made on the basis of diary found at the premises of third party cannot be sustained and deleted the addition made by the A.O. Since there is no change of circumstances, by applying the very same findings and conclusions, we allow the Ground No.1 and its sub grounds of the Assessee and

dismiss the Ground No. 1 to 3 of the Revenue for having become infructuous.

27. The Ground No. 2 of the Assessee and Ground No. 4 of the Revenue are regarding the addition of Rs. 15,00,000/- made by the A.O. which has been restricted by the Ld. CIT(A) to Rs. 1,00,000/-.

28. During the course of search proceedings, certain bills were seized from the Assessee's residence where it was found that one Ms. Roma Grover purchased Fortuner car and then transferred the same to the Assessee on 18.10.2014 for Rs.8,50,000/-. Apart from the same, an amount of Rs.1,00,000/- was directly transferred by the Assessee to 'Thirty Six Automobiles Pvt. Ltd' for the said vehicle. Further, it was also found that the Sh. Digvijay Khatana, son of the Assessee, has purchased a Maruti vehicle for Rs.5,50,000/- as evident from seized documents. As the Assessee could not offer any explanation during the course of assessment proceedings, an addition of Rs.15, 00,000/- was made by the AO on account of unexplained expenditure u/s 69 of the Act.

29. During the appellate proceedings the Ld. CIT(A) restricted the addition to Rs. 1,00,000/- for advance paid for vehicle booking and deleted the rest of the addition in following manners:-

“The appellant submitted during the appellate proceedings that Innova Car was booked by giving an advance of Rs.1,00,000/- in cash on 11.07.2014 to M/s Thirty Six Toyota dealer and same is recorded in the books of account. The receipt issued by M/s Thirty Six Toyota dealer was also found and seized at Page 11 of A-1. The appellant dropped the idea for purchase of the said Car and accordingly requested to M/s Thirty Six Toyota dealer to transfer the booking in the name of Mrs. Roma Grover w/o Shri Sanjeev Grover R/o House No.1232, Sector-14, Faridabad (family friend) who was also interested in buying the said vehicle in order to avoid the waiting time. Accordingly, the appellant got the refund of Rs.1,00,000/- from M/s Thirty Six Toyota on 17.10.2014 through cheque and the said proceeds have been credited to the bank account of the appellant maintained with HDFC Bank Account No.06191000034512. It was contended that AO presumed on the basis of receipt for advance booking, the appellant has purchased the said vehicle and made the addition. Further, it was submitted that son of Shri Digvijay Singh had purchased the Maruti Gypsy after raising vehicle Joanom HDFC Bank. The EMIs of Rs.16,063/- were also paid regularly by the son of the assessee from his account only.

After looking into facts and circumstances of the case, it is observed that the payment of Rs.1,00,000/- has been made by the appellant in cash to book a car from M/s Thirty Six Toyota. The said booking was transferred in the name of Smt. Roma Grover accepting a cheque from her of Rs.1,00,000/- on 17.10.2014. The said car was registered in her name as evident from the RC registration certificate and she has taken vehicle loan from the Canera Bank. There is nothing on record to show that the said vehicle was transferred back to the appellant. However, the appellant has failed to explain the source of cash

payment of Rs.1,00,000/- made by him for the booking of the above car. Accordingly, the addition made by the AO is restricted to Rs.1,00,000/. Further, it is observed that the transactions of Rs.5,50,000/- on account of purchase of Maruti car pertains to Sh. Digvijay Singh, son of the appellant who is a separate assessee (PAN FYZPS3658Q). Separate proceedings u/s 153C of the Act in the case of Sh. Digvijay Khatana have been initiated by the same AO .It is not the case of the AO that payment for the above transaction pertaining to Sh. Digvijay Khatana has been made by the appellant. In the circumstances, the AO is directed to consider above transaction while making assessment in his case u/s 153C of the Act Therefore, in view of the above discussion, the addition of Rs.5,50,000/- made by the AO is hereby deleted in the case of the appellant. Accordingly ground of appeal no.5 is hereby partly allowed.

30. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has given detailed findings and allowed the relief of Rs. 14,00,000/- to the Assessee which requires no interference at the hands of the Tribunal. Further submitted that, assessee has clarified that the assessee has paid the said advance booking of Rs. 1,00,000/- to Thirty Six Toyota Dealer and the same is recorded in the books of account. It was also informed to the Department that the assessee has dropped the idea of purchase of the said vehicle and requested the dealer to transfer the booking in the name of M/s Roma Grover wife of Sanjeev Kumar who was also interested to buy the said vehicle which has been done in order to avoid the waiting time. It is

found that the assessee has also got the refund of Rs. 1, 00,000/- through cheque which has been credited to the HDFC Bank account of the Assessee which can be corroborated from the seized document marked as Page A-1/12 where the application of such transfer of booking of car was made by the assessee and also from the ledger account where the advance of purchase of car have been recorded which is placed at Page No. 27 of the Paper Book. Considering the above facts and circumstances we delete the addition of Rs. 1,00,000/- sustained by the CIT(A) on account of advance booking.

31. In so far as deletion of the addition of Rs. 14,00,000/- is concerned, it is seen from the record that the Ld. CIT(A) while deleting the addition observed that the transaction of Rs. 5,50,000/- on account of purchase of Maruti Car pertaining to Sh. Digvijay Singh son of the Assessee who is a separate assessee and separate proceedings u/s 153C of the Act has been initiated by the A.O. It is not the case of the A.O. that payment of the above transaction pertaining to Sh. Digvijay Khatana has been made by the Assessee, therefore, in our considered opinion, the Ld. CIT(A)

rightly directed to consider the said transaction while making assessment in the case of sh. Digvijay Khatana u/s 153C of the Act and deleted the addition of Rs. 5,50,000/- which requires no interference.

32. Further, in so far as addition of Rs. 8,50,000/- is concerned, the said amount has been paid by Ms. Roma Grover who has purchased the car on 10/07/2014, therefore, the Ld. CIT(A) has not sustained the said addition in the hands of the Assessee. It is the Ground of the Department that the additional evidence has been field by the Assessee but the Ld. CIT(A) has not called for the Remand Report. On going through the order of the Ld. CIT(A) no such mentioning of additional evidence is forth coming and the same has not been argued before us. Therefore, we find no merit in the said ground of the Department. Thus, in our considered opinion, the Ld. CIT(A) has committed no error in deleting the addition of Rs. 14,00,000/-, accordingly, the Ground No. 2 of the Assessee is allowed and Ground No. 4 of the Revenue is dismissed.

33. The Ground No. 5 of the Revenue is against deleting the addition of Rs. 20,00,000/- made on account of interest income under the head of income from other sources.

34. During the course of search proceedings, a manual registers containing details of loans given by the Assessee were found and seized from the Assessee's residence. During the course of assessment proceedings, it was noted that the Assessee has advanced amount of Rs. 50,00,000/- to M/s Supra Finance during the year under consideration from his bank account. The Assessee was asked to explain the same. In response, the Assessee submitted before the A.O. that he extended interest free loan of Rs. 50, 00,000/- through banking channel. It was observed by the A.O. that the Assessee had been earning interest @2% on cash loans; therefore, Assessee was likely to earn interest on bank loans also. Thus, the amount of Rs. 20, 00,000/- on account of interest was added by the A.O. to the income of the Assessee under the head 'Income from other sources' on presumption basis.

35. The Ld. CIT(A) deleted the said addition in following manners:-

“The appellant submitted during the appellate proceedings that he advanced Rs.50,00,000/- to M/s Supra Finance mentioned on Annexure A-3/ Page 2 was given through RTGS from SBI, Faridabad Saving Account No.55005678494. The said advance was accounted for in the regular books of account and out of declared bank account of the appellant. The appellant in the assessment proceedings filed the statement of affairs and bank statements on which the said transaction was reflected. The appellant further explained that the appellant has charged interest amounting to Rs.3,64,380/- in the assessment year 2014-15 and Rs.4,74,660/- received interest in the financial year 2014- 15 relevant to assessment year 2015-16 which is duly shown in the computation of income and paid the taxes due thereon. It was submitted that interest rate of 2% was nowhere mentioned in any of the seized document and the AO has made addition of Rs.20,00,000/- purely based upon presumption and without any basis.

After looking into facts and circumstances of the case, it is observed that the appellant had given loan of Rs.50,00,000/- to M/s Supra Finance through his bank account received the same back in his bank account. It was explained during the appellate proceedings that the appellant has charged interest amounting to Rs.3,64,380 for the A.Y. 2014-15 and Rs.4,74,660/- for the A.Y. 2015-16 which is duly shown in the computation of income. Moreover, The AO has made the addition of Rs.20,00,000/- on account of interest income earned @2% on such loan on presumptive basis. There is no material available on record to support the rate of interest applied. In the absence of supporting evidence, such addition made on presumptive basis can not be sustained. Therefore, addition of Rs.20,00,000/- is hereby deleted. Accordingly, ground of appeal no. 6 is hereby allowed.

36. Considering the fact that the said loan given by the Assessee to Supra Finance has been received the same back in his bank account and the Assessee has charged the interest of in the AY 2014-15 and 2015-16 which was duly shown in the computation of income and as the A.O. made the addition of 20,00,000/- on account of interest income earned @2% on presumptive basis without there being any material available on record to support the said rate of interest, we find no reasons to interfere with the finding of the Ld. CIT(A) in deleting the addition. Accordingly, the Ground No. 5 of the Revenue is dismissed.

37. In the result, Appeal of the Assessee in ITA No. 1863/Del/2023 is allowed and Appeal of the Revenue in ITA No. 2039/Del/2023 is dismissed.

ITA No. 1864/DEL/2023(Assessee) (A.Y 2016-17)

38. The Ground No. 1 and its sub Grounds of the Assessee's Appeal are regarding addition made by the A.O. based on the diary found at the premises of third party which has been partly confirmed by the Ld. CIT(A) by applying peak credit theory.

39. We have already held in the case of the Assessee for AY 2012-13 that the addition made on the basis of diary found at the premises of third party cannot be sustained and deleted the addition made by the A.O. Since there is no change of facts and circumstances, by applying the very same findings and conclusions, we allow the Ground No.1 and its sub grounds of the Assessee.

40. The Ground No. 2 in the Assessee's Appeal is regarding the addition of Rs. 22,00,000/- on account of unexplained investment made u/s 69 of the Act by treating the same as unexplained investment of the Assessee and Rs. 2,25,000/- on account of interest on unexplained investment.

41. During the course of assessment proceedings, upon perusal of seized documents Annexure-A1/ 73, it was observed by the A.O. that the Assessee had advanced a loan of Rs. 22,00,000/- to Sh. Beju Thakur during the year under consideration. The Assessee could not furnish any satisfactory explanation in respect of such loan before the A.O. Therefore, the addition of Rs. 22,00,000/- was made by the A.O. on account of unexplained loan u/s 69 of the Act

and also added Rs. 2,25,000/- on account of interest income, which has been confirmed by the Ld. CIT(A).

42. The Ld. Counsel for the Assessee vehemently submitted that the addition of Rs. 22,00,000/- made on account of unexplained investment based on the loose paper found during the course of search from the Assessee and Rs. 2.25 lacs made on account of interest on presumption basis on the said investment. The addition has been made purely on surmise and conjunction based on the loose sheets, wherein certain amounts have been jotted and there is no corroborative material/evidence on record to conclude that such document has materialize into transaction giving rise to income of the Assessee which had not been disclosed in the regular books of accounts of the Assessee. The ld. Counsel relying on the several judicial precedents, submitted that the additions made based on the dumb document requires to be deleted.

43. The Departmental Representative relying on the orders of the Lower Authorities sought for dismissal of the Ground No. 2 of the Assessee's Appeal.

44. We have heard the parties perused the material available on record. During the course of the search, a loose sheet has been found and seized which was marked as A-1/73 wherein certain amounts have been jotted. The said loose sheet is reproduced for the sake of convenience as under:-

ENP Wad.
27/2/2019 (53)
112715 - 7
11116 - 15
22
14m - 14000
22 BM - 5,72,000
Total - 27.56 Rel.
March + May
1.25400
Total - 29.11

45. The Ld. A.O. on going through the above loose sheet inferred that the Assessee had advanced the loan of Rs. 22,00,000/- to Sh. Beju Thakur during the year under consideration and earned interest/commission of Rs. 2,25,000/-. It was the case of the

Assessee that Assessee's father is a social worker and several persons of nearby area use to visit their house for social work and the document above referred might have been left by some persons.

46. By looking into the above document, the nature of the transaction whether the same is receipt or payment cannot be decided, no address of any person have been mentioned, document is unsigned, no name of the Assessee as well as his family members have been mentioned, the document claimed to be not in the hand writing of the Assessee or his family members. The said loose documents does not indicate that whether it is an asset, liability, loan or advance or any other detail. When the dumb document like the above loose sheet of paper are recovered and if the Department wants to rely on the same, the onus lies on the Department to collect cogent evidence to corroborate the notings in the said loose sheet. In the present case, the A.O. has not corroborated the noting of the loose sheet with any documentary evidence and brought any material on record to prove conclusively that noting on the seized papers reveal the unaccounted investment in loan made by the Assessee. Further there is no circumstantial evidence in the farm

of unaccounted cash loan outside the books of accounts was found during the search, as such, the department cannot infer against the Assessee and make the addition.

47. The Hon'ble Supreme Court in the case of K. P. Varghese vs. ITO (1981) 131 ITR 597 (S.C) held that fictional receipt cannot be deemed to be a receipt in the absence of any cogent material to support the factum of actual receipt.

48. The Hon'ble Jurisdictional High Court in the case of CIT, Delhi Central-II Vs. D. K. Gupta 174 Taxman 476 upheld the order of the Tribunal wherein it was held that ad-hoc/dumb documents without any corroborative evidence/finding that the alleged documents have materialized into transaction cannot be deemed to be the income of the Assessee. The relevant part of the judgment is reproduced herein under:-

“The tribunal returned a finding of fact that there is no corroborative or direct evidence to presume that the notings / jottings had materialized into transactions giving rise to income not disclosed in the regular books of accounts.

4. Consequently, the tribunal upheld the findings of the Commissioner of Income-tax (Appeals) and agreed with the view taken by the latter that the assessee was liable to tax only on those receipts which had been proved to be income in the hands of the

recipient. As a result thereof, the tribunal found no reason to interfere with the findings recorded by the Commissioner of Income-tax (Appeals) on the ground that the same were based on valid and cogent materials placed on record and also produced before the Assessing officer during the course of assessment proceedings. The tribunal also noted that all the evidence, materials, explanations were furnished before the Assessing Officer and it is on the basis of such material that the Commissioner of Income-tax (Appeals) had arrived at the conclusion that no addition was warranted on the basis of the seized diaries.

5. We have examined the impugned order in detail and have also heard the counsel for the parties and we find that the issues sought to be raised before us are purely issues of fact. The tribunal, being the final fact finding authority, has returned a certain set of facts. We find no perversity in such findings and, consequently, no question of law, what to speak of a substantial question of law, arises for our consideration.

The appeal is dismissed.”

49. Further, the Hon'ble Supreme Court in the case of Common Cause v. Union of India (2017) 77 taxmann.com 245 (394 ITR-220) laid down the following principles:-

(i) Entries in loose papers/ sheets are irrelevant and not admissible under section 34 of the Evidence Act. It is only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible;

(ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any

person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability;

(iii) The meaning of account book would be spiral note book/ pad but not loose sheets;

(iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another,

v) Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are

correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts;

(vi) The court has to be on guard while ordering investigation against any important Constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.

50. Considering the above facts and circumstances and the judicial precedents (supra), in the absence of any corroborative evidence, the loose sheet seized during the course of search from the premises of the Assessee which is nothing but a dumb document which did not contain full details about the dates, parties name, absence of signature and in the absence of any corroborative material, could not have been relied by the authorities below. Accordingly, finding merit in Ground No. 2 of the Assessee, we delete the addition of Rs. 22,00,000/- made on account of unaccounted investment and also delete Rs. 2,25,000/- made on

account of interest income. Accordingly, Ground No. 2 of the Assessee is allowed.

51. Ground No. 3 of the Assessee is regarding addition of Rs. 86,000/- made on account of purchase of spectacle and mobile phone as unexplained expenditure u/s 69 of the Act.

52. Based on the seized document marked at A-1/15 placed at Page No. 10 & 11 of the Paper Book, the Ld. A.O. made addition of Rs. 50,000/- and 36,000/- on account of unexplained expenditure u/s 69 of the Act holding that the Assessee has not offered any explanation during the course of assessment proceedings to prove the source of the same. During the course of the appellate proceedings, the Assessee contended that payment of purchase of the said items have been made from the cash in hand shown in the books of the Assessee and recorded in the statements of assets. The Assessee has also produced the copy of the ledger account of mobile phone and Drishti Eye Care in respect of spectacles which are produced at page No. 8 & 9 of the Paper book and the statement are produced in the Paper Book at Page No. 14 & 15 of the Paper

Book. Though the above documents were well within record of the Ld. CIT(A), the Ld. CIT(A), has not made any comment on those documents. Considering the fact that the above cash in hand was very well recorded in statement of affairs and the ledger accounts of the vendors have been provided to the Lower Authorities, the addition of Rs. 86,000/- made u/s 69 of the Act is hereby deleted. Accordingly, the Ground No. 3 of the Assessee is allowed.

53. In the result appeal in ITA No. 1864/Del/2023 is allowed.

ITA No. 1865/Del/2023 (Assessee) ITA No. 2040/Del/2023 (Revenue) (A.Y 2017-18)

54. The Ground No. 1 and its sub Grounds of the Assessee's Appeal are regarding addition made by the A.O. based on the diary found at the premises of third party which has been partly confirmed by the Ld. CIT(A) by applying peak credit theory. We have already held in the case of the Assessee for AY 2012-13 that the addition made on the basis of diary found at the premises of third party cannot be sustained and deleted the addition made by the A.O. Since there is no change of facts and circumstances, by

applying the very same findings and conclusions, we allow the Ground No.1 and its sub grounds of the Assessee.

55. Ground No. 2 is regarding the addition of Rs. 2,25,000/- and Rs. 5, 72,000/- made on account of interest income on the basis of loose sheets pertaining to one Sh. Dharam Chand and Sh. Beju Thakur during the assessment year 2016-17.

56. Based on the above referred very same loose sheets, the addition has been made for AY 2016-17 and the issue has been dealt in detail while deciding Ground No. 2 of Assessee's appeal in ITA No. 1864/Del/2023 and held that in the absence of any corroborative evidence, the loose sheet found during the course of search from the premises of the Assessee which is nothing but a dumb document, which did not contain full details about the dates, parties name, absence of signature and in the absence of any corroborative material, could not have been relied by the authorities below and deleted the addition. Since, there is no change in facts and circumstances by applying the very same finding and the conclusion, we delete the addition of Rs. 2,25,000/- and Rs. 5,72,000/- by allowing Ground No. 2 of the Assessee's Appeal.

57. Ground No. 1 to 4 of the Revenue are regarding deleting the partial addition made by the A.O. on account of unexplained receipts and payments in cash from/to Ramesh Goyal by applying the theory of peak credit.

58. In view of deleting the additions made by the A.O. based on the diary found at the premises of third party in the Ground No. 1 of the Assessee's Appeal, the Ground No. 1 to 4 of the Revenue's Appeal challenging the partial deletion of the addition by the Ld. CIT(A) have become in-fructuous, accordingly the ground No. 1 to 4 of the Revenue are dismissed.

59. In the result, Appeal of the Assessee in ITA No. 1865/Del/2023 is allowed and Appeal of the Revenue in ITA No. 2040/Del/2023 is dismissed.

ITA No. 2588/Del/2023 (Assessee) & ITA No. 2815/Del/2023 (Revenue) (A.Y 2018-19)

60. The Ground No. 1 and its sub Grounds of the Assessee's Appeal are regarding addition of Rs. 41,65,110/- made by the A.O. based on the diary found at the premises of third party which has been partly confirmed by the Ld. CIT(A) by applying peak credit theory.

61. We have already held in the case of the Assessee for AY 2012-13 that the addition made on the basis of diary found at the premises of third party cannot be sustained and deleted the addition made by the A.O. Since there is no change of facts and circumstances, by applying the very same findings and conclusions, we delete the addition and allow the Ground No.1 and its sub grounds of the Assessee.

62. Ground No. 2 is regarding the addition of Rs1,25,000/- made on account of interest income on the basis of loose sheets. Based on the very same loose sheets, the addition has been made for AY 2016-17 and the issue has been dealt in detail while deciding Ground No. 2 of Assessee's appeal in ITA No. 1864/Del/2023 and deleted the addition. Since, there is no change in facts and circumstances, by applying the very same finding and the conclusion; we delete the addition by allowing Ground No. 2 of the Assessee's Appeal.

63. Ground No. 1 to 4 of the Revenue are regarding deleting the partial addition made by the A.O. on account of unexplained

receipts and payments in cash from/to Ramesh Goyal by applying the theory of peak credit.

64. In view of deleting the additions made by the A.O. based on the diary found at the premises of third party in the Assessee's Appeal, the Ground No. 1 to 4 of the Revenue's Appeal challenging the partial deletion of the addition by the Ld. CIT(A) became infructuous, accordingly ground No. 1 to 4 of Revenue are dismissed.

65. In the result, Appeal of the Assessee in ITA No. 2588/Del/2023 is allowed and Appeal of the Revenue in ITA No. 2815/Del/2023 is dismissed.

ITA No. 2589/Del/2023 (Assessee) (A.Y 2019-20)

66. Ground No. 1 in Assessee's appeal is regarding addition of Rs. 22,10,000/- made on account of the loan extended in cash from unexplained source of income made on the basis of document seized during the search marked as A-1/76 and Ground No.2 is regarding the addition of Rs. 1,78,770/- made on account of interest/commission earned by the Assessee on the loan extended from unexplained sources of income

67. Brief facts of the case are that, a search and seizure operation u/s 132(1) was carried out in the case of the Assessee on 16/10/2019. The Ld. A.O. observed that the loan of Rs. 22,10,000/- along with interest/commission is recorded in the documents found and seized during the course of search proceedings from the Assessee. The Ld. A.O. observed that the onus lies on the Assessee to give satisfactory explanation of the transactions recorded in the seized documents as per the provision of Section 132(4A)/ 292C of the Act, accordingly, the A.O. made the addition which has been confirmed by the Ld. CIT(A).

68. The identical issue regarding the addition based on the loose sheet has been already discussed in detail and deleted the addition for A.Y 2016-17 in ITA No. 1864/Del/2023 while dealing with Ground No. 2 of the Assessee. By relying on the very same adjudication and the conclusion, we delete the above addition of Rs. 22,10,000/- and Rs. 1,78,770/- made by the A.O. on account of unexplained loan and on account of interest/commission earned by the Assessee. Accordingly, the Ground No. 1 & 2 of the Assessee are allowed.

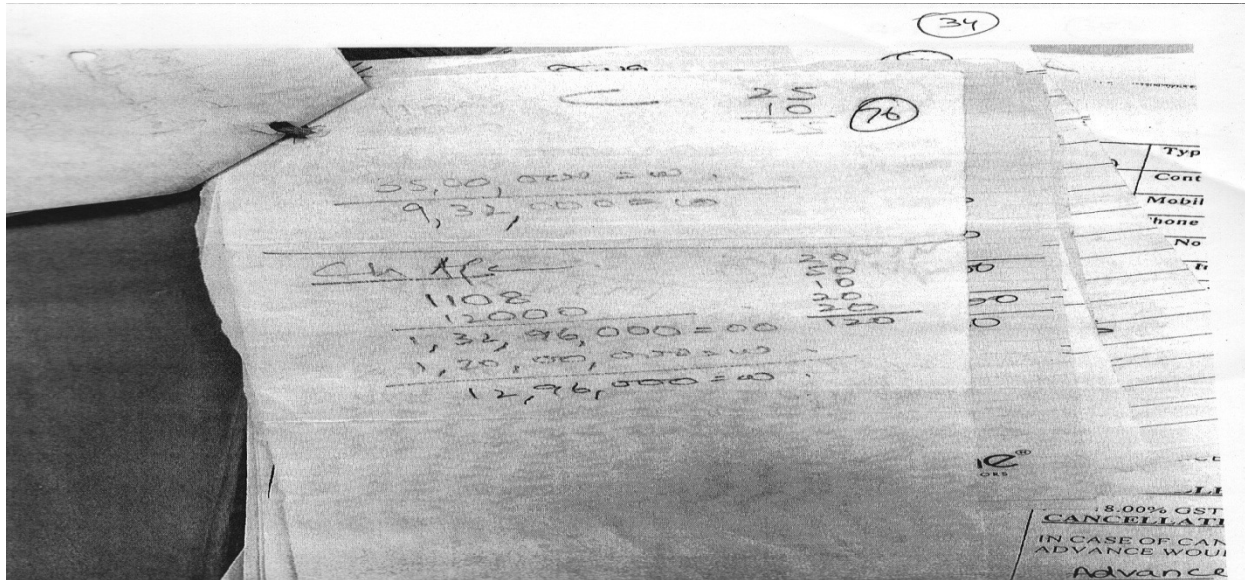
69. Ground No. 3 of the Assessee is regarding the addition of Rs. 44,32,000/- made by the A.O. u/s 69 of the Act on the basis of the loose sheet marked as A-1/76 seized during the search

70. The Ld. Counsel for the Assessee submitted that the document marked as A-1/76 seized during the search had certain amount jotted and the A.O. presumed that the Assessee made payment of Rs. 44,32,000/- for the purchase of Plot No. 9A NIT, Faridabad, in addition to Rs. 1,32,96,000/- as consideration mentioned in the sale deed. Further submitted that, nowhere in the seized document the figure of Rs. 44,32,000/- has been mentioned. The A.O. erroneously made the presumption which ultimately resulted in the addition which has been confirmed by the Ld. CIT(A), which requires to be deleted.

71. Per contra, the Departmental Representative relied on the orders of the Lower Authorities.

72. Heard and perused. The above addition has been made based on the loose slips found and seized during the course of the search which has been marked as A-1/ produced at page No. 34 of the

Paper Book. For the sake of convenience, the seized document is reproduced as under:-



73. From the perusal of the above seized document there are certain amounts have been jotted and there is no mention of the alleged amount of 'Rs. 44,32,000/-' further while making the addition, the A.O. presumed the land area of 1108 sq. ft. has been paid the amount @ 4000/- per sq. ft. and made the addition based on the said loose sheet without there being any corroborative evidences. The identical issue regarding the addition based on the loose sheet has been already discussed in detail and deleted the addition for A.Y 2016-17 in ITA No. 1864/Del/2023 while dealing with Ground No. 2 of the Assessee. By relying on the very same

adjudication and the conclusion and applying the said ratio, we delete the above addition of Rs. 44,32,000/- made by the A.O. on account of unexplained loan by allowing Ground No. 3 of the Assessee.

74. Ground No. 4 is regarding the addition of Rs. 1,07,24,750/- made on account of unexplained investment in purchase of jewellery .

75. During the course of search proceedings, various documents were found and seized from the Assessee. On the perusal of the same, it was found that the Assessee has purchased various jewellery items on 27.12.2018 for Rs. 1,07,24,720/-. The Assessee could not explain source of acquisition of the same. It was claimed by the Assessee that Assessee's father has given 1.5 kg of gold as gift to the Assessee. To substantiate the said claim, an affidavit of Assessee's father has been filed, but not produced his father before the A.O. Thus, the A.O. was of the opinion that the Assessee has failed to substantiate the contents of the affidavit of father of the assessee in respect of gift of gold of 1.5 kg. Accordingly, the Ld. A.O.

made addition of Rs. 1,07,24,720/- on account of unexplained jewellery u/s 69 of the Act.

76. During the course of appellate proceedings, it was reiterated by the Assessee that the jewellery found at the time of search proceedings and documents seized was out of the gift of 1.5 kg of gold by Assessee's father and remaining jewellery were received by the Assessee and his family members on various occasion such as marriage. It was also contended that the old jewellery has been replaced and exchanged.

77. The Ld. CIT(A) while rejecting the contention of the Assessee held as under:-

“The fact of the case and material on record has been gone through. On-going through the assessment order (page No. 11/12) it is found that various documents were found and seized wherein details of jewellery purchased on 27.10.2018 for Rs. 1,07,24,720/- have been clearly recorded. Such documents give complete details of nature of jewellery item purchased, their weight, rate, labour charges and total amount. On the perusal of the same, it is observed that these documents are not in respect of replacement/exchange of old jewellery against new jewellery items. It is clearly a case of purchase of new jewellery as total amount consists of cost of the value of the metal alongwith labour charges. If it would have been the case of exchange of old jewellery against new jewellery, conversion charges should have been recorded

in such bills, found and seized at the premises of the appellant. Therefore, the explanation offered in this respect during the assessment proceedings/appellant proceedings has been found without any merit. The appellant could not produce his father before the AO. Therefore, contents of the affidavit have remained verified purchased various jewellery items of Rs. 1,07,24,720/- on 27.10.2018 during the year under consideration. The appellant has failed to explain source of purchase of such jewellery items. The onus was upon the appellant to explain such transactions of purchase of jewellery as found recorded in the seized documents as per provision of section 132(4A)/292C of the Act. The appellant has failed to discharge onus in this respect. In this circumstances, there is merit in the addition made by AO of Rs. 1,07,24,720/-. The same is hereby confirmed u/s 69/69A of the Act. Ground of Appeal No. 8 is hereby dismissed.”

78. The Ld. Counsel for the Assessee made detailed submissions regarding the above addition which is reproduced as under:-

“(iii) it is submitted that the Ld. AO has made the addition and further confirmed by the Ld. CIT(A) on account of jewellery on the basis of slips/ parchis were found during the course of search The Ld. AO in his order vide Para 8.1, has mentioned the page No. and description, weight and applied estimated rate and worked out the cost of jewellery. The Ld. AO has taken the figures twice in some cases, the return items have also been considered and the working is not correct. In Page No.A-1/78, (Page No.35 of PB) the figures have been Rs. 19,08,547/- whereas the Ld. AO incorporated Rs.28,08,547/-. On page No.A-1/77, (Page No.36 of PB) the same amount of Rs.28,09,125/- have taken twice and including in page No.78 also. On page No.A-1/22, (Page No.37 of PB) the return figure have also been incorporated amounting to Rs. 1,08,269/-, Rs. 1,35,478/- and Rs.1,16,929/-. Similarly on page No.A-

1/68, (Page No.38 of PB) the figure of Rs.53,625/- has been included twice as the same figure is part of the figure of Rs. 66,702/- as reconciled hereunder:-

<i>Page Nos.</i>	<i>Figures shown in the seized documents</i>	<i>Figures estimated by Ld. A.O.</i>	<i>Difference</i>	<i>Explanation</i>
<i>A-1/78 (Page No. 35 of PB)</i>	<i>19,08,547</i>	<i>28,09,125</i>	<i>9,00,578</i>	<i>As per seized document amount mentioned was 19,08,547/- whereas the A.O adopted 28,09,125</i>
<i>a-1/77 (Page No. 36 of PB)</i>	<i>-</i>	<i>28,09,125</i>	<i>28,09,125</i>	<i>Repetition of same figure as shown on page No. A-1/78</i>
<i>A-1/22 (Page No. 37 of PB)</i>	<i>34.380 grams return</i>	<i>1,08,269</i>	<i>1,08,269</i>	<i>Return items have been considered while estimating the addition</i>
<i>A-1/22 (Page No. 37 of PB)</i>	<i>43.020 grams return 37.130 grams return</i>	<i>1,35,478 1,16,929</i>	<i>1,35,478 1,16,929</i>	<i>Returns items have been considered while estimating the addition.</i>
<i>a-1/68 (Page No. 38 of PB)</i>	<i>53,625</i>	<i>53,625+66,702=1,20,327</i>	<i>53,625</i>	<i>Rs. 53,625/- included in the figure of Rs. 66,702/- of the A.O. estimation order</i>
			<i>41,24,004</i>	

After considering these differences, the value left is only Rs.66,01,872/-(10724720-(900578+2808547+108269+135478+116929+53625)). As per the slips found the value of jewellery was approximately Rs.66,01,872/-. The assessee had replaced and exchanged the jewellery as is evident from the pages mentioned in the assessment order. Further, the list of items mentioned at page 24,23,69 and 68 (Page No.39 to 41 of PB) are noting but the list of jewellery available with

the family members which was prepared to know what jewellery needs to be replaced with new jewellery since all these sets, jewellery were old fashioned and needed replacement The assessee had only purchased jewellery of Rs.5,00,000/- in 2019 from M.S. Diamonds.

It is humbly submitted that during the course of search at the residential premises, the jewellery found from the possession of the assessee and was got valued of which details are as under:-

<i>Gold weight (gross weight in grams)</i>	<i>1622.51</i>
<i>Gold weight (Net weight in grams)</i>	<i>1522.706</i>
<i>Diamond weight (in carat)</i>	<i>131.82</i>
<i>Gold value</i>	<i>52,14,167/-</i>
<i>Diamond value</i>	<i>11,27,272/-</i>
<i>Silver</i>	<i>38,859/-</i>
<i>Total value</i>	<i>63,80,298/-</i>
<i>Jewellery seized</i>	<i>14,19,342/-</i>

It is pertinent to mention here that the total jewellery including diamond were found at Rs.63,80,298/- the Ld. AO made addition of Rs. 1,07,24,720/- in the year under consideration on the basis of seized and Rs.63,80,298/- in the AY 2020-21 on the basis of jewellery actually found at the time of search.

The Ld. CIT(A) has wrongly presumed and assumed that jewellery has been purchased for Rs. 1,07,24,720/- during the year under consideration ignoring the fact that during the course of search only jewellery of the value of Rs.63,80,298/- was found and no purchases were made. The items found have been further valued by the Approved Valuer wherein the valuation report description of

jewellery has been given and each item are matched with the slips found during the course of search. The seized slips found in respect of jewellery in possession of the assessee on account of list of exchange of jewellery. The Ld. CIT(A) has on wrong facts confirmed the addition without appreciating the fact that jewellery found during search is the same and no fresh purchase have been made. Copy of the valuation report is submitted and is marked as page No. 42 and 43 of PB.”

79. Per contra, the Departmental Representative by relying on the findings and conclusion of the Lower Authorities sought for dismissal of Ground No. 4 of the assessee.

80. We have heard the parties perused the material available on record. It is the case of the Assessee that the A.O. has taken the figures twice in some cases and return items have also been in cooperated and included twice and not properly made the working.

The Ld. Counsel has reconciled the jewellery in following manners:-

<i>Page Nos.</i>	<i>Figures shown in the seized documents</i>	<i>Figure s estima ted by Ld. A.O.</i>	<i>Diff ere nce</i>	<i>Explanation</i>
<i>A-1/78 (Page No. 35 of PB)</i>	<i>19,08,547</i>	<i>28,09,125</i>	<i>9,00,578</i>	<i>As per seized document amount mentioned was 19,08,547/- whereas the A.O adopted 28,09,125</i>
<i>a-1/77 (Page No. 36 of PB)</i>	<i>-</i>	<i>28,09,125</i>	<i>28,09,125</i>	<i>Repetition of same figure as shown on page No. A-1/78</i>
<i>A-1/22 (Page No.</i>	<i>34.380 grams return</i>	<i>1,08,269</i>	<i>1,08,269</i>	<i>Return items have</i>

37 of PB)				<i>been considered while estimating the addition</i>
A-1/22 (Page No. 37 of PB)	43.020 grams return 37.130 grams return	1,35,478 1,16,929	1,35,478 1,16,929	<i>Returns items have been considered while estimating the addition.</i>
a-1/68 (Page No. 38 of PB)	53,625	53,625+66,702=1,20,327	53,625	<i>Rs. 53,625/- included in the figure of Rs. 66,702/- of the A.O. estimation order</i>
			41,24,004	

81. As the per the Ld. Counsel, after the above reconciliation the value left is only Rs. 66,01,872/- (10,72,4720-900578+2808547+135478+116929+53625). Further contended that the Assessee has replaced and exchanged the jewellery and some of the jewelries are belongs to family members. The Assessee has made detailed submissions and contended that the value of total jewellery including diamond found during the search worth at Rs. 63,80,298/-, but the A.O. made addition of Rs. 1,07,24,720/- in the year under consideration. Considering the above facts and circumstances, we are of the opinion that it is just and proper to remand the matter to the file of the A.O. for considering the reconciliation made by the Assessee and also to consider the explanation given by the Assessee and decide the issue afresh. Accordingly, the issue involved in Ground No. 4 of the Assessee's

Appeal is remanded to the file of the A.O. for de-novo adjudication with a direction to consider contentions and reconciliation made by the Assessee and pass fresh order. Accordingly Ground No. 4 of the Assessee is partly allowed for statistical purpose.

82. Ground No. 5 is regarding addition of Rs. 27,17,000/- made on account of unexplained marriage expenses. During the course of search proceedings, certain documents were found and seized at the premises of the Assessee reflecting various expenses in relation to marriage of his daughter for Rs. 27,17,000/-. Such documents contained transaction or advance payments through cash/cheque. As per the A.O. the assessee has not given any satisfactory explanation regarding source of such payments, thus the A.O. made addition of Rs. 27,17,000/-, which has been confirmed by the Assessee.

83. The Ld. Counsel for the Assessee made following submissions:-

“As per seized document A-1/34 (Page No.44 of PB) dated 15.09.2018 amount of Rs.2,34,000/- to photographer (Arjun Color Lab) have been mentioned. It was clarified before the lower authorities that actually the payment of Rs.2,41,000/- was made partly through cheque and partly in cash which has recorded in the

statement of affairs. The Ledger copy showing the details of the payments to the said person is enclosed and marked as page No.45 of PB. As per seized document A-1/66 (Page No.46 of PB) amount of Rs.3,00,000/- plus taxes have been mentioned against FNP Wedding & Events India Pvt. Ltd. It was clarified before the lower authorities that actually the payment of Rs.5,22,000/- against the tax invoice received from the said company.

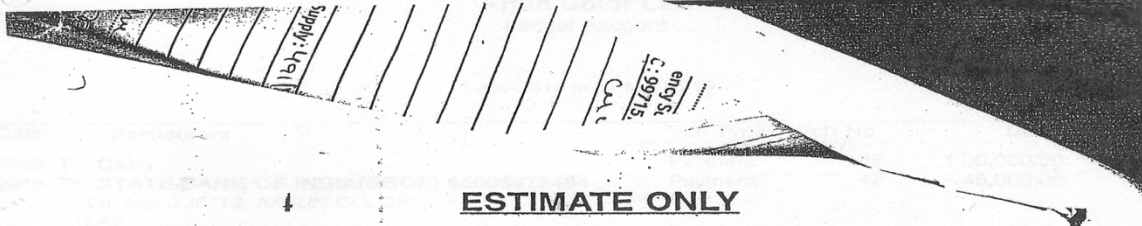
Entire payments have been made through banking channels from his saving bank account maintained with Axis bank. The said payments have been recorded in the statement of affairs. The Ledger copy showing the details of the payments to the said person and copy of the bank account are enclosed and marked as page No.47 to 64 of PB and statement of affairs is marked as Page No. 65 and 66 of PB.”

84. Per contra, the Departmental Representative relied on the findings of the Lower Authorities and sought for dismissal of the Ground No. 5 of the Assessee.

85. Heard and perused. During the course of the search, certain pages related to marriage expenses were found and seized. As per the A.O., the said pages reveals that the Assessee took the quotation from management companies for marriage of his daughter for which advance payments were for cheque and cash as well. The said documents were marked as A1/34 and A1/66 which are reproduced as under:-

A-1/34

44



ESTIMATE ONLY

Arjun
COLOR LAB

Luxury Wedding Photography
1 - K/32A, (KALYAN SINGH CHOWK)
N. I. T. FARIDABAD
[M] : 9810802105, 9310802105
W.: www.facebook.com/arjunlab

Name : _____

Addr. : _____

[M] : _____

34

44

Total - 242000/-	
- 11000/-	1 Drone
- 12000/-	1 video or marriage
<hr/>	
219000/-	
+ 15000/-	Album Extra (25 sheets)
<hr/>	
234000/-	
<hr/>	
Advance - 100000/-	
+ 38000/-	
<hr/>	
138000/-	
<hr/>	
Bal -> 96000/-	
- 50000/-	15/09/2018
<hr/>	
46000/-	

NOTE :

- * Our responsibility ceases if delivery of data (Photos or videos) not taken within 90 days.
- * 50% of Payment will be taken before first event.
- * Soft data will be given only after 75% of the payment.
- * GST Extra

A-1/66 (46)

66

Prospectus

Date: June 28/12	Day: Monday	Venue: Pavilion Palace	Type of Function: Marriage
Name of the Party: Ms. Dignidjay Singh		Contact Person: Mohin Kishor Shagun	
Address: 453 Sector 9, Faridabad		Mobile: 9810270830	No. Of Guest: 1500
Place: 3 lac + taxes		Phone: 9953222868	Finish time:
		Fax No:	Guest arrival time:
Billing Instruction:			
Advance: 50,000/- Cash			
<u>PAYMENT INSTRUCTIONS (DÉCOR)</u>			
<ul style="list-style-type: none"> • 25% ADVANCE TO BE COLLECTED AT THE TIME OF CONFIRMATION • 50% ONE MONTH BEFORE THE FUNCTION • BALANCE 25% ONE DAY BEFORE THE FUNCTION. 			
<u>PAYMENT INSTRUCTIONS (EVENTS)</u>			
<ul style="list-style-type: none"> • 50% ADVANCE TO BE COLLECTED AT THE TIME OF CONFIRMATION • BALANCE 50% 2 DAYS PRIOR TO THE EVENT 			
<u>APPLICABLE TAXES</u>			
<ul style="list-style-type: none"> • 18.00% GST 			
<u>CANCELLATION POLICY:</u>			
IN CASE OF CANCELLATION THE ENTIRE ADVANCE WOULD BE FORFEITED			
GUESTS SIGNATURE :			

Assembly Point
 Bridal Room
 Genset with Lighting
 Furniture - 60 Seater Round Tables etc.
 Linen - Cushions, Underlay/coverlay
 Caddles
 Floral Decor as per show
 Comedies
 Valet Service
 Trimmings
 Milk, Mala
 Photo ki chadai
 Seating 1000
 As per sheet attached

86. In so far as payment made to photographer i.e. Arjun Colour Lab of Rs. 2,34,000/-, it was contended by the Assessee that the actual payment of Rs. 2,41,000/- was made partly through cheque and partly in cash which has been recorded in the statement of affairs, which can be corroborated from the ledger copy showing the details of the payments to such person which is enclosed at Page No. 45 of the Paper Book. In our opinion, the authorities below committed error in not considering the above materials and made addition.

87. In so far as payment made to FNP Wedding and Events India Pvt. Ltd. amounting to Rs. 3,00,000/-, it was contended by the Assessee that actually the payment of Rs. 5,22,000/- against the tax invoice received from the said company and the entire payments have been paid through banking channels from Assessee's bank account. The said amount has also been recorded in the statement of affairs. The copy of the ledger showing the details of the payment made by the Assessee and the copy of the bank account were also enclosed in the paper book at Page No. 47 to 64 to prove the claim of the Assessee. Both the A.O. and the Ld. CIT(A) have not

considered the above documents and erroneously made the addition.

88. With regard to estimation of expenditure on account of catering is concerned, the Ld. A.O. based on the rough quotation calculated 1500 persons @ 2000 per plate and worked out the total expenditure at Rs. 30,00,000/- and after allowing the credit of Rs. 8,26,000/-, treated Rs. 21,74,000/- as unexplained expenditure. Admittedly, the Ld. A.O. made the estimation based on the rough quotation. In the quotation, the 1500 packs were mentioned and no rates were mentioned. It is the case of the Assessee that they had invited only 500 guests and the rate settled was Rs. 1,400/- per plate. The company has issued GST invoice of Rs. 8,26,000/- including GST and the payment has been a made by the Assessee through banking channel from his saving bank account with Axis Bank and SBI and the payments have been recorded in the statement of affairs and shown as personal drawings. The Ledger copy of account of the said party along with GST invoice is submitted and is marked at Page No. 47 to 64 of PB and statement of affairs is marked as page No. 65 and 66 of PB. Thus, in our

opinion, the authorities have committed error in not considering the above documents while making the above addition. Considering the above facts and circumstances, we are of the opinion that the Ld. CIT(A) have committed error in confirming the addition of Rs. 27,17,000/- on account of unexplained marriage expenses, thus, finding the merit in Ground No. 5 of the Assessee the said addition is hereby deleted.

89. In the result, the Appeal of the Assessee in ITA No. 2589/Del/2023 is partly allowed for statistical purpose.

ITA No. 2970/Del/2023 (Assessee) (A.Y 2020-21)

90. The Ground No. 1 and its sub Grounds of the Assessee's Appeal are regarding addition made by the A.O. based on the diary found at the premises of third party which has been partly confirmed by the Ld. CIT(A) by applying peak credit theory.

91. We have already held in the case of the Assessee for AY 2012-13 that the addition made on the basis of diary found at the premises of third party cannot be sustained and deleted the addition made by the A.O. Since there is no change of

circumstances, by applying the very same findings and conclusions, we allow the Ground No.1 and its sub grounds of the Assessee.

92. Ground No. 2 is regarding the addition of Rs. 29,78,000/- made on account of cash found at the time of search in the premises of the Assessee as unexplained income.

93. During the course of search proceedings in the case of the Assessee, cash of Rs. 29,78,000/- was found. The A.O. made the audition u/s 69A of the Act on the ground that the Assessee failed to explain the source and nature of the cash found. The Ld. CIT(A) while confirming the addition observed that the Assessee claimed that the above cash was received as 'Sagan' from various friends and relatives at the time of marriage of his daughter of Rs. 22,01,400/- and remaining cash was explained as belonging to his father and his wife out of their personal savings, but the claim of the Assessee is not supported by any evidence, accordingly confirmed the addition made by the A.O.

94. The Ld. Counsel for the Assessee submitted that both the Ld. CIT(A)/A.O have not considered the submissions made by the Assessee, the Assessee has filed statement of affairs and cash flow

statement before the authorities below. The Assessee in his statement of affairs from AY 2013-14 to 2020-21, declared each year's assets and liabilities. As per the cash flow statement and the statement of financial affairs as on 01/04/2018, the Assessee had cash balance which has been brought forward in AY 2020-21 and also during the year under consideration, the Assessee had savings. Both the authorities have not found any defect in cash flow statement and statement of affairs and the Ld. CIT(A) erroneously confirmed the addition without any basis.

95. Per contra, the Departmental Representative relied on the orders of the Lower Authorities and sought for dismissal of Ground No. 2 of the assessee.

96. Heard and perused. The Ld. A.O. while making the addition, has only stated that the 'Assessee has failed to explain the manner in which the cash of Rs. 29,78,000/- was derived' and made the addition. It is found from the record that the Assessee vide reply dated 24/09/2021, given explanation which are reproduced as under:-

“2. Point No. 2

a) a) Search and seizure action w/s 132 of the Income Tax Act, 1961 was undertaken against the assessee on 16/10/2019 During the course of search action conducted at the residential premises situated at House No. 453-454, Sector-9, Faridabad, cash amounting to Rs. 29,79,400/- was found out of which cash amounting to Rs 29,00,000/-

b) During the course of recording of his statement, he had explained the source of cash found and seized. In his reply, he had stated that the cash found from his premises is the accumulation of following:-

(i) Cash amounting to Rs. 22.41.205/- was received as Sagans from relatives on the occasion of his daughter's marriage Charu on 25.06.2018. The entire list of relatives and their sagan amount was also submitted before the DDIT (Inv.), Faridabad on 19.02.2020, a copy of the said letter is also enclosed for your kind perusal.

(ii) Further, at the request of DDIT(Inv.), Faridabad during post search proceedings, the assessee had also given addresses of certain persons for verification. On the date of search, the assessee had accumulated cash balance of Rs. 22.01.700/- and the balance cash is belonged to the savings of his wife, father who is retired and getting his pension from Military and agricultural income received by him and his family members earned from last 10-15 years.

Thus, the source of entire cash found from his possession stands fully explained and therefore, no adverse view may kindly be taken on this count.

97. Further the Assessee had also provided the cash flow statement which is placed at Page No. 166 which is reproduced as under:-

KIRAN PAL KHATANA

Cash Flow Statement for the year ended on 31-Mar-20

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Opening balance as on 01 April-2019</i>	<i>25,94,401</i>
<i>Add: rental income</i>	<i>3,66,000</i>
<i>Add: Cash withdrawals from bank</i>	<i>2,80,000</i>
<i>Total</i>	<i>32,40,401</i>
<i>Less: Renovation expenses</i>	<i>8,61,668</i>
<i>Closing balance as on 31 March 2020</i>	<i>23,78,733</i>

As per the above cash flow statement and the statement of affairs as on 01/04/2019, the Assessee had cash balance of Rs. 25,94,400/- which has been brought forward in the AY 2020-21 and during the year the Assessee claimed to have made some saving as on the date of search. Thus, the Assessee was having cash balance of Rs. 29,79,400/- which can be corroborated from the above documents. Neither the A.O. nor the Ld. CIT(A) have found any defect in the cash flow statement or in the statement of affairs of each year and not brought any adverse material on record to prove contrary against the case of the Assessee. Considering the above facts and circumstances, we delete the addition of Rs. 29,78,000/- made on account of cash found at the time of search by allowing Ground No. 2 of the Assessee.

97. Ground No. 3 is regarding addition of Rs. 3,08,67,500/- and Rs. 6,17,350/- made on the basis of the seized document as interest received and computed the principal amount as unexplained cash investment.

98. During the course of assessment proceedings, upon perusal of seized documents, the A.O. observed that the Assessee had advanced loans of Rs. 3,16,18,400/- to various persons during the year under consideration. The Assessee explained that the said documents have been left by some other persons and do not belong to the Assessee. The A.O. was not satisfied with such explanation, therefore, the addition of Rs. 3,16,18,400/- was made by the A.O. on account of unexplained loan u/s 69 of the Act. Further, addition of Rs. 6,17,350/- was made on account of interest earned from such loans.

99. The Ld. Counsel for the Assessee reiterated the contention of the Assessee taken before the Lower Authorities and further submitted that the additions have been made on presumption basis applying two percent per month interest rate and the same has been made based on the dumb document seized during the course

of search. The additions have been made purely on surmise and conjectures without there being any corroborative evidence.

100. Ld. Counsel has made following arguments by explaining the seized document:-

“presumed the figures as interest and applied 15% interest and worked out amount of principal amount of loan/ investment but actually the names mentioned in the above document are the names of tenants from whom the assessee and his wife received rental income through banking channels after deducting TDS and charging of service tax or GST. The entire income received through banking channels from, such tenants have been reflected in the return of income of the assessee and his wife and duly reconciled with Form No.26AS.

It is pertinent to mention here that:-

Shiva" means Shiva Telecom, as per seized documents A-1/19b, the figure of Rs.45,000/- has been mentioned which has been shown as rental income on which service tax @ 15% have been worked at Rs.6,750/-

"Napcotation" under the name and style PAC Machine Tools India LLP, as per seized documents A- 1/19b, (Page No.46 of PB) the figure of Rs.77,760/- has been mentioned which has been shown as rental income on which service tax @ 15% have been worked at Rs. 11,664/-

"Meenakshi" as per seized documents A-1/19b, (Page No.77 of PB) the figure of Rs. 18,150/- has been mentioned which has been shown as rental income on which service tax @ 15% have been worked at Rs.2,722/- who vacated the premises in 2016-17 SCO 141, 21C, Ist

Floor, Faridabad and presently rented out in favour of Arshveer Incorporation,

Axis" as per seized documents A-1/19b, (Page No.57 of PB) the figure of Rs.1,35,125/- has been mentioned which has been shown as rental income on which service tax @ 15% have been worked at Rs.20,269/- means Axis bank to whom the assessee has rented out its premises namely SCO 141, 21C, ground Floor, basement Faridabad,

"Rakesh" (658/21) as per seized documents A-1/19b, (Page No.49 of PB) the figure of Rs.85,000/- has been mentioned which has been shown as rental income on which service tax @ 15% have been worked at Rs.12,750/- represent the name of Rakesh Jain tenant to whom property bearing No.658 Sector-21, Faridabad was let out by Smt. Kachan Khatana, wife of the assessee. The assessee's wife had received the rental income from Mr. Rakesh Jain from 2015 onwards and the same is duly recorded and declared by her in her return of income for the respective assessment years.

Shivalik, as per seized documents A-1/19b, the figure of Rs.18,150/- has been mentioned which has been shown as rental income on which service tax @ 15% have been worked at Rs.2,722/-

"SP" means Shiv Poojan Proprietor of M/s SP Engineering who is tenant of Mrs. Kanchan Khatana, wife of the assessee as per seized documents A-1/19b, the figure of Rs.201590/- has been mentioned which has been shown as rental income on which service tax @ 15% have been worked at Rs.20,269/- and she has received and declared the rental income in her return of income for the respective Assessment Years

In support of the above arguments, copy of the rental agreements, placed as page No.46 to 80 of PB.

Computation of income, of the assessee Page No 81 to 118 of PB) The computation of income of the wife of the assessee page Nos. 119 to 149 of PB. It would not be out of place to mention here that all these documents along with the explanation was filed before the Ld. AO and Ld. CIT(A) but both the authorities, have not considered and the Ld. AO presumed the figures as interest, grossing up the hypothetical principal figure and made high pitched addition without any basis and same is unlawful and illegal which is further confirmed by the Ld. CIT(A) by mentioning wrong facts in his order.”

101. Per contra, the Departmental Representative relied on the findings of the Lower Authorities and sought for dismissal of Ground No. 3 of the Assessee.

102. We have heard the parties perused the material available on record. The above addition has been made based on the loose slips found and seized during the course of the search, which are marked as A-1/2 to A-1/8 and A-1/9b placed that 38 to 45 of the Paper Book.

103. From the perusal of the seized document, there are certain amounts have been jotted. The A.O. presumed that the said amount as monthly interest @2% per month and based on the entries jotted therein, worked out the principal amount of loan investment by applying interest @24% per annum. Further

considering the rental agreements placed at Page No. 46 to 80 of Paper Book, computation of income at Page No. 81 to 118 of Paper Book and the computation of income of the wife of the assessee, we find merit in the argument of the Assessee's Representative and hold that the authorities below have committed an error in making the addition. In addition to the same, the identical issue regarding the addition based on the loose sheet has been already discussed in detail and deleted the addition for A.Y 2016-17 in ITA No. 1864/Del/2023 while dealing with Ground No. 2 of the Assessee. By relying on the very same adjudication and the conclusion and applying the said ratio, we delete the above addition made by the A.O. by allowing Ground No. 3 of the Assessee.

104. The Ground No. 4 is regarding the addition of Rs. 45,24,810/- made on account of unexplained investment.

105. During the course of search proceedings, various documents were found containing details of construction expenses incurred by the Assessee during the year under consideration for construction work for residential house (453-454, Sector 9, Faridabad) of Rs. 45,24,810/-. The A.O. found that though the Assessee accepted

that construction work was going on, but he failed to give the source of expenditure incurred, accordingly, the AO made additions of Rs. 45,24,810/- u/s 69 of the Act.

106. The Ld. CIT(A) has confirmed the said addition on the ground that the Assessee failed to give a satisfactory explanation in respect of construction expenditure of Rs. 45 ,24,810/-.

107. The Ld. Counsel for the Assessee submitted that the Ld. CIT(A) has not considered detailed submission made along with the documents produced during the appellate proceedings. Further submitted the payments have been made either through cash or banking channels which have been duly reflected in the statement of affairs, the Assessee had also produced cash flow statement and ledger account of building renovation, bank account from which payment have been made and explanation has been given to each seized document, but the lower authorities have out-rightly rejected the submission of the Assessee. Therefore, submitted that addition made by the A.O. which has been confirmed by the Ld. CIT(A) is liable to be deleted.

108. Per contra, the Departmental Representative relying on the findings of the Lower authorities sought for dismissal of the Ground No. 4 of the Assessee.

109. We have heard the parties perused the material available on record. During the assessment proceedings, the Assessee give a detailed explanation of each of the seized document marked as Annexure-A1 in following manners:-

Ground of Appeal No.10: Addition of Rs.45,24,810/- u/s 69 unexplained expenditure in renovation of House No.453-454, Sector-9, Faridabad:

During the course of search operation certain hand written pages and bunch of loose papers were found and seized which contains details of expenses/ quotations/ estimates related to construction work carried out by the assessee in respect of abovementioned property. The some of the entries pertain to son of the assessee who is Prop. Divine Ayurvedic Product a Patanjali Store on closure of Patanjali Store against sale of fixed assets. The documents marked as Annexure-A-1. On the basis of these documents, without considering the submission of the assessee furnished during the course of assessment proceedings, the Ld. AO has made entire amount of renovation work, /sale of Patanjali store assets amounting to Rs.45,24,810/-added to the income of the assessee u/s 69 on account of unexplained expenditure.

During the course of the assessment proceedings, the assessee submitted to the Ld. AO that minor repairing and renovation work was carried out at House No.453-454 for which several quotations/ proforma invoices for different works like repairing of tiles, granite, doors, plumbing etc. have been obtained different vendors. It was also submitted that the assessee has incurred certain expenses towards repair and renovation through cash as well as banking channels and recorded these expenses in the books of account and reflected in the statement of affairs filed before the Ld. AO for the year under consideration. The detailed explanation of each document mentioned in the Annexure A1 containing the nature and the treatment of the said expenses in the hands of the assessee.

S.No.	Document reference	Particulars	Date	Amount
1.	A-1/ 79	Venezula (1200 sq.ft.@ Rs.490/-	06.07.2019	Rs.7,85,610/-
		The proforma invoice for tiles has been received for Rs.7,85,610/- against that		

“

	M/s Spice crafts has executed the said work for which an amount of Rs.7,81,798/- has been made through cash as well as banking channels. During the course of assessment proceedings, the details of payments and copy of ledger account of M/s Spice Crafts have been submitted before the Ld. AO but he out-rightly rejected the contention of the assessee without any reason. Further submitted that the above payments are duly recorded in the books of account and reflected in the statement of affairs for the year under consideration under the head- construction 454 sector-9, Faridabad. The said copy of account is submitted herewith for your kind perusal.			
2.	A-1/75	Plumber	-	Rs.78,000
3.	A-1/75b	Pentry/ Plumbing (453 & 454, Sec.9)	-	Rs. 87,900
	Against the said documents totalling to Rs.1,65,900/-, the assessee has made payments on account of plumbing work either through cash and banking channels on different dates amounting to Rs.1,65,941/- which is duly recorded in the books of account and reflected in the statement of affairs for the year under consideration under the head- construction 454 Sector-9, Faridabad. It is pertinent to mention here that during the course of assessment proceedings, the assessee had furnished the complete details and ledger copy of account of plumbing work but the Ld. AO has out-rightly rejected the contention of the assessee without any reason. The said copy of account is submitted herewith for your kind perusal.			
4.	A-1/74 & 74B	Water connection	-	Rs.2,19,000/-
	Only quotation has been received by the assessee and no work has been executed on this account.			
5.	A-1/72	Trivintino (453)	-	Rs.6,35,720/-
	Against the said documents totalling to Rs.6,35,720/-, the assessee has made payments to Trivintino on 18.05.2016 through cash regarding repairing of house No.453 Sector-9, Faridabad which is duly recorded in the books of account and reflected in the statement of affairs for the relevant assessment year under the head- House No.453 Sector-9, Faridabad. It is pertinent to mention here that during the course of assessment proceedings, the assessee had furnished the complete details and ledger copy of account of repairing at House No.453 Sector-9, Faridabad but the Ld. AO has out-rightly rejected the contention of the assessee without any reason. The said copy of account is submitted herewith for your kind perusal.			
6.	A-1/70 & 71	Steel Grill (@ 400/- per KG x 734 KG (453-Sec.9)	-	Rs.2,93,600/-
	Only quotation/ estimates has been received by the assessee and no work has been executed on this account.			
7.	A-1/62	Luxury Door	08.09.2019	Rs.7,764/-
8.	A-1/59	Luxury Slider & Door	08.09.2019	Rs.2,79,762/-

	The proforma invoice for Luxury Door and Luxury Slider Door for Rs.2,87,526/- against that the assessee has executed the said work for which an amount of Rs.2,80,000/- has been made through banking channels. During the course of assessment proceedings, the details of payments and copy of account of Sliding Door has been submitted before the Ld. AO but he outrightly rejected the contention of the assessee without any reason. Further submitted that the above payments are duly recorded in the books of account and reflected in the statement of affairs for the year under consideration under the head- construction 454 sector-9, Faridabad. The said copy of account is submitted herewith for your kind perusal.		
9.	A-1/31	Granite	Rs.8,86,075/-
10.	A-1/17	Granite	Rs. 32,568/-
	It was only proforma invoice for Granite for Rs.8,86,075/-but neither the granite was purchased nor the said work was executed. However, granite for Rs.32,568/-and Rs.1,25,000/- on account of purchase of marble from M/s Rahul Marbal whose invoice was also found and seized and the payments were made through cheque and cash which have been recorded in the books of accounts and reflected in the statement of affairs for the year under consideration. During the course of assessment proceedings, the details of payments and copy of account has been submitted before the Ld. AO but he outrightly rejected the contention of the assessee without any reason. The said copy of account is submitted herewith for your kind perusal.		
11.	A-1/30	Fountain	Rs.1,52,400/-
	Against the said documents totalling to Rs.1,52,400/-, the assessee has made payments on 10.11.2019 through cash regarding installation of fountain at house No.454 Sector-9, Faridabad which is duly recorded in the books of account and reflected in the statement of affairs for the relevant assessment year under the head- Construction of House No.454 Sector-9, Faridabad. It is pertinent to mention here that during the course of assessment proceedings, the assessee had furnished the complete details and ledger copy of account of fountain work at House No.454 Sector-9, Faridabad but the Ld. AO has outrightly rejected the contention of the assessee without any reason. The said copy of account is submitted herewith for your kind perusal.		
12	A-1/20	Water	Rs. 39,000
	This bill is related to repair/renovation of House No.454 sector-9, Faridabad which is recorded in the books of account and the payment is made through cheque only.		
13.	A-1/25	ShastryJee	3,07,900/-
14.	A-1/25	Sec 9	67,050/-
15.	A-1/25	Sec 9	50,000/-
16.	A-1/25	Nirat	1,46,000/-
17.	A-1/25	Nirat	80,000/-
18.	A-1/25	Sector 35	53,870/-

19.	A-1/25	Bhatia	-	28,688/-
20.	A-1/25	Bhatia	-	9,000/-
21.	A-1/25	Master Old	-	9,006/-
22.	A-1/25	Number 1	-	38,000/-
23.	A-1/25	Janarat	-	1,60,000/-
24.	A-1/25	Sachin	-	38,897/-
25.	A-1/25	Sachin	-	39,000/-
<p>These transactions related to Patanjali Store run under the name and style of M/s Divine Ayurvedic Products Proprietorship concern of the son of the assessee Shri Digvijay Singh, which was shut down in the year under consideration. On closure of said store, the final payments were made and remaining articles were sold to different Patanjali Stores. All such payments and receipts pertain to Shri Digvijay Singh who has recorded all these transactions in his return of income. The details are explained hereunder:-</p>				
13.	ShastryJee	<p>ShastryJee running business under the name and style of Arogya Jan Sewa Kendra Sector-35, Faridabad. The book value of the racks was at Rs.3,07,900/- against which the Racks were sold as resale for Rs.2,71,037/-. It is pertinent to mention here that the GST has been charged on the said resale of racks under proper invoices and the payments have been received through account payee cheques. The explanation in respect of the same with documentary evidence was submitted to the Ld. AO during the course of assessment proceedings but he has not considered the submissions of the assessee and made addition to the income of the assessee, which is unlawful and illegal. It is pertinent to mention here that the transactions on account of sale of old assets belong to son of the assessee on closure of its Patanjali store and the Ld. AO without applying the mind to the transaction made addition in the hands of assessee which is illegal and unsustainable in the eye of law</p>		
14.	Sec.9	<p>The said documents pertain to resale of items of Patanjali Store against the book value of Rs.67,050/-. The son of the assessee sold the said items to Shri Krishna Harbal Shop No.108 Block-G Sector-10 Faridabad at a consideration of Rs.50,055/-. It is important to state here that the assessee has charged GST @ 5% on the said resale items and generated proper invoices. The receipt on account of said resale have been duly reflected in the books of account of the son of the assessee, during the course of assessment proceedings, the detailed explanation in respect of the same was furnished before the Ld. AO but the same has not been considered which is unlawful and illegal. The copies of the documents submitted before the Ld. AO are furnished for your</p>		

		kind perusal. It is pertinent to mention here that the transactions on account of sale of old assets belong to son of the assessee on closure of its Patanjali store and the Ld. AO without applying the mind to the transaction made addition in the hands of assessee which is illegal and unsustainable in the eye of law
15	Sec.9	Rs.50,000/- worth goods were sold to Patanjali Store Sector 35, transaction pertain to Divine Ayurvedic Store Prop. Shri Digvijay Singh accounted for in his books of account and reflected in the return of income.
16	Nirat	The said documents pertain to resale of items of Patanjali Store against the book value of Rs.1,46,000/- and sold for Rs.1,40,000/-. The son of the assessee sold the said items in market and depreciated from block of assets. The receipt on account of said resale have been duly reflected in the books of account of the son of the assessee, during the course of assessment proceedings, the detailed explanation in respect of the same was furnished before the Ld. AO but the same has not been considered which is unlawful and illegal. The copies of the documents submitted before the Ld. AO are furnished for your kind perusal. It is pertinent to mention here that the transactions on account of sale of old assets belong to son of the assessee on closure of its Patanjali store and the Ld. AO without applying the mind to the transaction made addition in the hands of assessee which is illegal and unsustainable in the eye of law
17 to 25	Nirat	The entries mentioned at Serial No.17 to 25 pertain to M/s Divine Ayurvedic Store Prop. Shri Digvijay Singh who reflected all these transactions in his books of account and reflected in the return of income for the year under consideration. Since the entries does not belong to the assessee as such, no addition can be made in the hands of the assessee.

Ground of Appeal No.11. Addition of Rs.74,60,163/- on account of unexplained investment in construction u/s 69 of the Income tax Act, 1961:

During the course of search operation, a document marked as Annexure A-1/ 55 quotation for civil work issued by M/s G. R. Construction Company of Plot No.133 DLF Industrial Estate, Faridabad of M/s Profile Engineers Pvt. Ltd. It is important to state here that as per the said seized documents, it has been clearly mentioned as "Quotation". This quotation was not considered by the assessee in the year under consideration. Subsequently, in the financial year 2020-21 relevant to the assessment

110. It is observed that the Serial No. 1 to 12 pertains to assessee for renovation of house property; the payments have been made either through cash or banking channels which are reflected in the statement of affairs which is produced at Page No. 10 of

Paper Book. The Assessee has gave explanation to each seized document before the A.O. as well as the Ld. CIT(A) and also produced the cash flow statement and ledger accounts of building renovation, bank account from which the payments have been made. Both the authorities have not looked into the same and gave any findings.

111. Further, the entries recorded in the seized document marked as A-1/25 produced at Page No. 178 of the PB amounting to Rs. 10,27,405/- pertaining to son of the Assessee Sh. Digvijay Singh and he was subject to the assessment u/s 153C of the Act and the said entry/amount has been considered thereon. The copy of the assessment order is also placed at page No. 179 to 187 of the PB. Considering the above facts that the payments have been made through banking channel as well as by way of cash which have been duly reflected in the statement of affairs and looking into the cash flow statement and ledger accounts of building renovation, bank account from which the payment have been made and an amount of Rs. 10,27,405/- have been considered in the case of Sh. Digvijay Singh who was subject to the assessment u/s 153C of the

Act, we are of the opinion that the Ld. CIT(A) has committed error in sustaining the addition of Rs. 45,24,810/- on account of unexplained expenditure in the hands of the assessee. Accordingly, the Ground No. 4 of the Assessee is allowed.

112. Ground No. 5 of the Assessee is regarding addition of Rs. 1,46,050/- made on account of unexplained expenditure for purchase of foreign currency.

113. The above addition made by the A.O. on the ground that the Assessee has made payment in cash for purchase of foreign currency. The Assessee produced the bank accounts wherein the Assessee made two payments of Rs. 49,270/- and Rs. 96,780/- from bank for purchase of foreign currency. The said payment has been made by two separate cheques. With respect to Rs. 49,270/-, through cheque No. 49901 dated 04.07.2019 drawn on Axis Bank Savings Bank account No. 91301007049036. An amount of Rs. 96,780/- was withdrawn from the account of the son of the Assessee Sh. Digvijay Singh vide Cheque No. 784402 dated 06.07.2019 from his bank account No. 65111564991 maintained with SBI, Faridabad, which can be corroborated from the statement

of account produced at page No. 182 to 190 of the PB. Further, both the bank accounts have duly been reflected in the return of income and statement of affairs of the Assessee and his son and same has been shown as personal withdrawal from the capital account. Considering the above facts and circumstances, we delete the addition of Rs. 1,46,050/- by allowing Ground No. 5 of the Assessee.

114. In the result, the Appeal of the Assessee in ITA No. 2970/Del/2023 is allowed.

Order pronounced in the open court on 28th June, 2024

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Date:- 28 .06.2024

R.N, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI

