आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं /**ITA Nos.164, 194 & 195/Hyd/2024**
(निर्धारण वर्ष/Assessment Years: 2014-15,2015-16 & 2017-18)

GRR Holdings Hyderabad PAN:AAQFG0867M	Vs.	Dy. C. I. T. Central Circle 3(3) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri P. Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by::	N O N E	
सुनवाई की तारीख/Date of hearing:	27/05/2024	
घोषणा की तारीख/Pronouncement:	24/07/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

These three appeals filed by the assessee are directed against the separate, but identical orders passed by the learned Commissioner of Income Tax (Appeals)-11 Hyderabad, all dated 01-02-2024 and pertains to A.Ys 2014-15, 2015-16 & 2017-18. Since the facts are identical and issues are common, for the sake of convenience, these appeals filed by the assessee were heard and are being disposed off by this consolidated order.

ITA No.164/Hyd/2024-A.Y 2014-15

2. The assessee raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld. Gen CIT(A) erred in dismissing the appeal and enhancing the income of Rs. 39,48,50,000/- towards unexplained money u/s 69A of the IT Act, 1961.

2. On the facts and circumstances of the case and in law, the enhancement of income of Rs. 39,48,50,000/- towards unexplained money u/s 69A of the Act by the Ld. CIT(A) is against to the decision of the Hon'ble ITAT in ITA No. 92/Hyd/ 2022 dt 31.01.2023 against the order u/s 263 of the Pr. CIT (Central), Hyderabad, which is in violation of the orders of the ITAT.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering that the appellant has retracted from the statement recorded u/s 132(4) of the Act and ought to have considered that no enhancement of income is needed.

4. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in considering the statements given by the other partner Sri Syed Mohammed Fayaz and the statements of Smt. Jugenee Bhai and D. Murali, the vendees, wherein that no amounts in cash were received from the appellant and, thus, the additions made by the AO as well as by the enhancement made by the Ld. CIT(A) are not sustainable.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have considered that the property-in-question was not in the possession of the vendees, which fact was evidenced from the report of the Deputy Director of Survey that no assignments are in possession in S. Nos 2018/11, 2018/12, 2018/13 of AC 11-33 Gts. and hence no addition is valid on this count.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have appreciated that the assessee (Vendee) and vendor, both have filed affidavits regarding the non-payment and non-receipt of money on account of sale transaction.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have appreciated the fact that while completing the assessment u/s 153A of the Act no addition can be made in the absence of any incriminating material.

8. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have appreciated the fact that the AO erred in bringing to tax the amount of Rs. 25,00,000/- out of the total amount of Rs. 42,00,000/- towards unexplained investment on stamp duty and other charges and the amount of Rs. 17,00,000/ out of the total amount of Rs. 42,00,000/- towards unexplained investment in the impugned properties.

9. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the appellant seems to have made an effort to match the cash payments recorded in the sale deeds and present the same as Sundry creditors to avoid the factum of cash payments.

10. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have appreciated that the land in question was not handed over in possession by the vendors and the transfer of property was not fulfilled even though the sale deeds were executed and registered.

11. On the facts and circumstances of the case and in law, the Ld. CIT(A) Ought to have considered that no incriminating material was found towards the alleged purchase of AC 11-33 Gts, by paying cash to the extent of Rs. 34,48,50,000/- except the statement recorded u/s 132(4) of the Act which was later retracted.

12. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in considering that the appellant has paid, sale consideration in cash as recorded in the impugned sale deed without considering the statements given by the vendees, statement given by other partner, non-availability of the said land as reported by Deputy Director of Survey and other circumstantial evidences basing on presumption.

13. Without prejudice to the above grounds, the Ld. CIT(A) has failed in fairly appreciating the fact that as per the report of the District Collector, the land in question under transfer is not identifiable in Revenue records and that therefore, there arose business loss, which needs to be given set off.

14. The Ld. CIT(A) ought to have fairly and judiciously considered that there arose loss of an asset which is the land in question under transfer and set off ought to have been allowed.

15. Without prejudice, the Ld. CIT(A) ought to have fairly and judiciously allowed the set off of loss incurred by the appellant, as mentioned in the grounds above, against the enhanced income.

16. The assessee may add, alter, or modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of the appeal".

3. The brief of the case is that the assessee, M/s. GRR Holdings is a firm was incorporated on 31.01.2014 with two partners Shri Gaddam Shyam Prasad Reddy & Shri Syed Fayaz Mohammed. The main objective of the partnership firm is to carry on real estate business. The assessee did not file return of income for the A.Ys 2014-15, 2015-16 and 2017-18. A search & seizure operation u/s 132 of the I.T. Act, 1961 was carried out on 20.09.2017. During the course of search, a statement on oath was

recorded from Shri Gaddam Shyam Prasad Reddy on 12.09.2017 and confronted certain documents found during the course of search which relates to purchase of property admeasuring 11.33 acres in Survey No.218/11, 218/12 and 218/13 situated at Kondapur Village, Serilingampally Mandal, R.R. District and in response to specific question No.9, the partner of the appellant stated that the above documents pertains to purchase of land admeasuring 11.33 acres for a total consideration of Rs.39,65,50,000/- registered in the name of GRR Holdings holding a partnership firm in which myself and Shri Syed Fayaz Mohammed are partners. He further stated that the source for consideration paid for purchase of property was contributed by himself to the extent of Rs.34,48,50,000/- and the balance amount of Rs.5,00,00,000/- is contributed or paid by Shry Syed Fayaz Mohammed. He further stated that he cannot explain the source and accordingly admitted the same as undisclosed income in his individual capacity for the A.Y 2014-15. In respect of balance amount of Rs.5.00 crore contributed by Shry Syed Fayaz Mohd, he stated that the source for the same can be explained by him.

4. Pursuant to search action, notice u/s 153A of the Act dated 11.5.2018 was issued. The assessee did not file return of income in response to notice u/s 153A as per the time provided in the said notice. Later, Shri Gaddam Shyam Prasad Reddy submitted a copy of e-filed return of income in Tapal on

13.11.2018. The Assessing Officer, on the basis of return of income filed by the assessee noticed that, the assessee has filed return of income without admitting the income as admitted by its partners during the course of search on oath statement recorded u/s 132(4) dated 20.09.2017 and sworn statement dated 20.05.2017 and 17.11.2017 and affidavit dated 26.10.2017. Further, the appellant has also filed retraction statement made by Shri Gaddam Shyam Prasad Reddy dated 30.11.2017 and stated that the earlier sworn statement recorded on 17.11.2017 before the DDIT (Inv.) was taken under cohesion, threat and undue influence. Therefore, he had retracted from his statement with relevant facts and evidences and claimed that although the property was registered in the name of appellant M/s. GRR Holdings but no consideration was paid to seller of the property and the same has been confirmed by Smt. Jugenee Bhai and Shri D. Murali, since both of them does not have any right or title over the property and also the possession of the property was not under their control.

5. The Assessing Officer after considering the relevant evidences including the copies of sale deed dated 11.02.2014 for purchase of 11.33 acres in favour of the assessee firm coupled with the statement recorded from partners of the appellant firm and also taken into account the retraction statement filed by the partner opined that there is no dispute with regard to the fact that the land has been registered in the name of GRR Holdings as per

the registered sale deed. Further, it is also a fact on record that heavy stamp duty and other charges have been paid on various dates to register these lands in favour of the firm. Therefore, considering consideration paid for purchase of property by cheque and cash and stamp duty paid for registration of the documents, has made addition of Rs.42.00 lakhs u/s 69 of the Act as unexplained investment for the A.Y 2014-15. The Assessing Officer had also made addition of Rs.27,42,21,320/- for the A.Y 2015-16 u/s 69 of the I.T. Act, 1961 as unexplained investment towards cash consideration paid for purchase of property amounting to Rs.25,17,00,000 and total stamp duty and other charges paid for Rs.2,25,21,320/- on the ground that the assessee has paid an amount of Rs.20.17 crores in cash to the vendors of the property in the financial year relevant to A.Y 2015-16. Similarly, the Assessing Officer has made addition of Rs.15,41,85,625/- for the A.Y 2017-18 towards sale consideration paid in cash and total stamp duty and other charges paid for purchase of the property.

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee challenged the addition made by the Assessing Officer towards the purchase of property u/s 69 of the I.T. Act, 1961 on the ground that when the partner himself had admitted in his statement recorded u/s 132(4) that the entire investment made for purchase of property was contributed by

partners out of their income earned from Real Estate Business and further they admitted to disclose the additional income in their individual capacity for the A.Y 2014-15, the Assessing Officer erred in making addition in the hands of the appellant. The ld. CIT(A) after considering the relevant submission of the assessee and taken note of various facts including the relevant deeds for purchase of property, sworn statement recorded from Shri. Gaddam Shyama Prasad Reddy and subsequent retraction statement from the partner, enhanced the assessment for the A.Y 2014-15 and directed the Assessing Officer to make addition u/s 69A of the I.T. Act, 1961 for Rs.39,48,50,000/- towards the consideration paid for purchase of property as per sale deeds and not recorded in the books of account of the assessee for the relevant A.Ys. The learned CIT (A) further noted that the appellant also paid sale consideration of Rs.17.00 lakhs through bank account and stamp duty and registration charges of Rs.25.00 lakhs for the impugned asst. year which have been added by the Assessing Officer in the assessment order u/s 69 of the I.T. Act, 1961 as unexplained investment. However, as seen in the return, the balance sheet records the investment, therefore, the addition has to be regarding the money which has been paid for this investment would fall u/s 68 of the I.T. Act, 1961 for Rs.17.00 lakhs and Rs.25.00 lakhs u/s 69A of the I.T. Act, 1961. Therefore, the addition made by the Assessing Officer of Rs.42.00 lakhs is confirmed out of which Rs.17.00 lakhs is confirmed as cash credit

u/s 68 and Rs.25.00 lakhs is confirmed as unexplained money u/s 69A of the Act.

7. In so far as the A.Y 2015-16 & 2017-18 are concerned, the learned CIT (A) for the reasons record in the appellate order observed that since the assessment has been enhanced towards the total consideration paid for purchase of the property for the A.Y 2014-15, has directed the Assessing Officer to delete the addition made towards cash consideration paid for purchase of property in the A.Y 2015-16 and 2017-18, however, sustained addition of Rs.2,25,21,320/- for A.Y 2015-16 and Rs.1,10,35,625/- for the A.Y 2017-18 towards stamp duty and other charges paid to the SRO for registration of the property u/s 68 of the I.T. Act, 1961 on the ground that although the appellant claimed that the stamp duty and other charges has been paid out of amount received from partners, but the identity, genuineness of the transactions and creditworthiness of the creditors from whom the amount was received was not proved.

8. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

9. The learned Counsel for the assessee Shri P Murali Mohan Rao, CA submitted that the learned CIT (A) is erred in enhancing the assessment to the extent of Rs.39.48 crores towards alleged consideration paid in cash for purchase of property on the basis

of sale deed without appreciating the fact that the partners of the appellant firm has duly recorded in their statement u/s 132(4) of the act that the entire amount of investment for purchase of property has been contributed by two partners and further they have admitted undisclosed income in their individual capacity for A.Y 2014-15. The learned Counsel for the assessee referring to the provisions of section 251 of the I.T. Act, 1961 on the powers of the learned CIT (A) to enhance the assessment submitted that the learned CIT (A) had suo moto powers to consider the question arising out of the appellant, but there is no provision under the Act that the learned CIT (A) can travel beyond the subject matter that arose out of the proceedings before the Assessing Officer since separate machinery provisions for such eventuality are provided under the Act. The learned Counsel for the assessee further submitted that the Assessing Officer has made addition u/s 69 of the I.T. Act, 1961 as unexplained investment, whereas the ld. Cit(A) enhanced the assessment by bringing into new source of income by making addition u/s 69A of the I.T. Act, 1961 as unexplained money even though the learned CIT (A) does not have the power to bring in new source of income. The learned Counsel for the assessee further submitted that whenever the question of taxability of income from a new source of income is considered which has not been considered by the Assessing Officer, an appropriate mechanism to deal with the same is u/s 147/148 and section 263 of the I.T. Act, 1961, if requisite conditions are fulfilled and it is inconceivable that in presence of

such specific provisions, a similar power is available to first appellate authority. In this connection, the learned Counsel for the assessee referring to the order passed by the ITAT Hyderabad Bench dated 31/01/2023 in ITA No.92/Hyd/ 2022 submitted that the PCIT (Central) Hyderabad passed an order u/s 263 dated 16.03.2022 holding that the assessment order for A.Y 2014-15 is prejudicial to the interest of the Revenue and set aside the order to the file of the Assessing Officer for limited purpose of brining to tax the entire investment in cash as recorded as paid in all the above mentioned 3 sale deeds in the A.Y 2014-15 itself. The appellant has challenged the order passed by the learned PCIT u/s 263 of the I.T. Act, 1961 before the ITAT and the ITAT Hyderabad Bench has quashed the 263-order passed by the learned PCIT and discussed the issue in detail on amount invested by the assessee for purchase of the property and held that once investment in purchase of property was assessed in the hands of the individual partners as their income then, the same cannot be assessed in the hands of the partnership firm. From the above, it is clear that the learned PCIT has considered the very same issue of consideration paid for purchase of property and the same has been deleted by the second appellate authority i.e. the ITAT and quashed the assessment order. Therefore, when the matter has already been considered and examined by the higher authority i.e. the learned PCIT, then the CIT (A) cannot exercise his powers on enhancement of the very same issue. Therefore, he

submitted that the enhancement made by the learned CIT (A) is incorrect.

10. The Counsel for the assessee, further submitted that assuming for a moment, the learned CIT (A) is right in enhancing the assessment for the A.Y 2014-15 in respect of alleged cash consideration paid for purchase of property, but the fact remains that although the appellant has got registered the property but no consideration has been paid to the sellers which is evident from the statement recorded from sellers wherein they denied having received any consideration for sale of property. Further, the Tax Recovery Officer issued an order for attachment of the property to recover the demand raised by the Assessing Officer and in the process written a letter to the Revenue authorities to identify the land, but the Revenue authorities stated that the land in Survey No. stated in the above sale deed were not separately identifiable. From the above, it is very clear that the seller of the property does not have any right and title over the property and does not have any possession over the property. Therefore, when the person does not have rights and title over the property, the sale deed executed for transferring the right in the said property is illegal and void. Since the land is not identifiable and no consideration was paid, the question of making addition u/s 69A of the I.T. Act, 1961 as unexplained money does not arise. Therefore, on this count also, the order passed by the learned CIT (A) is not

sustainable.

11. In so far as A.Ys 2015-16 & 2017-18 are concerned, the learned Counsel for the assessee submitted that although the Assessing Officer has made addition u/s 69A of the I.T. Act, 1961 towards the amount paid for stamp duty and other charges, but the learned CIT (A) has enhanced the assessment and assessed the alleged amount paid for stamp duty and other charges u/s 68 of the I.T. Act, 1961 as unexplained cash credit without appreciating the fact that as per the financial statements filed by the assessee, the appellant has claimed entire amount invested in purchase of property including the stamp duty and other charges is got out of partners capital and sundry creditors. The appellant also filed necessary balance sheet before the learned CIT (A) and proved that the stamp duty and other charges have been paid by the partners through proper banking channels and thus once the amount has been paid by the Partners, the question of making addition towards the capital contribution or amount received from partner u/s 68 of the I.T. Act, 1961 does not arise, because the identity of the partners was established and genuineness of the transaction was also provided. Therefore, he submitted that the addition sustained by the learned CIT (A) for the A.Y 2015-16 and 2017-18 should be deleted.

12. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the documents found

during search on 20.09.2017 and subsequent statement recorded from the partner of the appellant during post survey inquiry clearly shows unexplained investment on the property. Further, the partner of the appellant firm Shri Gaddam Shyama Prasad Reddy in his statement recorded u/s 132(4) clearly stated that the consideration has been paid in cash for purchase of the property and the same has been contributed by himself and another partner. He further stated that he could not explain the source for investment in purchase of the property and thus agreed for additional income for the A.Y 2014-15. Although, he has filed retraction statement subsequently, but fact remains that he could not adduce any evidence as to how consideration paid as per the registered sale deed is incorrect. Although the appellant claims that the cash consideration as stated in the sale deed was not paid to the seller on the basis of their admission, but fact remains that the said statement is self-serving document which cannot be relied upon.

13. The learned DR further submitted that the assessee right from the beginning misleading the Assessing Officer, the learned CIT (A) and the Hon'ble ITAT. He further submitted that the appellant during the 263 proceedings stated that the partners have agreed to disclose additional income for the A.Y 2014-15 towards investment made in property. However, during the appellate proceedings the appellant has taken a contrary view and stated that the addition is made in the hands of the individual

and further the same addition cannot be made in the hands of the partnership firm. If we go by the arguments of the assessee at different stages, when it comes to individual assessment, the appellant claims that the income is offered by the partnership firm whereas when it comes to the assessment of partnership firm, the appellant claims that the income is offered by the partners. Therefore, he submitted that the argument of the assessee that the amount paid for purchase of property was offered by the partners in their individual capacity is incorrect. The learned DR further referring to the provisions of section 251(1)(a) and 263 of the I.T. Act, 1961 submitted that the powers of the CIT (A) and powers of the Pr. CIT are mutually exclusive. The CIT (A) is having co-terminus power with that of the Assessing Officer can enhance the assessment even if the Pr. CIT has considered the issue during the revision proceedings. Therefore, the argument of the learned Counsel for the assessee that the Pr. CIT has considered the very same issue in revision proceedings and the same has been examined by the 2nd appellate authority and because of this, the learned CIT (A) cannot exercise his enhancement powers is devoid of merit and should be rejected.

14. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. We also carefully considered the relevant case law cited by both the party's considering facts brought on record by the

Assessing Officer and the learned CIT (A). There is no dispute with regard to the fact that during the course of search, a statement was recorded from Shri Gaddam Shyama Prasad Reddy and confronted with certain documents including copies of 3 sale deeds for purchase of land admeasuring 11.33 acres. In the statement recorded u/s 132(4) of the I.T. Act, 1961, the partners of the appellant firm stated that the land admeasuring 11.33 acres was purchased for the appellant firm M/s. GRR Holdings vide registered sale deed dated 11.12.2014 and consideration paid for purchase of property was contributed by two partners. Further, the partners of the appellant firm made it very clear that the consideration paid in cash was contributed by himself to the extent of Rs.34.5 crores and the balance was contributed by the other Partner Shri Syed Fayaz Mohd. It was further stated that the amount invested in the purchase of the property in the name of the partnership firm was earned out of the real estate business and agreed to disclose income for the A.Y 2014-15 in his individual capacity. This fact has been further confirmed by way of an affidavit dated 25.10.2017. however, the statement given during the post search investigation on various dates coupled with affidavit dated 25.10.2017 was withdraw by way of retraction statement along with the affidavit dated 30.11.2017 and stated that the earlier statement recorded during the course of search and post search investigation was obtained by coercion and undue influence and further he was given such a statement in a state of confused mind. Therefore, such a statement cannot be

considered as valid and evidentiary value for the purpose of assessment of the firm. In the retraction statement it was further stated that although the property was registered in the name of the firm and stated that the consideration was paid in cash, but in fact no consideration was paid to the seller of the property because of certain dispute over the title and interest in the property and possession of the property. In absence of any interest or title over the property, the sale deed executed by the seller is invalid and void and further in absence of possession of the property, it cannot be stated that a valid transfer took place to say that the appellant firm has paid the consideration.

15. The Assessing Officer rejected the argument of the assessee in light of retraction statement solely on the ground that the registered document for purchase of property clearly shows consideration paid in cash at the time of registration and further the said consideration was paid by the appellant firm. Therefore, subsequent retraction in light of confirmation of sellers along with other evidence is only an after thought to circumvent to liability of tax in the hands of the firm and this cannot be accepted. Therefore, the Assessing Officer has made addition in the hands of the partnership firm for 3 A.Ys towards consideration paid for purchase of property and other incidental expenses like stamp duty and registration charges. The appellant challenged the assessment order passed by the Assessing Officer before the first appellate authority and challenged the addition made towards the

consideration paid for purchase of property u/s 69 of the I.T. Act, 1961 for all the 3 A.Ys. Thereafter, while appeals filed by the assessee are pending for disposal before the learned CIT (A), the learned PCIT Central, Hyderabad revised the assessment order passed by the Assessing Officer u/s 144 r.w.s. 153A of the I.T. Act, 1961 on 12/12/2019 by exercising powers conferred under section 263 of the I.T. Act, 1961 and set aside the assessment order passed by the Assessing Officer with a direction to reconsider the issue of additions made towards the consideration paid for purchase of property u/s 69 of the Act for the A.Y 2014-15. The appellant has challenged the 263 order passed by the learned PCIT before the ITAT Hyderabad Benches and the ITAT in ITA No.92/Hyd/2022 order dated 31.01.2023 set aside the order passed by the learned PCIT and held that when the Assessing Officer has taxed the amount invested for purchase of property in the hands of the partners in their individual capacity, the fact not disputed by the learned PCIT, then the learned PCIT is erred in invoking the jurisdiction u/s 263 of the I.T. Act, 1961 and set aside the assessment order. In other words, the issue of consideration paid for purchase of property and assessment in the hands of the firm for the A.Y 2014-15 was subject matter of revision proceedings by the PCIT and the same has been held to be invalid by the ITAT.

16. In light of above facts, if we examine the reasons given by the learned CIT (A) to enhance the assessment to the extent of

Rs.39.48 crores for the A.Y 2014-15 towards consideration paid for purchase of property in the hands of the appellant firm, we ourselves do not subscribe to the reasons given by the CIT(A) for the simple reason that, once an issue has been subject matter of consideration or examination by a higher authority in the rank of hierarchy, the lower authority in the rank or the authority exercising equal powers cannot sit in judgment over the order passed by the higher authorities. This is for the simple reason that provisions of section 116 of the Act have defined the I.T. Authorities and as per the said provisions, the PCIT is higher in the rank when compared to the CIT(A). Therefore, the order passed by the PCIT in the proceedings cannot be reviewed or examined by the learned CIT (A) who is below the rank of the PCIT. Further, the powers of the CIT (A) and the powers of the PCIT are mutually exclusive and both cannot exercise powers simultaneously. In other words, if the CIT (A) has considered an issue in appellate proceedings, then the PCIT cannot take up the very same issue under revision proceedings as per the provisions of Explanation 1(c) of section 263 of the I.T. Act, 1961 where it has been clearly defined the powers of the PCIT that where any order referred in this sub-section and passed by the Assessing Officer had a subject matter of any appeal, the powers of the PCIT under this sub-section shall extent and shall be deemed to have extended to such matters as had not been considered and decided in such an appeal. In other words, if an issue is sub judice before the CIT (A) for his consideration, then the PCIT cannot exercise

his powers on the issue which is the subject matter before the CIT (A). If we apply the same analogy in the reverse, in our considered opinion, where any order referred to in sub-section and passed by the Assessing Officer had been the subject matter of revision proceedings, then the powers of the CIT (A) shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such revision proceedings. Therefore, if we apply the above principle, in our considered view, once a PCIT has exercised his powers on a particular issue and decided in any proceedings and further the said proceedings are scrutinized by the higher appellate forum, then the CIT (A) does not have any power to review the decision rendered by the higher appellate authorities. Therefore, the powers exercised by the CIT (A) u/s 251(1) of the Act to enhance the assessment towards consideration paid for purchase of property in the hands of the assessee for the A.Y 2015-16 is beyond the scope of the powers of the CIT(A) and thus cannot be upheld. Therefore, in our considered view the learned CIT (A) having noticed that the very same issue was the subject matter to revision proceedings u/s 263 by the PCIT (Central) Hyderabad and the same has been scrutinized by the Tribunal in appellate proceedings, the learned CIT (A) ought not to have ventured into to enhance the assessment for the impugned A.Y. Therefore, on this count itself, the enhancement of assessment made by the learned CIT (A) cannot be sustained.

17. Be that as it may, coming back to another aspect of the matter. Admittedly, the sale deeds for transfer of property shows consideration paid in cash. Further, the partners of the appellant firm had also in their statement recorded during post search investigation confirmed that cash has been paid and the amount has been contributed by both the partners. They had also stated that the amount has been earned from the real estate business in their individual capacity and agreed to offer additional income for the A.Y 2014-15. Further, during hearing of the appeal, we came to know that the Assessing Officer has made an addition towards the amount invested for purchase of property in the hands of the individual partners also and this fact has also been confirmed by the learned DR. Therefore, once a particular investment for purchase of property has been explained out of capital contribution from the partners, the next question comes to our mind is whether the amount invested for purchase of property can be added as unexplained investment in the hands of the appellant firm. The provisions of section 69A of the I.T. Act, 1961 deals with unexplained money etc., and as per the said provision, where in any financial year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable articles and such investment is not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of acquisition of money or explanation offered by him is not in the opinion of the Assessing Officer satisfactory, the money and the value of bullion

or other valuable articles may be deemed to be the income of the assessee for such financial year. In order to invoke section 69A, there should be an investment or unexplained money and the same is not recorded in the books of account, if any, maintained by the assessee and further the assessee offers no explanation, or the explanation offered by the assessee is not in the opinion of the Assessing Officer not satisfactory. In the present case, there is no dispute regarding the fact that the appellant maintains books of account and also recorded investment made in purchase of property in the books of account maintained for the relevant A.Ys. The appellant had also explained the source of income and nature and source of acquisition of the money for purchase of the property and claimed that the entire amount has been contributed by the two partners and this fact is not disputed by the Assessing Officer which is evident from the assessment order passed in the hands of the individual partners. Further, the CIT(A) in his order reproduced the balance sheet of the appellant for the year ending 31-03-2014 and as per said balance sheet the appellant claims to have received amount from partners. The CIT(A) having noticed the fact that amount received from partners is recorded in the books of firm as creditors, then ought not to have made addition in the hands of the assessee. Therefore, in our considered view, once the investment is recorded in the books of account and further the nature and source of acquisition of investment was explained by the assessee, then in our considered

opinion, the Assessing Officer/learned CIT (A) ought not to have invoked the provisions of section 69A of the I.T. Act, 1961.

18. In so far as arguments of the ld. DR in light of statements recorded from the partner of the appellant and subsequent retraction statement, that the appellant and its partners are taking contradictory stand on the issue of assessment of investments in purchase of property in the name of the assessee and partners, we find that the AO has committed a gross error in considering the issue. In our considered view, assessment of income is purely based on evidence, but not based on statements of any person or his admission. Even in a case of admission, the AO should examine the taxability of any income or expenditure in the hands of assessee based on evidence collected during assessment and he cannot make addition or assess any income only based on statements. In fact, the CBDT has clearly instructed all assessing officers to focus on collecting evidence, rather than taking confessional statements from the assessee. In the present case, the AO and the CIT(A) simply put addition in the hands of the assessee, even though the circumstances and evidence clearly warrants to consider the issue in the hands of the partners. Further, the assessee is always trying to escape from tax liability by using all possible ways. The AO who is authorized to assess any assessee, shall consider the facts, evidence with him and relevant provisions of law before coming to any conclusion. If he draws any conclusion only based on statement or admission of

assessee without properly appraising evidence, then it leads to a confusing situation and the taxpayers would always take advantage of the situation. Therefore, in our considered view, the revenue should take all precautions before taking any decision while assessing any assessee or his income, rather blaming the assessee for the mistakes committed by the AO. Therefore, we reject the ld. DR arguments on this issue. Further, we have also considered relevant statements and other orders passed by the ld. CIT(A) in the case of partner of assessee firm and find that, those evidence are not in any way helps the case of the revenue.

19. We, further, noted that as narrated by the Assessing Officer, the appellant firm was incorporated on 31.01.2014. The firm has acquired the property by way of 3 registered sale deeds on 11.2.2014. In other words, the firm has acquired the property within 15 days from the date of incorporation or came into existence. The Assessing Officer never disputed the fact that the firm has not carried out any business activity during the above period. Unless an assessee carries out business activity, it cannot be alleged that the appellant earns such a huge amount of unexplained income within a span of 15 days. Therefore, the reasons given by the Assessing Officer/learned CIT (A) to make additions for purchase of property in the hands of the appellant ignoring the explanation offered by the assessee is contrary to or against the theory of human probability. Therefore, in our considered opinion, the Assessing Officer, having noticed that the

entire contribution for purchase of property had come from two partners erred in making additions towards investment in the hands of the appellant firm. We further note that once the source of investment in the hands of the partnership is explained out of capital contribution from partners and further the identity of the partners was not in doubt, then the addition cannot be made in the hands of the partnership firm towards investment as unexplained money u/s 69 of the I.T. Act, 1961. In this regard, it is pertinent to refer to the decision of the Hon'ble Allahabad High Court in the case of Kesharwani Sheetalaya Sahsaon vs. CIT reported in (2020) 116 Taxmann.com 382 (All.HC) where under identical set of facts, the Hon'ble Allahabad High Court held that once the assessee firm shown credit of some amount from its partners, since the partners of assessee were all identifiable and separately assessed to tax and they had shown sufficient income in their personal returns of past years which had been accepted by the Department as such, source of investment by those partners in assessee's firm having been explained, no addition could be made in the hands of firm on account of such credit. The relevant findings of the Hon'ble High Court in the case of Kesharwani Sheetalaya Sahsaon vs. CIT (Supra) is as under:

> *"12. In order to answer the questions of law upon which the present appeal has been admitted it would be necessary to advert to the provisions contained under Section 68 of the Act. For ease of reference, Section 68 of the Act, as it stood prior to the Finance Act, 2012, is being extracted below:-*
>
> *"68. Cash credits--Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no*

explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the Assessee of that previous year."

13. As per Section 68, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source of the same or the explanation offered by the assessee is not satisfactory, in the opinion of the Assessing Officer, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

14. The conditions for the applicability of Section 68 would therefore be as follows--

(i) the existence of books of accounts made by the assessee itself;

(ii) a credit entry in the books of account; and

(iii) the absence of a satisfactory explanation by the assessee about the nature and source of the amount credited.

15. The requirement under the Section is that the assessee is to submit an explanation about the nature and source of the sum which has been credited. The explanation furnished by the assessee is to be satisfactory and the creditworthiness or financial strength of the creditor is to be proved by showing that it had sufficient balance in its accounts to explain the source and the credits in the books of accounts of the assessee. The assessee would be required to explain the source of credit in the books of accounts but not the source of the source i.e. source of the creditor. It is seen that although the requirement under Section 68 is that the Assessing Officer must be satisfied that the explanation offered by the assessee is genuine, but it is also provided that in the absence of a satisfactory explanation, the unexplained cash credit "may" be charged to income tax - therefore, the unsatisfactoriness of the explanation would not automatically result in deeming the amount credited in the books as income of the assessee.

16. A similar view was taken in the case of Deputy Commissioner of Income Tax v Rohini Builders2, wherein referring to the judgment of the Supreme Court in the case of Commissioner of Income Tax v Smt. P.K. Noorjahan3, rendered in the context of Section 69 of the Act, it was held as follows:-

"The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of

that previous year. In this case the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P.K. Noorjahan [1999] 237 ITR 570."

17. The question of addition under Section 68 in a case of capital introduced by the partners was considered in Commissioner of Income Tax v Taj Borewells4, and taking note of the fact that Section 68 is a charging section and also a deeming provision it was held that once the firm had offered explanation and established that the capital was contributed by the partners, the same could not be assessable in the hands of the firm. The relevant observations made in the judgment are as follows:-

"7. Section 68 is a charging section and it is also a deeming provision. Unless the following circumstances exist, the Revenue cannot rely on section 68 of the Act.

(a) Credit in the books of an assessee maintained for the year.

(b) the assessee offers no explanation or if the assessee offers explanation the Assessing Officer is of the opinion that the same is not satisfactory, the sum so credited is chargeable to tax as "income from other sources".

x x x x x

13. ...Once the firm had offered an explanation and established that the capital was contributed by the partners, the same could not be assessable in the hands of the firm. Unless there are contradictions and inconsistencies in the statement of the partners, the credit cannot be treated as unexplained and cannot be added under section 68 of the Act in the hands of the assessee-firm..."

18. The issue relating to addition under Section 68 also came up in Commissioner of Income Tax v Pragati Co-operative Bank Limited5, and taking note of the language of Section 68 it was held that the word "may" indicates that the intention of the legislature is to confer a discretion on the Assessing Officer in the matter of treating the source of investment or credit which had not been satisfactorily explained as income of an assessee, but it is not obligatory to treat

such source as income in every case where the explanation offered was found to be not satisfactory. It was held thus:-

"14. Section 68 of the Act requires that there has to be a credit in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offers no explanation about the nature and source of such credit; or the explanation offered by the assessee is not, in the opinion of the assessing authority, satisfactory, then the sum so credited may be charged to tax as income of the assessee of that previous year. The apex court in the case of CIT v. Smt. P.K. Noorjahan [1999] 237 ITR 570 has laid down that the word "may" indicated the intention of the Legislature that a discretion was conferred on the Assessing Officer in the matter of treating the source of investment/credit which had not been satisfactorily explained as income of an assessee, but it was not obligatory to treat such source as income in every case where the explanation offered was found to be not satisfactory."

19. The nature and scope of Section 68 of the Act fell for consideration before the Supreme Court in Commissioner of Income Tax v P. Mohanakala6, and it was held as follows:-

"16. The question is what is the true nature and scope of section 68 of the Act? When and in what circumstances section 68 of the Act come into play? A bare reading of section 68 suggests that there has to be credit of amounts in the books maintained by an assessees; such credit has to be of a sum during the previous year; and the assessees offer no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessees in the opinion of the Assessing Officer is not satisfactory, it is only then the sum so credited may be charged to income-tax as the income of the assessees of that previous year. The expression "the assessees offer no explanation" means where the assessees offer no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessees. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessees as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion."

20. The aforementioned principle of law has been reiterated and followed in a recent judgment in Principal Commissioner of Income Tax (Central)-I v NRA Iron and Steel Private Limited7.

21. The judgment in the case of Kapur Brothers, which forms the basis of the order passed by the Assessing Officer and also that of the Tribunal, and upon which strong reliance has been placed by the Revenue, was a case where the entries had been made in the books of account of the assessee firm about three weeks prior to the end of the accounting period and the different explanations furnished by the assessee at different stages of the proceedings were disbelieved for the reason that the assesee had failed to establish that the partners had actually deposited the money and that the entries were not fictitious, and it was in view of the said facts that the court proceeded to answer the question referred to it by holding that the cash credit entries standing in the names of the partners in the account books of the firm could validly be treated as income of the firm from the undisclosed sources. The operative portion of the judgment in the case of Kapur Brothers is being extracted below:-

"In that case, the entries were alleged to have been made a week before the end of the accounting period. In the present case, the entries were made about three weeks prior to the end of the accounting period. Identical amounts were entered as deposited in the name of each partner. Different explanations were given by the assessee at different stages of the proceedings. They were disbelieved. In this view of the matter, the Tribunal was not justified in treating the amount as the income of the individual partner in view of the finding that the assessee had failed to establish that the partners have actually deposited the money and that the entries were not fictitious.

Accordingly, we answer the question referred to us by holding that the cash credit entries standing in the names of the partners in the account books of the firm could validly be treated as the income of the firm from undisclosed sources. As no one appeared on behalf of the assessee, there will be no order as to costs."

22. The question as to whether in a case where there are cash credit entries in the books of the assessee firm in which accounts of individual partners exist and it is found as a fact that the cash was received by the firm from its partners then in the absence of any material to indicate that there were profits of the firm, the sum so credited could be assessed in the hands of the firm was considered in the decision in Commissioner of Income Tax, Allahabad v Jaiswal Motor Finance8, and it was stated thus:-

"...It appears to be well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exist and it is found as a fact that cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, could not be assessed in the hands of the firm.

We are, therefore, of the opinion that the Tribunal did not commit any error of law and rightly held that the deposits shown in its accounts were satisfactorily explained."

23. The questions with regard to burden of proof in respect of an addition under Section 68 came up for consideration in India Rice Mills v Commissioner of Income Tax9, and it was held that where capital contributions are made by the partners prior to the commencement of the business by the assessee firm, it is for the partners to explain the source of such capital contribution and if they failed to discharge such onus then such capital contributions, although entered in the books of accounts of the assessee firm, cannot be regarded as income of the assessee firm but the same were to be added in hands of the partners. Distinguishing the judgment in the case of Kapur Brothers, it was held as follows:-

"Reliance on Kapur Brothers' case [1979] 118 ITR 741 (All) is misplaced, inasmuch as in that case deposits were entered in the books of the firm when it was already carrying on its business. The firm was called upon to explain the source of the deposits. The explanation of the firm was that the deposits represented the sale proceeds of certain assets belonging to the partners. When no evidence was adduced to substantiate that explanation, the assessing authority added the amount as income of the partnership-firm. These facts are materially different from the fact of the Infant case. Most striking feature of the case on hand is that all the deposits came to be made during the accounting year in the books of he assessee-firm before it started its business. Therefore, the onus was on the partners to explain the source in the case on hand and if they failed, the amount could have been added in their hands only and not in the hands of the assessee-firm."

24. The question as to whether in a case where there was credit in the capital account of partners in books of the firm, addition thereof could be made in the hands of the firm or the same had to be considered in the hands of the partners, came up in a reference under Section 256(1) of the Act in Commissioner of Income Tax v Metachem Industries10, and it was held that according to Section 68 the burden was on the assessee to satisfactorily explain the credit entry in the books of account of the previous year and in a case where satisfactory explanation had been given by establishing that the amount had been invested by a particular person, be he a partner or any individual then the burden of the assessee firm is discharged and the credit entry could not be treated to be income of the firm for the purposes of income tax. The relevant observations made in the judgment are as follows:-

"...Section 68 of the Act of 1961 says that where any sum is found credited in the books of an assessee maintained for any previous year,

and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. Therefore, according to section 68, the first burden is on the assessee to satisfactorily explain the credit entry in the books of account of the previous year. If the explanation given by the assessee is satisfactory, then that entry will not be charged with the income of the previous year of the assessee. In case the explanation offered by the assessee is not satisfactory or the source offered by the assessee-firm is not satisfactory, then in that case, the amount should be taken to be the income of the assessee. In the present case, the Assessing Officer did not feel satisfied with the explanation given by the assessee and accordingly assessed all the three credit entries to the account of the assessee as the income.

...Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount.

So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is an income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax. It is open to the Assessing Officer to take appropriate action under section 69 of the Act, against the person who has not been able to explain the investment..."

25. A similar question was considered in Commissioner of Income Tax v Burma Electro Corporation11 wherein the deletion of the addition made by the Tribunal, on the ground that though there was no evidence on record to show availability of funds with partners at the time of investment with the assessee firm the concerned partners having admitted to have made those investments and there being no material to indicate that those investments were profits of the assessee firm, the sum so credited could not be assessed as income of the firm in terms

of Section 68 but could be assessed in the hands of the individual partners, was upheld.

26. We may also refer to the decision in the case of Abhyudaya Pharmaceuticals v Commissioner of Income Tax12, wherein the earlier decision in the case of Jaiswal Motor Finance was followed on the point that if there are cash credit entries in the books of the assessee firm in which accounts of an individual partner exists, and it is found as a fact that the cash was received by the firm from its partners then in the absence of any material to indicate that the same were profits of the firm, it could not be assessed in the hands of the firm. The judgment in the case of Kapur Brothers was also considered and distinguished on facts. The relevant observations made in the judgment are as follows:-

"13. So far as the second limb of the argument that at whose hands the addition should be made is concerned, it is apt to have a look to section 68 of the Income-tax Act. Heading of the said section is "Cash Credits" and it reads that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as income of the assessee of that previous year.

14. It may be noted that section 68 of the Income-tax Act, 1961 is a new provision in the sense that there was no such provision under the old Act, i.e., the Indian Income-tax Act, 1922. Even then the underlying principle of section 68 was given judicial recognition by courts. In other words, the principle has been developed on the basis of judicial decisions which has been given statutory recognition by section 68.

15. CIT v. Jaiswal Motor Finance [1983] 141 ITR 706 (All) is a Division Bench authority of this court wherein it has been laid down that if there are cash credit entries in the books of the assessee-firm in which accounts of an individual partner exists, and it is found as a fact that the cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm. The learned counsel for the appellant submits that the aforesaid decision applies with full force to the facts of the case on hand. Noticeably, this was also a case where it was the first year of assessment of the firm. The observations made therein if read in the context of the facts of the present case, the submission of the appellant's counsel is well founded. The relevant extract is reproduced below (page 707):-

"It appears to be well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exist

and, it is found as a fact that cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm. We are, therefore, of the opinion that the Tribunal did not commit any error of law and rightly held that the deposits shown in its accounts were satisfactorily explained."

16. At this stage, the learned standing counsel for the Department places reliance upon another Division Bench decision of this Court in the case of Kapur Brothers [1979] 118 ITR 741 (All). It is apt to examine the facts of the case of Kapur Brothers (supra). The Assessing Officer found a deposit of certain amount while making assessment of M/s. Kapoor Brothers. The amount was deposited in the name of its partners. The deposits were entered as on October 20, 1966. The accounting period for the assessment year 1967-68 ended on November 11, 1968. The explanation offered by the assessee was not found satisfactory. In this factual background, it was noticed that the entries were made about three weeks prior to the end of the accounting period. In this factual background the High Court held that cash credit entries standing in the name of partners in the account books of the Firm would validly be treated as income of Firm from undisclosed source.

17. On a first flash, it appears that the ratio of the aforesaid decisions given in the case of Kapur Brothers [1979] 118 ITR 741 (All) and Jaiswal Motor Finance [1983] 141 ITR 706 (All) is conflicting, but on a meaningful reading thereof, would show that they were rendered in different factual matrix. The ratio laid down in the case of Kapur Brothers [1979] 118 ITR 741 (All) will be applicable in a case where a partner brings capital amount at the formation of the firm itself, before the commencement of business by the firm. It would not be applicable in a case where the deposit is reflected in the account books of the firm during the currency of the business of the firm. The underlying idea in the case of Kapur Brothers [1979] 118 ITR 741 (All) is that when the assessee-firm has no business, it cannot possibly have any income. Therefore, in such a case the question of presumption of income of the assessee-firm would not arise generally. But it is not appropriate when the assessee-firm is earning income from its business and in that situation the assessee-firm has to explain the cash credit standing in its account. If the above line of distinction is kept in mind, we find that both the decisions are standing on a different factual background.

18. It is interesting to note that the aforesaid two decisions one given in the case of Jaiswal Motor Finance [1983] 141 ITR 706 (All) and another in the case of Kapur Brothers [1979] 118 ITR 741 (All) were again up for consideration before a Division Bench of this court in the

case of India Rice Mill v. CIT (1996) 218 ITR 508. The relevant extract is reproduced below (page 510 of 218 ITR):

"However, the Tribunal relying on CIT v. Kapur Brothers [1979] 118 ITR 741 (All), held that since the amount was credited in the books of the assessee-firm, it is for the assessee to explain the source of the deposits and as the assessee-firm failed to discharge that onus, the deposits were rightly taken to be the income of the assessee-firm from undisclosed sources by the assessing authority..."

Reliance on Kapur Brothers' case [1979] 118 ITR 741 (All) is misplaced, inasmuch as in that case deposits were entered in the books of the firm when it was already carrying on its business. The firm was called upon to explain the source of the deposits. The explanation of the firm was that the deposits represented the sale proceeds of certain assets belonging to the partners. When no evidence was adduced to substantiate that explanation, the assessing authority added the amount as income of the partnership-firm. These facts are materially different from the fact of the instant case. Most striking feature of the case on hand is that all the deposits came to be made during the accounting year in the books of the assessee-firm before it started its business. Therefore, the onus was on the partners to explain the source in the case on hand and if they failed, the amount could have been added in their hands only and not in the hands of the assessee-firm."

19. On the facts and circumstances of this case, we are of the considered opinion that the authorities below have committed error as they have failed to take into account that this was the first year of the business of the assessee firm. The partnership firm was formed on July 5, 1990 and on July 7, 1990, Master Shishir Garg deposited Rs.1,90,000 and Rs.72,000 as capital money with the Firm through bank clearance of two bank drafts. The accounting period being financial year, i.e., ending on March 31, 1991, the Firm could not have any income at the time of its formation. The identity of the depositor, i.e., Master Shishir Garg was not in issue at any point of time before the income-tax authorities. They treated the said deposit by Master Shishir Garg. This being so, if for one reason or the other, they were not satisfied with the financial capability of Master Shishir Garg, the amounts could have been added at the hands of Master Shishir Garg and not at the hands of firm.

20. The decision relied upon by the learned counsel for the Department is clearly distinguishable on facts as it was not in respect of first year of the business and has no application whatsoever. The argument put by him that the income was liable to be added in the hands of firm as Master Shishir Garg being minor could not be prosecuted, has no substance.

21. It may be noted that the decision given in the case of Jaiswal Motor (supra) is being constantly followed by this court in the subsequent decisions. Reference can be made to Surendra Mohan Seth v. CIT [1996] 221 ITR 239 (All).

22. The Rajasthan High Court in CIT Vs. Kewal Krishna and Partners [2009] 18 DTR 121 (Raj) has also taken similar view."

27. Section 68 requires the Assessing Officer to satisfy itself of the source of the credit and if during the course of enquiry undertaken, the entries are found to be not genuine then the sum represented by such credit entry is to be added as income of the assessee. The satisfaction of the Assessing Officer thus forms the basis for invocation of the provisions of Section 68. The satisfaction in this regard, however, must not be illusory or imaginary but is required to be based on the facts and the evidence and on the basis of a proper enquiry of the material before the Assessing Officer. The enquiry envisaged under the provision is to be reasonable and just.

28. Under Section 68, the onus is on the assessee to offer explanation where any sum is found credited in the books of account and where the assessee fails to prove to the satisfaction of the Assessing Officer, the source and nature of the amount of cash credits an inference may be drawn that the credit entries represent income taxable in the hands of the assessee. This does not however absolve the responsibility of the Assessing Officer to prove that the cash credits constitute the income of the assessee. The onus on the assessee has to be understood with reference to the facts of each case and if the prima facie inference on the basis of facts is that the assessee's explanation is probable, the onus shifts to the Revenue. It has been consistently held that once the assessee has proved the identity of its creditors, the genuineness of the transactions and the creditworthiness of the creditors vis-a-vis the transactions which it had with the creditors, the burden stands discharged and the burden then shifts to the Revenue to show that the amount in question actually belong to, or was owned by the assessee himself.

29. The question as to whether in a case where money has come from a partner, addition, if any, has to be made in the hands of the partner or of the firm came up for consideration upon the reference under Section 256(1) of the Act in the case of Commissioner of Income Tax v Kishorilal Santoshilal13, and referring to the language used under Section 68 and various authorities on the point it was held that in this regard the following points are required to be noted:-

"On the basis of the language used under section 68 and the various decisions of different High Courts and the apex court, the only conclusion which could be arrived at is :

(i) that there is no distinction between the cash credit entry existing in the books of the firm whether it is of a partner or of a third party,

(ii) that the burden to prove the identity, capacity and genuineness has to be on the assessee,

(iii) if the cash credit is not satisfactorily explained the Income-tax Officer is justified to treat it as income from "undisclosed sources",

(iv) the firm has to establish that the amount was actually given by the lender,

(v) the genuineness and regularity in the maintenance of the account has to be taken into consideration by the taxing authorities,

(vi) if the explanation is not supported by any documentary or other evidence, then the deeming fiction credited by section 68 can be invoked."

30. It is therefore seen that in a case where a sum is credited in the books of account of a firm from a partner, the assessee firm could discharge its onus by proving three things: (i) identity of the creditor; (ii) creditworthiness of the creditor; and (iii) genuineness of transaction in question. Once the assessee proves all the three things its onus is discharged. It has also been consistently held that the assessee only needs to prove the source of credit entries and he is not required to prove the source of the source or the creditors' credit.

31. In a case where the integrity of the creditors is established and the entries are shown to be not fictitious, the burden would shift on the Revenue.

32. In the case at hand, the partners have shown the agricultural income in their personal returns of the past years which had been accepted by the department as such. The partners are all identifiable and separately assessed to tax. The source of investment having been explained, in the event the Assessing Officer was not satisfied the addition could have been considered in the hands of the partners and not in the hands of the firm. The burden of proving the source of the credits having been sufficiently explained the addition could not have been made in the hands of the firm in the facts of the present case."

20. In this view of the matter and considering the facts and circumstances of the case and also by following the decision of the Hon'ble Allahabad High Court (Supra), we are of the considered view that once the assessee explained the source for purchase of property out of capital contribution from Partners, then the Assessing Officer cannot make addition towards investment in purchase of property in the hands of the appellant firm as unexplained money u/s 69A of the I.T. Act, 1961. The learned CIT (A) without appreciating the relevant facts and without any valid reasons enhanced the assessment and made addition towards the amount for purchase of property as unexplained money for the impugned asst. year. Thus, we reverse the findings of the learned CIT (A) and delete the enhancement to the extent of Rs.39,48,00,000/- in the case of the assessee u/s 69A of the I.T. Act, 1961.

21. As regards the addition of Rs.17.00 lakhs u/s 68 of the I.T. Act, 1961 towards the consideration paid for purchase of property by cheque and Rs.25.00 lakhs towards stamp duty and registration charges for registration of the property, we are of the considered view that when the entire contribution has been received from the Partners as a capital contribution and since the identity of the Partners are established and also the investment has been routed through proper banking channels, the question of making addition towards the consideration paid by cheque u/s 68 of the I.T. Act, 1961 and amount paid for stamp duty and

other registration charges by cheque u/s 69A of the Act does not arise. Therefore, we reverse the findings of the learned CIT (A) on this addition and direct the Assessing Officer to delete the addition made u/s 68 and 69A of the I.T. Act, 1961.

22. In the result, an appeal filed by the assessee for the A.Y 2014-15 is allowed.

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23. Coming back to the addition of Rs. 2,25,21,321/- and Rs. 1,10,35,625/- for Asst. years 2015-16 and 2017-18. The CIT(A) assessed stamp duty and other charges u/s 68 of the Act, for both assessment years on the ground that the appellant failed to prove identity of the creditor and genuineness of the transaction. Admittedly, the partners of appellant firm had in their statement recorded during the course of post search investigation confirmed that the total amount incurred for purchase of property, including stamp duty and other incidental charges has been contributed by both the partners. They had also stated that the amount has been earned from the real estate business in their individual capacity and also agreed to offer additional income for the A.Y 2014-15. We came to know that the Assessing Officer has made addition towards the amount invested for purchase of property in the hands of the individual partners also and this fact has also been confirmed by the learned DR.

Therefore, once a particular investment for purchase of property has been explained out of capital contribution from the partners, the next question comes to our mind is whether the amount invested for purchase of property can be added as unexplained credit in the hands of the appellant firm. The provisions of section 68 of the I.T. Act, 1961 deals with unexplained credit etc., and as per the said provision, where any sum found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or explanation offered by him is not in the opinion of the Assessing Officer satisfactory, the sum so credited may be charged to income tax as income of the assessee of that previous year. To invoke section 68, there should be a credit in the books of account, if any, maintained by the assessee and further the assessee offers no explanation, or the explanation offered by the assessee is not in the opinion of the Assessing Officer not satisfactory. In the present case, there is no dispute about the fact that the appellant had explained the source of income and nature and source of credit and claimed that the entire amount has been received from partners and this fact is not disputed by the Assessing Officer which is evident from the assessment order passed in the hands of the individual partners. Therefore, once the credit is explained by the assessee, then in our considered opinion, the Assessing Officer/learned CIT (A) ought not to have invoked the provisions of section 68 of the I.T. Act, 1961. Further, as narrated by the Assessing Officer, the appellant firm

was incorporated on 31.01.2014. The firm has acquired the property by way of 3 registered sale deeds on 11.2.2014. In other words, the firm has acquired the property within 15 days from the date of incorporation or came into existence. The Assessing Officer never disputed the fact that the firm has not carried out any business activity during the above period. Unless an assessee carries out business activity, it cannot be alleged that the appellant earns such a huge amount of unexplained income within a span of 15 days. Therefore, the reasons given by the Assessing Officer/learned CIT (A) to make additions for sundry creditors being partner's capital accounts, ignoring the explanation offered by the assessee is contrary to, or against the theory of human probability. Therefore, in our considered opinion, the Assessing Officer, having noticed that the entire contribution for purchase of property had come from 2 partners, erred in making additions towards investment in the hands of the appellant firm. We further note that once the source of investment in the hands of the partnership is explained out of capital contribution from partners and further the identity of the partners was not in doubt, then the addition cannot be made in the hands of the partnership firm towards investment as unexplained credit u/s 68 of the I.T. Act, 1961

24. In this regard, it is pertinent to refer to the decision of the Hon'ble Allahabad High Court in the case of Kesharwani Sheetalaya Sahsaon vs. CIT reported in (2020) 116 Taxmann.com

382 (All.HC) where under identical set of facts, the Hon'ble Allahabad High Court held that once the assessee firm shown credit of some amount from its partners, since the partners of assessee were all identifiable and separately assessed to tax and they had shown sufficient income in their personal returns of past years which had been accepted by the Department as such, source of investment by those partners in assessee's firm having been explained, no addition could be made in the hands of firm on account of such credit.

25. In this view of the matter and considering the totality of the facts and circumstances of the case and also by following the decision of the Hon'ble Allahabad High Court in the case of Kesharwani Sheetalaya Sahson vs. CIT (Supra), we are of the considered opinion that once it is noticed that entire contribution towards purchase of property and incidental charges has been received from Partners and further the identity of the partners is proved, then in our considered opinion, the question of making additions towards the amount paid for stamp duty and other charges as unexplained cash credit u/s 68 of the I.T. Act, 1961 in the hands of the appellant firm does not arise. The learned CIT (A) without appreciating the relevant facts simply made addition towards the stamp duty and registration charges u/s 68 of the I.T. Act, 1961. Thus, we set aside the order passed by the learned CIT (A) for both the A. Ys and direct the Assessing Officer to delete

the additions made u/s 68 of the I.T. Act, 1961 for Asst. years 2015-16 and 2017-18.

26. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 24th day of July, 2024.

Sd/-	Sd/-
(LALIET KUMAR) **JUDICIAL MEMBER**	**(MANJUNATHA, G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 24th July, 2024
Vinodan/sps

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order