

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

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

ITA No. 206 & 207/Ind/2023 (AY: 2015-16 & 2016-17)

DCIT (Central)-3, Indore	<b><u>बनाम/</u></b> Vs.	Mrs. Jatinder Kaur Bhatia Rajbeer Roadlines, Pandhana Road Borgaon Khurd, Khandwa (PAN: AGIPB6002F)
(Revenue / Appellant)		(Assessee / Respondent)

ITA No.227/Ind/2023 (AY:2018-19)

Mrs. Jatinder Kaur Bhatia Rajbeer Roadlines, Pandhana Road Borgaon Khurd, Khandwa (PAN: AGIPB6002F)	<b><u>बनाम/</u></b> Vs.	ACIT(Central) Ujjain (Stationed at Indore)/ DCIT (Central)-3, Indore
(Assessee / Appellant)		(Revenue / Respondent)

Assessee by	Shri Harsh Vijaywargiya, AR
Revenue by	Shri Ram Kumar Yadav, CIT DR

Date of Hearing	27.05.2024
Date of Pronouncement	22.08.2024

**आदेश / ORDER**

**Per Bench:**

The captioned three appeals are related to same assessee. **ITA No. 206 & 207/Ind/2023** for AY 2015-16 and 2016-17 respectively are preferred by revenue and **ITA No. 227/Ind/2023** for AY 2018-19 is preferred by assessee. All these appeals are directed against appeal-order dated 30.03.2023 passed by learned Commissioner of Income-tax (Appeals)-3,

Bhopal ["CIT(A)"] which in turn arise out of assessment-order dated 30.12.2009 passed by ACIT, Ujjain, stationed at Indore ["AO"] u/s 153A/143(3) of the Income-tax Act, 1961 ["the Act"].

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

3. The background facts leading to these appeals are such that the assessee-individual was engaged in the business of providing material handling and transportation services connected with railway racks in a proprietorship concern named 'M/s Rajbeer Roadlines'. The assessee worked mainly for Food Corporation of India (FCI) and Ambuja Cements Limited. A search u/s 132 was carried by Income-tax Authorities on one "Bhatia group" including assessee on 23.01.2018. Consequently, the assessments u/s 153A/143(3) were framed for seven AYs 2012-13 to 2018-19. Presently, we are concerned with three AYs 2015-16, 2016-17 and 2018-19 in these appeals. The AO made assessments of these three AYs after making certain disallowances/additions. The assessee carried matters in first-appeal and succeeded to a large extent. Now, the revenue/assessee have come in these appeals.

**Revenue's ITA No. 206 & 207/Ind/2023 - AY 2015-16 & 2016-17:**

4. The grounds raised in these appeals are as under:

**A.Y. 2015-16:**

1. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of Salary/Hammali expenses amounting to Rs. 2,53,63,900/- made u/s 40A(3) of the IT Act for payment made in cash exceeding Rs. 20,000/-?

2. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of Salary/Hammali expenses amounting to Rs. 2,53,63,900/- made u/s 40A(3) of the IT Act for payment made in cash exceeding Rs. 20,000/- ignoring that:

a) The payment made in cash exceeding Rs. 20,000/- was found entered in the registers seized during the course of search proceedings conducted in the case of the assessee?

b) The registers, as evidenced at pages 4-6 of the Assessment Order, contain the signature of personnel accepting salary in cash exceeding Rs. 20,000/- on duly affixed Revenue Stamps?

c) The assessee failed to substantiate that the month-wise registers represents daily payment?

3. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the mad addition of Rs. 4,05,973/- made for unexplained investment u/s 69 of the IT Act in construction of house?

4. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 4,05,973/- made for unexplained investment u/s 69 of the IT Act in construction of house without pointing out any specific defect in the report of the Departmental Valuation Officer?

5. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made for unexplained investment u/s 69 of the IT Act in construction of house on the basis of application of CPWD rates without pointing out any specific defect in the report of the Departmental Valuation Officer?"

**A.Y. 2016-17:**

1. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of Salary/ Hammali expenses amounting to Rs. 1,58,16,000/- made u/s 40A(3) of the IT Act for payment made in cash exceeding Rs. 20,000/-?

2. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of Salary/ Hammali

*expenses amounting to Rs. 1,58,16,000/- made u/s 40A(3) of the IT Act for payment made in cash exceeding Rs. 20,000/- ignoring that:*

- a) The payment made in cash exceeding Rs. 20,000/- was found entered in the registers seized during the course of search proceedings conducted in the case of the assessee?*
- b) The registers, as evidenced at pages 4-6 of the Assessment Order, contain the signature of personnel accepting salary in cash exceeding Rs. 20,000/- on duly affixed Revenue Stamps?*
- c) The assessee failed to substantiate that the month-wise register represents daily payment?*

*3. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 15,17,280/- made for unexplained investment u/s 69 of the IT Act in construction of house?*

*4. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 15,17,280/- made for unexplained investment u/s 69 of the IT Act in construction of house without pointing out any specific defect in the report of the Departmental Valuation Officer?*

*5. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made for unexplained investment u/s 69 of the IT Act in construction of house on the basis of application of CPWD rates without pointing out any specific defect in the report of the Departmental Valuation Officer?*

5. Thus, the grounds raised by revenue for both years are identical except change of figures. Therefore we decide grounds of both appeals analogously.

Ground No. 1 to 2:

6. In these grounds, the revenue has challenged the CIT(A)'s action of deleting the disallowance of Rs. 2,53,63,900/- in AY 2015-16 and Rs. 1,58,16,000/- in AY 2016-17 made by AO u/s 40A(3) on account of cash payments exceeding Rs. 20,000/- towards salary/hamali expenses.

7. The AO has dealt this issue in Para 7 of assessment-order. He has noted that during search action, Salary/Attendance Registers inventoried as 'BS-49, 50, 51, 52, 53' were found containing details for financial years 2014-15 and 2015-16 relevant to AY 2015-16 and 2016-17 respectively. The Salary Registers contained month wise/employee wise details of number of days present, salary per day, total salary for the month and signatures of respective employees with revenue stamps, etc.. The Attendance Registers contained details such as names of employees, individual dates of each month when they were present, etc. These registers were found certified by Store In-Charge of FCI. The AO has also scanned and re-produced part of Salary Registers on Page 4-6 of assessment-order. Thus, from these registers which were found during search, the AO observed that the assessee had made payments exceeding Rs. 20,000/- in cash to some employees which was a contravention of section 40A(3). The AO has compiled the details of such violative payments in tabular formats on Page 7-32 of assessment-order. The AO show-caused assessee to explain the violation of section 40A(3). In response, the assessee filed explanation which is re-produced by AO in Para 7.3 of assessment-order. The assessee's submission was such that the payments mentioned in Salary Registers were made to hamals (labourers) on 'daily wage basis' but due to the format suggested by FCI officials, the assessee had to maintain details on 'monthly basis' in the form of Registers. The assessee further submitted that none of the actual payments exceeded Rs. 20,000/-; that there was no contravention of section

40A(3) and that all actual payments made by assessee were recorded in assessee's books of account and were verifiable. The assessee also filed copies of Ledger A/c of Hamali payments as print-outs of books of account to AO. The assessee requested the AO to drop the alleged issue. However, the AO rejected assessee's submission, vide Para 7.4 of assessment-order, by observing that the assessee was engaged in same business on regular basis for some years; that the assessee's business was not such as could be done on 'hire and fire' staff; that the assessee was a lady who could not be in a position to search large number of hamals on daily basis. The AO therefore concluded that the assessee had fix, identifiable and permanent staff. Ultimately, the AO computed yearwise figures of cash payments for AY 2015-16 and 2016-17 and made disallowances in respective years.

8. During first-appeal, the CIT(A) reversed AO's action and deleted disallowance by passing following order:

*"3.2.2 I have considered the facts of the case, material evidences on record, written submission filed by appellant and to the facts and finding of the AO inter alia material brought on record. The appellant during appellate proceedings as well as during appellant proceedings has admitted and stated that the seized registers i.e. BS-49, B-50 & BS-51 pertains to M/s. Rajbeer Road Lines Prop. Smt. Jatinder Kaur Bhatia. The appellant has explained that she had been involved in providing hammals to FCI in loading and unloading railway racks and the impugned registers as mentioned above mentions details of hammals deployed to FCI for loading and unloading work. The details of these hammals are prepared in the format accepted by FCI. The attendance and other details of hammals are verified by FCI officials and then the same are forwarded to FCI for payments for handling railway racks. The impugned register contains details of salary paid to hammals, number of days the hammals were present at work, signature of hammals accepting salary. The register BS-49 is an attendance register of labours deployed for handling railway racks of FCI for the period 01.04.2014 to, 31.03.2015. The register BS-51 is also an attendance register for the period 01.04.2015 to 31.03.2016.*

However, register BS-51 is also an attendance register for the period April 2014 to October 2014. The appellant has explained that the register BS-49 & BS-50 were prepared in the format as accepted by the FCI and since the register BS-51 was not in prescribed format as desired by the FCI the same was not accepted by FCI officials. Afterwards a new register was prepared which has also been seized as BS-49. The appellant has also claimed that the payments mentioned in BS-49, B-50 & B-51 were made to hammals on daily/fortnightly basis in cash, however due to format as suggested by FCI the seized registers were maintained on monthly basis. Further, the appellant for execution of work of FCI and other concerns would not hire 211 permanent employee during the year 2014-15 and 189 during the year 2015-16. Rather, the appellant has hired hammals on regular basis and payments to them were made either daily or fortnightly. The same fact can also be verified from hammals registers found and seized during the course of search which clearly shows that a maximum number of hammals were not shown to be present for work throughout the year for the reason that either there was no railway rack during that period or they were engaged somewhere else which shows that these hammals were not regular employees of the appellant. Hence, no payment exceeding Rs. 20,000/- has been paid in violation to provisions of section 40A(3) of the Act. In support appellant has filed copy of ledger account of hammal expenses for F.Y. 2014-15 & 2015-16.

3.2.3 Considering the claim of the appellant and findings of the Ld. AO, I find that appellant has been involved in handling railway racks of FCI from FY 2014-15 and Ambuja Cement from F.Y. 2015-16. The handling work includes loading and unloading railway racks. Therefore, for execution of the said work the appellant hired hammals to whom payments, as claimed, were made in cash on daily/fortnightly basis. On perusal of relevant extract of seized registers i.e. BS-49, BS-50 & BS-51 it has been prima facie observed that during F.Y. 2014-15 the appellant has hired 211 hammals and has paid salary as per seized register. The salary paid in few months is in excess of Rs. 20,000/- which has subsequently been disallowed by the Ld. AO by invoking provisions of section 40A(3) of the Act. The Ld. AO has rejected claim of the appellant by stating that these hammals were regular employee and that the business of appeal required regular services of hammals and therefore, the same cannot be on the basis of hire and fire method. Further, the appellant being a lady was not in a position to search such large number of laborers on daily basis. However, the appellant has claimed that the hammals were hired on day-to-day basis and appellant was in no position to hire 211 hammals as regular employee. I find merit in the claim of the appellant for the reason that the impugned seized registers mentions month wise attendance details of all the hammals which shows that many of the hammals were not hired for major portion of the year and therefore, they cannot be treated as regular employees. **Further, the appellant before the Ld. AO as well as before me has filed copies of debit voucher for making payments to hammals which have been made on fortnightly basis and none of the payment have been made in violation of provisions of section 40A(3) of the Act.** Hence, the appellant cannot be held to be in default within the meaning of section 40A(3).

3.2.4 Most importantly, the Ld. AO had not made any independent enquiry from any of the hammals to ascertain true and correct facts of the case and rather solely relied upon impugned registers. The Ld. AO has also not considered the debit vouchers which clearly mentions date of payment, amount, name of hammal, signature on revenue stamp. The Ld. AO ignoring all the key facts has only relied on seized register, which mentions total amount paid to hired hammals which was in format desired by FCI department for further reimbursement of payment to appellant. The income earned by appellant for hammals services to FCI and others have been fully offered to tax and have not been disputed by the Ld. AO. I also find that the impugned register which is compiled for the FCI department cannot be made basis of impugned disallowance and that too in absence of any contrary independent finding and cogent evidence on record.

3.2.5 In view of the above discussion, the Ld. AO was not justified in invoking provisions of section 40A(3) and also in making impugned disallowance. Thus, disallowance made by the Ld. AO amounting to Rs. 2,53,63,900/- in A.Y. 2015-16 and Rs. 1,58,16,000/- in A.Y. 2016-17 are hereby deleted. Therefore, appeal on this ground is allowed."

*[Emphasis supplied]*

9. Before us, Ld. DR for revenue/appellant submitted that the limited issue before bench is whether section 40A(3) was attracted or not? He submitted that the assessee has not given any details or evidence to AO to show daily payments to hamals. He submitted that the registers found from possession of assessee during search clearly show month-wise data of payments and the AO has compiled details of payments exceeding Rs. 20,000/- from those very registers found from assessee, hence where is any infirmity in the action of AO? He submitted that the assessee made after-thought submission of daily/fortnight payments to CIT(A) and the CIT(A) accepted assessee's submission. He submitted that the vouchers of payments submitted by assessee appear in the handwriting of same person and these vouchers were not available at the time of search. He submitted

that the CIT(A) has given credence to assessee's submission without remand to AO, which is also a mistake.

10. Per contra, Ld. AR for assessee/respondent straightaway carried us to the 'Salary Register' found during search as re-produced by AO on Page 4-7 of assessment-order. Referring to same, he submitted that in the column of 'basic salary', there is a clear mention of Rs. 900/- or 700/- or 650/- per day. He submitted that had the assessee's arrangement/payment been on monthly basis, the 'basic salary' would have been mentioned on 'per month' basis which is not the case. He submitted that this point itself reveals that the hamals were on daily basis and not on monthly basis. He submitted that the rates of daily hamali charges was fixed by Hamal's Association. He submitted that outside hamals were not allowed by Hamals' Association. Then, he carried us to next Page 7 onwards of assessment-order to show that the details compiled by AO itself shows that there are asymmetric monthly payments to different hamals. Having shown thus, Ld. AR invited our attention to Page 443, 447 and 454 of Paper-Book to the Condition No. VI(a) of the Tender-documents of FCI reading as under:

"VI. Liability for Personnel:

"(a) All persons employed by the contractor shall be engaged by him as his **own employees/workers** in all respects and all rights and liabilities under the Indian Factories Act or the Employees Compensation Act and Employees Provident Fund & Misc. Provisions Act, or any other similar applicable enactments in respect of all such personnel shall exclusively be that of the contractor. The contractor shall be bound to indemnify the Corporation against all the claims whatsoever in respect of his personnel under the Employees Compensation Act, 1923, or any statutory modification thereof or otherwise for or in respect of any

*damage or compensation payable in consequence of any accident or injury sustained by any workmen or other person **whether in employment of the Contractor or not.***

Ld. AR submitted that in order to meet the aforesaid Condition No. VI(a) of Tender-document, the assessee had to prepare the seized Registers irrespective of whether the payees were employees or workers or in assessee's employment or not. Such Registers would have to be signed by FCI officials for release of payment to assessee. Then, referring to a declaration submitted by assessee to FCI (Page 467 of Paper-Book) and Form No. 26AS downloaded from database of Income-tax Department (Page 481 of Paper-Book), Ld. AR showed that the assessee has also done identical work for a private client named Ambuja Cements Limited ("Ambuja") but the assessee has not made similar register for the hamals/workers engaged for work of Ambuja because there was no insistence by Ambuja to maintain Salary Registers in the manner required by FCI. Ld. AR submitted that the assessee is a commercial organisation and had to obtain work from FCI and comply with the condition imposed by FCI and maintain registers in the format suggested by FCI officials else the assessee would not have received work or payments from FCI. Ld. AR submitted that the position of hamals engaged for executing works of FCI and Ambuja is essentially same. However, the AO has accepted the payments made by assessee to hamals engaged for the work of Ambuja as recorded in assessee's books and has not made any disallowance but when it came to the payments made to the hamals engaged for work of FCI, the AO has made disallowance on the basis

of Salary Registers found during search disregarding the books of accounts maintained by assessee. Ld. AR submitted that the realistic position in both cases i.e. FCI and Ambuja is same. Then, Ld. AR referred the Ledger A/cs of Hamali Expenses and sample vouchers of payments maintained by assessee as part of books of accounts as filed before lower-authorities (Page 793 to 920 of Paper-Book). Referring to same, Ld. AR submitted that the actual payments were made by assessee to hamals on daily/fortnight basis and the same are accordingly and properly recorded in books of account. Ld. AR submitted that the actual payments made by assessee as per vouchers do not exceed Rs. 20,000/- and therefore no disallowance is called for. Ld. AR submitted that the AO has inferred violation of section 40A(3) on the basis of monthly 'Salary registers' found during search which though were made and maintained by assessee only to meet the requirement of FCI and do not represent actual payments. Ld. AR submitted that there were as many as 211 hamals and how could the AO assume that such a large number would be permanent employees of assessee? Lastly, Ld. AR submitted that the CIT(A) has judiciously considered the factual position of assessee and deleted the disallowance, his order is a proper order and no interference is required.

11. Ld. AR also pointed out that all payment-vouchers considered by CIT(A) were part of books of accounts and were available before AO but the AO has not made any comment or whisper on vouchers or even daily/fortnight payments in assessment-order. He submitted that the AO

has conveniently made disallowance on the basis of 'Salary Registers' found during search without considering the factual position submitted by assessee.

12. While arguing Ld. AR also made a legal submission that even otherwise had the assessee made any payment exceeding Rs. 20,000/- in cash to hamals, which though is not the case, the assessee would still not be exposed to suffer any disallowance u/s 40A(3) for the reason that the hamals did not accept payment through cheque and insist on cash payment only. The assessee had to engage hamals and make cash payments to run her business. It is by now judicially accepted that the considerations of business expediency are inbuilt as exceptions in the provisions of section 40A(3). Therefore also, the disallowance made by AO was not called for.

13. We have considered rival submissions of both sides and carefully perused the documents held in Paper-Book including the orders of lower authorities. Admittedly, it is a fact that the impugned registers on the basis of which the AO has made disallowance were found from possession of assessee during search. The assessee has no dispute *qua* this fact. Those registers which were found during search contained monthwise/employeewise details of basic wages per day, number of days, total salary for a month etc. From those details, the AO has inferred/compiled the details of payments exceeding Rs. 20,000/- made in cash and made disallowance. Thus, the only basis for making disallowance by AO is the Registers found

during search. But here comes the explanation of assessee which has to be considered passionately and judiciously. Vide Condition No. VI(a) of Tender-documents of FCI, as mentioned earlier, the assessee was obligated to comply with all statutory laws whether the payees were employees or workers or in employment of assessee or not. It is a submission of assessee that by virtue of this Condition, the FCI officials required the assessee to maintain details of payments to various hamals in the form of a monthly register which were then signed by officials of FCI and used for releasing payment to assessee. It is a strong claim of assessee that she is engaged in the business of handling and transportation of goods at railway racks and work had to be done through hamals only, outside labours were not permitted. Further, the hamals have their own Association. Thus, the line of assessee's business is such that there is a considerable credence in assessee's claim that she had to engage hamals already available and the hamals have to be paid as per rates fixed by hamals' Association on daily/ fortnightly basis on one hand and still the assessee had to maintain Salary Registers on monthly basis to meet the requirement of FCI on other hand. Then, the CIT(A) has noted a finding that the assessee has recorded hamali payments in books of account and filed copies of Ledger A/cs and debit vouchers to AO as well as CIT(A). The documents are also filed in Paper-Book before us. The Ld. AR's pleading in open court that the Ledger A/cs and vouchers were before AO but not commented by AO in assessment-order is in line with the finding made by CIT(A). From these documents

which are part of assessee's books of accounts; which were available with AO as well as CIT(A) and which were not rejected by AO, the CIT(A) has rightly found that there is no payment exceeding Rs. 20,000/- having been made by assessee in cash. The CIT(A) is also right in observing that the AO has not made any enquiry from any of the hamals in the matter. If the AO had any doubt or dispute with regard to the assessee's factual submission, he could very well make independent enquiry from some of the hamals to discover the correct state of affairs. However, no such attempt was done by AO. The AO has merely stuck to the Registers found during search and made disallowance based thereon without giving any regard to assessee's submission. We find that the CIT(A) has considered assessee's submission judiciously and deleted the disallowance after a due consideration. We also find merit in the legal submission of assessee that even if any payment exceeding Rs. 20,000/- would have been made in cash to hamals, the disallowance u/s 40A(3) would still not trigger because the hamals are petty-level labourers who do not accept payment through cheques and hence it would be a business compulsion of assessee to pay only in cash. Ld. AR is right in pleading that judicially it has been held that the consideration of business necessity/expediency is in-built as exception in the provision of section 40A(3). Thus, considering entire conspectus of case, we do not find any valid reason to make interference with the deletion of disallowance made by CIT(A). Consequently, we uphold order of CIT(A) and the grounds raised by revenue are dismissed.

**Ground No. 3 to 5:**

14. In these grounds, the revenue has challenged the CIT(A)'s action of deleting the addition of Rs. 4,05,973/- in AY 2015-16 and Rs. 15,17,280/- in AY 2016-17 made by AO u/s 69 on account of unexplained investment in construction of house.

15. The precise facts apropos to this issue are such during assessment-proceeding, the AO made a reference to Departmental Valuation Officer (DVO) u/s 142A for determining investment made by assessee in a house property. In pursuance thereof, the DVO prepared report and submitted to AO. Thereafter, the AO show-caused assessee to explain undisclosed investment on the basis of difference in investment declared by assessee in books of account and value reported by DVO. The assessee filed reply which the AO rejected and made addition. We reproduce below the entire order passed by AO on this issue:

*"9. Reference was made to the Departmental Valuation Officer u/s 142(A) of Income-tax Act, 1961, for period ranging from F.Y. 2014-15 to F.Y. 2017-18 in the assessee and her husband's case w.r.t. Land and Building situated at Plot Nos. 17,18,19, 20; Sector 03, Luv Kush Nagar, Beside Scholar Den School; Deendayalpuram; Khandwa (M.P.). According to the report received from the DVO, difference in valuation of the asset(s) as declared by him and as determined by the DVO stand as follows:*

S.No.	F.Y.	Cost of investment as declared by assessee	Cost of investment estimated by DVO	Difference Amount (In Rs.)
1.	2014-15	6,78,976/-	14,90,921/-	8,11,945/-
2.	2015-16	26,72,026.13	57,06,587/-	30,34,561/-

3.	2016-17	48,74,543.02	1,01,32,841/-	52,58,298/-
4.	2017-18	36,24,502.03	73,38,651/-	37,14,149/-
	Total	1,18,50,047/-	2,46,69,000/-	1,28,18,953/-

*In this regard, the assessee was show caused to explain the difference between the cost of investment declared by him and estimated by DVO during the assessment proceedings. In this regard, the assessee submitted the following reply:*

*That Reference was made to departmental valuation officer (DVO) u/s 142(A) for period ranging from F.Y. 2014-15 to F.Y. 2017-18 in assessee and her husband's case w.r.t. Land and Building situated at Plot No. 17,18,19,20 at Sector 3, Luv Kush Nagar, Beside Scholar den School, Deendayalpuram, Khandwa (MP) and there is a difference in valuation of the building as declared by the assessee and as determined by the DVO and your honor has asked why difference (half) in amount invested as declared by the assessee and as estimated by DVO should not be treated as unexplained investment (i.e. Rs. 4,05,973/- for F.Y. 2014-15, Rs. 15,17,280/- for F.Y. 2015-16, Rs. 26,29,149 for F.Y. 2016-17 and Rs. 18,57,074/- for F.Y. 2017-18).*

*At the outset we wish to bring to your kind notice that the Valuation Report of Ld. DVO u/s 142(A) was based on estimations and surmises and away from the ground reality due to the fact that Ld. DVO while preparing the report has completely ignored the valuation report of Registered Valuer obtained by the assessee and also have ignored all the bills, vouchers and other relevant documents in support of such report of registered valuer. Ignorance of all these documents can be perceived from the valuation report of DVO dated 22.03.2018 wherein Ld. DVO categorically denied receipt of Registered Valuer Report in point 7.4 of the valuation report. However, assessee vide letter dated 02.02.2018 addressed to Ld. DVO (Duly acknowledged by Ld. DVO) has submitted the registered valuer's report continued from Page 287 of submissions alongwith annexures, photographs, bills, vouchers and other supporting documents. Moreover fairness of registered valuer report cannot be challenged due to the fact that report or registered valuer was obtained by the lender bank on assessee's behest and more importantly much before the date of search on 15.07.2017, date of search is 23.01.2018. (Copy of DVO report dated 22.03.2018, copy of questionnaire issued by DVO dated 25.01.2018, copy of assessee's reply to questionnaire alongwith copy of full submission before Ld. DVO dated 02.02.2018 and affidavit of assessee with reference to acts of Ld. DVO dated 10.04.2018 is annexed as Annexure-4).*

*Therefore, we request your honour to kindly ignore the report of Ld. DVO which is based on estimation and surmises and rely on the impartial and fair valuation report or registered valuer produced by the assessee and drop any proposed addition in this regard in the best interest of justice to the assessee.*

*In this regard, it is stated that the assessee-group is habitual of making complaint against almost each officer who happens to handle its case. After search & seizure action, the assessee-group made complaints against various officers of the department. During and after post-search investigations, the assessee-group again made complaints against various officers. They made complaints even against very senior supervisory officers of the department. They made complaints even against lady officers of the department. Instead of raising the issues on prescribed forums, the assessee-group chose to send copy of the complaints to almost all the esteemed and high offices of the country. In the course of the instant assessment proceedings, the assessee-group filed copy of these complaints in reply to various queries. In these complaints, the assessee-group has challenged procedures, working, findings, attitude and intention of the almost every officer it came across. Now on this issue, the assessee-group cannot be accepted and encouraged. If this is allowed, it will be impossible for any department to function. As in the case of any other government department, the Valuation Officer runs and function according to the prescribed set off rules and procedures. Hence, the allegation made by the assessee against the DVO cannot be considered, particularly in view of fact that the assessee group is habitual in making complaints against almost each and every officer who, in the course of his/her lawful duties, handles the case of the assessee-group. Therefore, the assessee's objections against the DVO's report are hereby rejected and the findings of the DVO's report are hereby accepted. Consequently, the year-wise difference in cost of investment as worked out by the DVO is treated as unexplained investments u/s 69 made by the assessee in construction of the house, and half of difference amount for each of the assessment year, are hereby added to the total income of the assessee for respective assessment years, and taxed as per the provisions of section 115BBE of the Income-tax Act, 1961; the remaining amounts are being added to the total income of the assessee's husband Shri Jarnalbeer Singh Bhatia simultaneously. I am satisfied that the assessee has furnished inaccurate particulars of his income for A.Y. 2015-16 & A.Y. 2016-17. Therefore, penalty proceedings u/s 271(1)(c) are hereby initiated in the matter for A.Y. 2015-16 & A.Y. 2016-17. I am also satisfied that the assessee has under-reported his income for A.Y. 2017-18. Therefore, penalty proceedings u/s 270A are hereby initiated in the matter for A.Y. 2017-18. Further, in view of the provisions of section 271AAB of the Act, I am satisfied that penalty proceedings must be initiated for the amount added to the total income of the assessee. Hence, penalty proceedings u/s 271AAB are hereby initiated for A.Y. 2018-19.*

Addition : Rs. 4,05,973 for A.Y. 2015-16

Addition : Rs. 15,17,280/- for A.Y. 2016-17

Addition : Rs. 26,29,149/- for A.Y. 2017-18

Addition : Rs. 18,57,075/- for A.Y. 2018-19"

16. During first-appeal, the CIT(A) passed following order to reverse AO's action and thereby delete the addition:

**“3.3.2.** I have considered the facts of the case, material evidences on record, written submission filed by appellant and to the facts and findings of the AO inter alia material brought on record. A reference was made by the Ld. AO to DVO to estimating cost of investment in land and building located at Plot No 17 to 20 at Sector-3, Luv Kush Nagar, Besides Scholar Den School, Deen dayal puram, Khandwa (MP). The DVO submitted the desired report and determined excess investment in construction of house as under:

<b>FY</b>	<b>Declared by assessee (In Rs.)</b>	<b>Estimated by DVO (In Rs.)</b>	<b>Difference (In Rs.)</b>
2014-15	678976	1490921	811945
2015-16	2672026	5706587	3034561
2016-17	4875543	10132841	5258298
2017-18	3624502	7338651	3714149
<b>Total</b>	<b>11850047</b>	<b>24669000</b>	<b>12818953</b>

Out of above difference in each year, 50% additions have been made in the hands of the appellant and remaining in the hands of her husband Shri Jarnalbeer Singh Bhatia. Submission on this issue of the appellant is same as made in the case of Shri Jarnalbeer Singh Bhatia. I have decided this issue in the case of her husband Shri Jarnalbeer Singh Bhatia in appeal no 10049 to 10054/2019-20 order dated 30.03.2023 and found the variation in cost of construction acceptable and deleted the entire additions. Therefore, the relevant paras of the said order is reproduced hereunder which are also applicable to this case:

**“3.3.2** I have considered the facts of the case, material evidences on record, written submission filed by appellant and to the facts and findings of the Ld. AO inter alia material brought on record. The appellant during appellate proceedings has stated that a reference u/s 142(1) was made by the Ld. AO to DVO to estimating cost of investment in land and building located at Plot No 17 to 20 at Sector-3, Luv Kush Nagar, Besides Scholar Den School, Deen dayal puram, Khandwa (MP). The DVO has submitted the desired report and determined excess investment in construction of house as under:

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The Ld. AO after considering the report of the DVO made addition on account of difference in value declared by appellant in books of account and that determined by the DVO. The appellant further contended that the DVO as well as the Ld. AO did not consider the report of the independent registered valuer which has been obtained by the lender bank (Bank of India, Khandwa) on 15.07.2017 much prior to date of search i.e 23.01.2018. Further, the AO has ignored all bills and vouchers and other documents submitted in support of valuation report. The appellant has also submitted following reasons for the variation between the cost shown by the appellant and the DVO:-

- i) *That the Id VO should have valued the property by applying the local rate of the cost of construction material and labour rate. The local PWD rates are worked out by taking into consideration these local rates.*
- ii) *Since the cost of construction material (like sand, brick, wood, cement etc) is less in M.P. in comparison to Delhi and similarly cost of labour in Khandwa town of Madhya Pradesh is less then that in Delhi hence usually the DSR (CPWD) rate are higher than MPPWD rate.*
- iii) *That inspite of request of the appellant the detail working of cost of construction has not been given for the reason that the VO has applied DSR (2012) rate at base 100 and has not taken in to consideration the actual cost of material used in the construction and actual labour rates.*
- iv) *That the assessee was C&F and rack handler of Ambuja cement and therefore, received cement bag at Rs. 258/- per bag as compared to market rate of Rs. 300/- per bag.*
- v) *That the appellant had directly purchased steel, sand, gitti and other material directly from the wholesaler through own trucks.*
- vi) *That the appellant had only paid fees of Rs. 1,00,000/- towards drawings and planning's and no site supervision services were availed from architect/engineer and had saved a substantial cost estimated around Rs. 8,50,000/-.*
- vii) *That the DVO has wrongly exceeded constructed area by 64.16 Sqm/690.66 Sq.Ft by considering double heighted both on 1st floor and 2nd floor. However, no such double heighted structure existed.*
- viii) *That the actual area of construction is 9423 sq.ft, however, as per the DVO the actual area of construction was 10114 sq.ft. also the DVO had applied per sq.ft rate of construction at Rs. 1860/-, however, as per registered VO the same is at Rs. 1300/-, however, the appellant had only incurred Rs. 930/- per sq.ft.*
- ix) *That the assessee had incurred cost on civil construction at Rs. 87,74,970/- and toward furniture and fixture at Rs. 29,92,990/- totaling to Rs. 1,17,42,758/-.*

**3.3.3.** *I have considered the facts mentioned in the assessment order and the submission of the appellant. The Ld AO has made the addition of Rs. 4,05,973/- in AY 2015-16, Rs. 15,17,280/- in AY 2016-17, Rs. 26,29,149/- in AY 2017-18 and Rs. 18,57,075/- in AY 2018-19 {50% of total difference} on account of unexplained investment in the construction of house. Remaining amount has been added in the hands of his wife Smt. Jatinder Kaur Bhatia. The valuation officer has determined cost of construction at Rs. 2,46,69,000/- whereas, the appellant has shown total cost of construction at Rs. 1,18,50,047/-. The appellant during the assessment proceedings as well as in the appellate proceedings pointed out defects in the valuation report of the valuation officer. The appellant has submitted that valuation has been made on the basis of DSR whereas value of the property*

should have been estimated by applying local rate of material and labour. Rates of Delhi should not have been applied. Rates of Delhi are much higher than the rates of MPPWD. The appellant has also explained difference in rates adopted by registered valuer and that shown by appellant. The appellant stated that the registered valuer though have adopted state PWD rates however, has included cost of transportation and fees paid to contractors and supervisors which were actually saved by the appellant as a result of transportation business and past supervision experience. I find contentions of the appellant are justified. Valuation should have been made after considering local rate of cost of material & labour and also the business activity and past experience of the appellant and other family members. Regarding applying local or Local PWD rates, Hon'ble Supreme Court in the case of **CIT Vs. Sunita Mansingha,(2017)** reported in **393 ITR 0121 (SC)/Civil Appeal No.3064 of 2007, judgment dated 29.03.2017** has held that local Public Works Department rates are to be applied and adopted in place of Central Public Works Department rates. Relevant paras of the said decision are reproduced hereunder:

"From the order of the Tribunal we find that the Tribunal has even though held that the reference to the Departmental Valuation Officer in question is not valid, in view of the decision of this Court in the Case of *Amiya Bala Paul v. CIT* (2003) 262 ITR 407, but it has also held that it is a settled principle of law that in place of Central Public Works Department rates local Public Works Department rates are to be applied and adopted to determine the cost of construction. In view of the fact that Section 142A was inserted by Finance (No.2)Act, 2014 (23 of 2004) w.e.f. 15th November, 1972 and subsequently again substituted by Finance Act, 2010 (14 of 2010) w.e.f. 1st July, 2010 and Finance (No.2) (225 of 2014) w.e.f. 1st October, 2014, as the proviso to sub-section (3) of Section 142A as it existed during the relevant period, reference to the Departmental Valuation Officer can be made because assessment in the present case had not become final and conclusive because the appeal preferred by the Revenue under Section 260A of the Income Tax Act, 1961 was pending before the Rajasthan High Court.

**However, in view of the finding recorded by the Tribunal that the local Public Works Department rates are to be applied and adopted in place of Central Public Works Department rates, we do not find any good ground to interfere in the impugned judgment on this issue on merits. The appeal fails and is dismissed."**

**3.3.4.** Further, on comparison of two estimated reports i.e. DVO and registered valuer the following is observed:-

Report of DVO			Report of Registered valuer (After considering furniture, wood work, stone work, interior and other furnishing items)		
Particulars	Area in Sq.mt	Amount	Particulars	Area in Sq.mt	Amount @ 13455
Ground floor	301.48	17137129	Ground floor + Gurudwara	307.79	12250000
1st floor	258.60		1st floor + servant quarter	273.04	
2nd floor	294.13		2nd floor	273.04	
Total @ 20062/-	854.21		Tower	22.41	
			Total	875.43	

<b>Double heighted @ 22528</b>	31.52	710083			
<b>Gurudwara @ 15860</b>	14.49	229811			
<b>Servant quarters @ 18327</b>	39.37	721622			
<b>Total area of civil work</b>	939.59	18798644	<b>Total area of civil work @ 13455</b>	875.43	12250000
<b>Other extra item</b>		4807238	<b>Water supply arrangement</b>		100000
<b>Architect fees and consultancy charges</b>		944235	<b>Compound wall</b>		368000
<b>Local bodies</b>		118029	<b>Pavement</b>		150000
<b>Total estimate</b>		24668147	<b>Total estimate</b>		12868000

The appellant by explaining difference of 64.16 Sq.mt in total constructed civil area that taken by the DVO and by the registered valuer stated that DVO has taken double heighted tower on both first and second floor. Further, the measurements have been taken manually and have scope of errors. Further, the DVO made addition of Rs. 4807238/- on account of 'other extra items' for which no bifurcation has been given. Furthermore, the DVO has estimated fees of architect and consultancy at Rs. 9,44,235/-, however, the appellant had only paid sum of Rs. 1,00,000/- towards designs and planning and no amount was paid towards supervision or architect charges. Nonetheless, the DVO has ignored all the bills, vouchers and details alongwith registered valuer report before estimating the cost of investment. The appellant has also filed copies of bills and vouchers for all the expenditure made towards purchase of raw material before me which are briefly tabulated as under:-

<b>S.No</b>	<b>Expenditure towards</b>	<b>Amount (In Rs.)</b>
1	Consultation fees (drawings and planning)	100000
2	Iron material	1090488
3	Borewell charges	75000
4	Cement	555809
5	Bricks	389531
6	Gitti	119055
7	Sanitary items	578481
8	Electrical goods	890534
9	POP	459012
10	Flooring	702788
11	Paint	372138
12	Ply and furniture	2702608
13	Garden	70650
14	Labour charges and fees	2310639
15	Electricity bill during construction	167363
16	Sand	88298
17	Local body Taxes	152021

18	Glass work	18561
19	Duties and taxes	166250
20	Bank interest	733532
	<b>Total</b>	<b>11742758</b>

Considering, the entire factual position of the case, I do not find any infirmity in the measurement taken by the DVO i.e total area of civil work 939.59 sq.mt, however, the DVO ought to have adopted state PWD rates rather than CPWD rates, therefore, the rates adopted by the registered valuer i.e. Rs. 13455/- per Sq.mt in my considered opinion are correct and prevailing State PWD rates. Thus, the total investment made by the appellant as per state PWD rate is estimated at Rs. 1,26,42,183/- (939.59 x Rs. 13455). Further, an addition as made by the registered valuer on account of water supply arrangement, pavement, compound wall amounting to Rs. 6,18,000/- needed to be made in the said investment. Hence, the total investment in the said property comes at Rs. 1,32,60,183/- (Rs. 1,26,42,183 + Rs. 6,18,000). Further, the registered valuer has not considered the expenditure incurred by the appellant amounting to Rs. 1,00,000/- on account of architect fee and Rs. 1,52,021/- on account of payment made to local body. Considering this, total construction cost comes to Rs. 1,35,12,204/- (Rs. 1,32,60,183+Rs. 1,00,000+Rs. 1,52,021).

**3.3.5.** Now coming to report of DVO, he has added cost of extra items amounting to Rs. 48,07,238/- for which no bifurcation or details have been furnished in the valuation report. The Ld. AO has also not given any bifurcation or explanation regarding the same and has accepted the impugned investment ipso facto without giving or calling an explanation from the DVO. On perusal of report of the DVO in para 9 of the report the following has been mentioned under the heading 'Comments of the Valuation Officer' :-

The PUC consists of a residential building with GF, FF and SF with superior specifications such as vitrified tile flooring in complete building, superior type of acrylic printed false ceiling in complete building, wallpapers, marble flooring in staircase steps, 12mm thick glass in staircase railing with stainless steel railing and in balcony, modular kitchen with stainless steel chimney, cupboards in rooms, compound wall with stainless steel gate etc.

I find that a separate addition on account of furniture and fixtures have already been made by the Ld. AO in the hands of appellant. Further, as discussed herein above, the appellant has furnished copies of bills and vouchers of the steel, furniture and other items before the Ld. AO which have totally been ignored by the Ld. AO before making the impugned addition and before accepting the report of the DVO. The appellant has already shown expenditure of Rs. 8,32,803/- on account of electrical accessories and Rs. 27,01,162/- on account of ply and furniture goods. Thus, I find no merit in making the impugned addition again in the hands of appellant. Therefore, the amount of Rs. 48,07,238/- should not be considered in valuation cost.

**3.3.6** The Ld. AO on the basis of report of the DVO has also made addition of Rs. 9,44,235/- on account of architect fees and consultancy charges @ 4% of total cost of project and Rs. 1,18,029/- on account of approval of drawings from local bodies @ 0.5% of total cost of project. I find that the impugned addition have been made on sheer guess work and hypothetical basis. The appellant had paid sum of Rs. 1,00,000/- towards drawing and planning charges and have not availed supervision services of an architect which in instant case is not mandatory. Further, appellant had paid sum of Rs. 1,52,021/- to local authorities towards

approvals and other taxes. Therefore, the Ld. AO ought to have considered the documentary evidences filed by the appellant before him before making the impugned addition. The Ld. AO itself should have allowed deduction on account of self supervision which have been allowed by various courts between 10 to 12.5%. Some of the judgments' wherein the rebate of CPWD rates and also rebate on account of self supervision have been allowed are summarized as under:

S.No	Reference	Citation	Rebate allowed for	
			Supervision	CPWD rate
1	ITO vs Nitesh Maheshwari	138 TTJ 116 (JP)	12%	20%
2	Rajeev Mewara	35 SOT 001 (Indore)	10%	25%
4	Shri Jagmohan Jaiswal	(2008) 10 ITJ 187 (Trib-Indore)	10%	30%
6	Nandu Atmaram Rajput vs. DCIT, Pune	ITA No.1036 to 1041/PN/2014 dt 05.08.2016	12.5%	20%
8	DCIT v. Smt. C.K. Sumathy	[2010] 6 ITR(T) 193 (Chennai)	10%	15%

However, the appellant is in possession of actual payment on account of architect fee/supervision charges which has been included in the cost of construction, as determined above, determined at Rs. 1,35,12,204/-. Thus, additions amounting to Rs. 9,44,235/- and Rs. 1,18,029/- should not be considered and actual payment of Rs. 1,00,000/- made to architect for drawings and Rs. 1,52,021/- made to local authorities for getting approval should only be considered.

**3.3.7** In nutshell, the DVO as well as the Ld. AO ought to have applied state PWD rates, considered the bills etc before determining impugned investment. Further, the Ld. AO ought to have considered the documentary evidences filed by appellant during assessment proceedings before making additions on other accounts. Thus, as discussed above, the total investment in impugned property comes at Rs.1,35,12,204/-. The appellant on other hands has shown investment of Rs. 1,18,50,047/-.

**3.3.8.** The appellant has also claimed that he had saved cost of raw material by 20% by using its own truck and has also saved amount by self supervising the construction. Appellant has also claimed that he has past experience of construction of petrol pumps and warehouses and therefore, at the time of construction of house have saved hefty amount towards material cost/supervision/architect charges. I find the claim of the appellant justified to some extent. It would be justified if, cost saved in purchase of material is considered. But, it cannot be quantified in certain terms. However, as against claim of 20% of such cost, 5% deduction on this account will be reasonable. Considering this, a further deduction of Rs. 6,63,009/- (Rs. 1,32,60,183 x 5%) is allowed. Accordingly, total construction cost is worked out to Rs. 1,28,49,195/- (Rs. 1,35,12,204 – Rs. 6,63,009) as against cost of construction of Rs. 1,18,50,047/- shown by the appellant.

**3.3.9.** Accordingly, cost of civil construction is worked out Rs. 1,28,49,195/- which is 8.43% more than the cost shown by the appellant. This variation is very nominal and is acceptable in view of various judicial pronouncements. I find decision of Hon'ble MP High Court in the case of **Abeeson Hotels Pvt. Ltd.**, reported in (2004) 191 CTR 263 is relevant here, though it deals with the

variation between valuation done by the DVO and the value shown by the assessee, wherein in such circumstances, variation of 10% has been held as acceptable. Relevant paras of the decision of Hon'ble jurisdictional MP High Court are reproduced here under:-

"5. The question in substance that arose before the taxing authorities was in regard to valuation of assessee's properties. It was found that there is some variation between the valuation made by the assessee and what is made by the DVO. So far as assessee's valuation was concerned, it was valued at Rs. 1,41,79,527 whereas the valuation made by DVO was at Rs. 1,58,38,500. In the opinion of Tribunal, 10 per cent difference usually occurs in two valuers and hence, the valuation shown by assessee was accepted. The Revenue has now come up in appeal against this finding.

6. We find no merit in the challenge laid, by the Revenue. In fact, what is held by the Tribunal cannot be faulted with. **The 10 per cent difference in the valuation made by the two valuers cannot be said to be either unreasonable or without any basis. It usually occurs and hence, if the authorities accepted the valuation of the assessee so far as the property in question is concerned, the said reasoning cannot be regarded as entirely illegal or illogical, or without jurisdiction.**

7. The issue thus does not involve any question of law, much less substantial question of law. The appeal, thus fails and is hereby dismissed in limine."

In view of above discussion and above decision, the addition made by the Ld AO is not sustainable as the difference in cost of construction is very nominal.

**3.3.10.** Therefore, addition of Rs. 4,05,973/- in AY 2015-16, Rs. 15,17,280/- in AY 2016-17, Rs. 26,29,149/- in AY 2017-18 and Rs. 18,57,075/- in AY 2018-19 on account of difference in investment in house shown in books of account and estimated by the DVO are deleted. Thus, appeal on this ground is **allowed.**"

In view of above discussion made in the case of her husband, the addition made by the Ld AO is not sustainable.

**3.3.5.** Therefore, addition of Rs. 4,05,973/- in AY 2015-16, Rs. 15,17,280/- in AY 2016-17, Rs. 26,29,149/- in AY 2017-18 and Rs. 18,57,075/- in AY 2018-19 on account of difference in investment in house shown in books of account and estimated by the DVO are deleted. Thus, appeal on this ground is **allowed.**"

17. Before us, Ld. DR for revenue assailed the order of CIT(A) on three-fold grounds, namely (i) the CIT(A) has grossly erred in not giving opportunity to DVO or AO, (ii) the CIT(A) has considered several aspects including the

difference in CPWD rates and Local PWD rates, and (iii) the CIT(A) is not competent to calculate cost of construction.

18. Per contra, Ld. AR for assessee made following submissions:

- (i) The AO, in assessment-order, has not talked on merit of the issue. The AO has unnecessarily talked on unrelated aspects of habits/ attitude of assessee and made addition mechanically on the basis of difference in the cost of investment declared by assessee and value estimated by Departmental Valuation Officer (DVO). On the other hand, the CIT(A) has rightly considered assessee's submission on merit of the issue and passed a well-reasoned order.
- (ii) The AO made reference dated 24.01.2018 to the DVO for determining investment made by assessee in property. Acting thereupon, the DVO issued notice dated 25.01.2018 to assessee (Page 85-86 of Paper-Book). The assessee filed reply dated 02.02.2018 to DVO (Page 77-78 of Paper-Book) and vide Para 17 thereof, the assessee filed a Valuation-Report of Registered Valuer (RV) to DVO. On one hand, the DVO has acknowledged the reply dated 02.02.2018 filed by assessee in Para 3 of his Valuation-Report in the spaced titled "Chronological Statements of Notices sent to the assessee and Replies received" (Page 80 of Paper-Book) but subsequently in Para 7.4 of very same report (Page 81 of Paper-Book), the DVO has made a factually incorrect reporting that the assessee did not file RV's report. Ld. AR went on

explaining that the RV's report submitted by assessee to DVO (Page 372 of Paper-Book) was directly procured by Bank of India, Khandwa from Shri Abhishek Maheshwari, Chartered Engineer, Registered Valuer, for loan purpose and the report was obtained on 15.07.2017 which is prior to initiation of search. It is further submitted that the assessee also filed complete details of construction in the proforma supplied by DVO (Page 88-89 of Paper-Book). The DVO ignored assessee's submission and made his own estimation on the basis of simple mathematics of Square Meters x Flat rate (Page 82 of Paper-Book). As against this, the RV has, clearly certified in Point No. J of "Declarations" in his report that he has valued construction taking into account the PWD specifications and prevailing cost of construction (Page 372-382 of Paper-Book). The RV's report is more reliable and credible for the reasons that (i) the report was obtained for bank loan purpose, (ii) the report was obtained by independent bank, (iii) the report was obtained prior to search and (iv) the RV made valuation on the basis of prevailing rates. Ld. AR submitted that all details/documents as considered by CIT(A) were very much available before DVO and AO. There was nothing new before CIT(A) and the CIT(A) has merely analysed and appreciated the documents already available.

(iii) That the CIT(A) has passed a well-reasoned order after vehement analysis of each and every aspect. Therefore, his order presents a correct adjudication of assessee's issue and must be upheld.

19. We have considered rival submissions of both sides and carefully perused the documents held in Paper-Book including the orders of lower authorities. On a careful consideration, we firstly find that the AO made a reference to DVO u/s 142A for determining investment made by assessee in house property. The DVO then proceeded in the matter and issued notice dated 25.01.2018 to assessee calling for certain details and documents and also supplied a format. In response, the assessee filed reply dated 02.02.2018 to DVO giving details and documents including a valuation-report of RV obtained by Bank of India for financing assessee's property to show that the investment declared in assessee's books was adequate. The DVO has acknowledged assessee's reply dated 02.02.2018 at one place in his Report but in later part of same Report, the DVO made an adverse finding that the assessee did not file RV's report. The assessee has very specifically claimed before AO and CIT(A) and also emphasising the same claim before us that the DVO has made a factually incorrect reporting that the RV's report was not filed. Ld. AR pleads that the DVO prepared his report without considering the details/documents filed by assessee and submitted to AO. Subsequently, on the basis of DVO's report, when the AO show-caused assessee, the assessee filed objections to AO which are noted by AO in Para 9 of assessment-order reproduced by us in earlier para. In the

objections, the assessee raised several issues including the mistake of DVO in not considering RV's report. The assessment-order clearly reveals that the AO rejected assessee's objections only by making adverse observations on the habit/attitude of assessee unrelated to the issue and made addition equal to the difference in investment declared by assessee and valuation reported by DVO. There is a strong merit in Ld. AR's submission that the AO has not at all considered merit of the issue or the objections raised by assessee and made addition which is legally not valid. The assessee therefore approached CIT(A) by way of first appeal. The CIT(A) considered assessee's entire case meticulously from each and every angle and reversed AO's action and granted relief to assessee by deleting addition. The order passed by CIT(A), as re-produced by us in earlier para, shows that the CIT(A) has judiciously considered assessee's facts/submissions and after due consideration came to a conclusion that the addition made by AO is not sustainable. Without repeating the analysis and conclusion made by CIT(A) for the sake of brevity, we only state that we do not find any perversity or illegality in the order of CIT(A) on merit of the issue. Accordingly, we uphold the order of CIT(A).

20. At this stage, we would also like to analyse a legal proposition involved in this issue which though has not been advanced by parties but deserves consideration being legal. Admittedly, the AO has made impugned addition in assessment-order passed u/s 153A by making a reference to DVO u/s 142A during assessment-proceeding to estimate the investment made by

assessee in property and having regard to the Report submitted by DVO. It is a further fact that the years involved are AYs 2015-16 and 2016-17 which were in the nature of "completed or unabated assessment years" as the search was conducted on 23.01.2018; the assessee had already filed returns for those years u/s 139(1) on 27.09.2015/30.09.2016; assessments of those years were not pending on the date of search (23.01.2018) and the time-limits for issuance of notices u/s 143(2) had also expired by date of search. Therefore, in such a case, as per decisions by **Hon'ble Jurisdictional High Court of Madhya Pradesh in PCIT Vs. Gahoi Dal & Oil Mills (2021) 11 ITJ Online 314 (MP)**; **Hon'ble Delhi High Court in CIT Vs. Kabul Chawla (2016) 380 ITR 573** and **Hon'ble Supreme Court in PCIT Vs. Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212**, no addition can be made u/s 153A in a non-abated assessment year in absence of incriminating material found during search. In present case, the AO has made addition in assessments u/s 153A by making a reference to DVO u/s 142A but without having any incriminating material found during search. Therefore, in the light of legal view taken in these decisions, the addition made by AO is legally not sustainable.

21. In view of above, the grounds raised by revenue are meritless and dismissed therefore.

**Assessee's ITA No. 227/Ind/2023 – A.Y.2018-19:**

22. The grounds raised in this appeal are as under:

*1. That on the facts and in the circumstances of the case, Ld. AO and Ld. CIT(A) has erred in making notional addition in the form of money found in locker during Search amounting to Rs. 10,24,500/- as unexplained money u/s 69A r.w.s. 115BBE of Income Tax Act, 1961.*

*2. That the impugned order so passed in this regard by Ld. AO and Ld. CIT(A) is illegal and wrong.*

23. Thus, the assessee has raised a single issue of addition of Rs. 10,24,500/- made by AO u/s 69A on account of unexplained money. The brief facts are such that the AO has noted that during search operations, cash (currency notes) worth Rs. 20,49,000/- were found from two bank lockers of assessee and her husband (Shri Jarnal Beer Singh Bhatia) maintained with Bank of India (Rs. 5,51,000/- from locker No. 121 and Rs. 14,98,000/- from locker No. 113). During assessment-proceeding, when the AO show-caused assessee and her husband to explain source of such cash, it was submitted that cash amounting to Rs. 19,00,000/- belonged to Smt. Mandeep Kaur Bhatia (Shri Jarnal Beer Singh Bhatia's brother's wife) and remaining Rs. 1,49,000/- belonged to assessee and her husband. The AO considered assessee's reply but was not convinced. *Firstly*, the AO noted that in statements recorded u/s 132(4), the assessee stated that Smt. Mandeep Kaur Bhatia gave her Rs. 21,00,000/- for sake keeping. Therefore, the reply contradicts the statements recorded u/s 132(4). *Secondly*, the AO noted that in the statements u/s 132(4), the assessee submitted that she operated lockers on 20.01.2018 to keep moneys but from the bank record, it was found that locker no. 121 was last operated on 12.07.2017 (the AO has also mentioned that locker No. 302 was last operated on 18.07.2017 but the

locker No. 302 is not relevant for this issue as no currency was found therein). The AO observed that in the statements u/s 132(4) also, the assessee insisted that the locker was operated on 20.01.2018 and also stated that only the bank manager can explain their record. Therefore, to verify the contention of assessee, CCTV footage of Bank was analysed from which it was observed that only a small purse was being carried by assessee's husband who was accompanying the assessee and their entry at bank premise was recorded at 3:36 P.M. Ultimately, the AO concluded that the claim of assessee that she kept cash in lockers can't be relied as such voluminous amount of cash cannot be kept in a small sized purse and made addition of Rs. 10,24,500/- (50% of Rs. 20,49,000/-) in the hands of assessee as unexplained money u/s 69A read with section 115BBE. Identical addition of Rs. 10,24,500/- (remaining 50%) was made in the hands of assessee's husband Shri Jarnal Beer Singh Bhatia.

24. During first-appeal, the CIT(A) upheld AO's action by passing following order:

*"3.5.2. I have considered the facts of the case, material evidences on record, written submission filed by appellant and to the facts and findings of the AO inter alia material brought on record. Fact of this case is that during the course of search cash amounting to Rs. 20,49,000/- was found from two bank lockers. Ld. AO has made addition of Rs.10,24,500/- each in the hands of the appellant and his wife as the it was found unexplained. Submission on this issue of the appellant is same as made in the case of Shri Jarnalbeer Singh Bhatia. I have decided this issue in the case of her husband Shri Jarnalbeer Singh Bhatia in appeal no 10049 to 10054/2019-20 order dated 30.03.2023 and confirmed entire addition. Therefore, the relevant paras of the said order is reproduced hereunder which are also applicable to this case:*

**3.5.2** I have considered the facts of the case, material evidences on record, written submission filed by appellant and to the facts and findings of the Ld. AO inter alia material brought on record. As a matter of fact during the course of search cash amounting to Rs. 20,49,000/- was found from two bank lockers. Ld. AO has made addition of Rs.10,24,500/- each in the hands of the appellant and his wife. Statement of appellant's wife Smt. Jatinder Kaur Bhatia was recorded u/s 132(4) of the Act wherein she stated that Smt Mandeep Kaur Bhatia gave her sum of Rs. 21,00,000/- for safe keeping and which was kept in bank locker on 20.01.2018. Further, Smt Mandeep Kaur Bhatia, sister in law of the appellant has filed an affidavit during assessment proceedings and stated that she gave Rs. 19,00,000/- to Smt. Jatinder Kaur Bhatia for safe keeping. She further stated that she had to visit Indore and does not have her own locker and therefore, the said amount was given by her to Smt. Jatinder Kaur Bhatia for safe keeping. For the remaining cash of Rs 1,49,000/-, the appellant submitted that this amount was out of past savings of himself and his wife. The both versions found contradictory to each other. Information regarding operation of locker by the appellant and his wife was called for from the bank. The bank intimated to the Ld AO that the bank locker no. 121 was last operated on 12.07.2017 and locker no. 302 was last operated on 18.07.2017. Smt. Jatinder Kaur Bhatia was intimated about the information received from the bank. In her statement, she stated that that can be explained by bank manager, however, I had operated locker no.113 on 20.01.2018. The Ld. AO, for verification of claim of the appellant, issued summons to bank for providing details of locker operation and CCTV footage of locker operation on 20.01.2018. The Ld. AO on perusal of CCTV footage found that the appellant entered bank premises with a small purse which cannot hold such voluminous amount of cash. Here I find that the Ld. AO has made good presumption that the purse carried by appellant would not be able to carry such voluminous cash. Therefore, the Ld AO rejected the claim of the appellant and added Rs. 10,24,500/-, being 50% of Rs. 20,49,000/- to the total income of the appellant u/s 69A of the Act and applied the provisions of section 115BBE of the Act.

**3.5.3** The appellant has also brought on record the other aspect of the case as per which during the course of search in the case of M/s Bhatia Auto Services physical cash in hand of Rs. 64,770/- was found and the cash as per books of account was Rs. 17,64,090/-. Shri Mangal Singh Bhatia, partner was required to explain the said difference. He stated that a sum of Rs. 2,00,000/- was sent home for safekeeping and for balance amount his son Shri Arvind Singh Bhatia one of the partner in appellant firm would reply. Shri Arvind Singh Bhatia vide an affidavit has stated that sum of Rs. 15,00,000/- was taken by him during the day for safe keeping and Shri Mangal Singh Bhatia was not aware about the same. It is pertinent to mention that Smt Mandeep Kaur Bhatia is wife of Shri Arvind Singh Bhatia and he gave her Rs. 15,00,000/- for safe keeping. Therefore, total amount of Rs. 17,00,000/- was given to her from cash in hand available with M/s Bhatia Auto Services. Here it is important to mention that the Ld. AO in assessment proceedings in the case of M/s Bhatia Auto Services has accepted the said claim and no adverse finding was made on this account. Further, the appellant has filed copy of cash book of Smt Mandeep Kaur Bhatia for the year under consideration as per which she had cash in hand balance of Rs. 71,29,001/- as on date of search.

**3.5.4.** Considering the changing stands on the cash found from the locker, themselves establish that the appellant has no suitable explanation regarding source of cash found from the locker. CCTV footage itself proves that his wife gone to bank, but, no such voluminous cash of small denomination was with her. This

fact is also confirmed by the correspondences between authorized officer and bank authority. It is pertinent to mention that the search and seizure operation was conducted on the appellant on 23.01.2018. Vide summon dated 20.03.2018, the branch manager was asked to submit certified copies of locker register from 01.10.2017 to 31.01.2018 because, the authorized officer found that Smt. Jatinder Kaur Bhatia, wife of the appellant was allowed to insert her name and signature in locker register and she mentioned locker no. 115 on entry date 20.01.2018 in row of the holder of locker no. 08 which appeared to be intentionally made. The authorized officer also found that every row/column of register was having only one signature and meant for one locker holder, but, in the above particular row/column, signature of Smt. Jatinder Kaur Bhatia was put on with locker owner of locker no. 08. The explanation in this regard was called for from the bank manager. In response to the above summon, the Bank officer submitted that **last operation of locker no. 113 was 20.01.2018. It was erroneously written as 115. In the same reply, the bank authority further submitted that the confirmed last operation of locker no. 113 was 20.10.2017.** The above information has been submitted by the Ld AO vide letter dated 21.10.2022 on the request of undersigned. The reply along-with copy of register and other correspondences are placed on record. On perusal of the copy of locker register of Bank Of India Anand Nagar Branch, Khandwa, I find that row of holder of locker no. 8 has been utilized by holder of locker no. 115. The date is 20.01.2018 and time is 2.20. As per the locker register, next entry has been made on 22.01.2018. Thus, no space after 20.01.2018 was available and for this reason only, there was no option but to allow Smt. Jatinder Kaur Bhatia to insert her name with the holder of locker no.08. It clearly, indicate the back dating. Manipulation in the locker register as well connivance with the bank authorities is also proved from the CCTV Footage as per which Smt. Jatinder Kaur Bhatia had entered in the bank premises at 3.36 PM whereas register shows the time of operation 2.20 PM. On perusal of subsequent clarification submitted by bank authority to the authorized officer in response to summon dated 20.03.2018 and copy of locker register create a strong suspicion on operation of locker no. 113 by Smt. Jatinder Kaur Bhatia. This fact also indicates towards connivance of the bank authority with the appellant group. However, if, the last operation date is 20.01.2018 is treated as correct, then also, one thing is clear that no cash amounting to Rs. 19,00,000/- or Rs. 21,00,000/- was kept on that day in the locker no. 113. Further, on perusal of para 9.1 of the assessment order, cash of Rs. 14,98,000/- only was found from the locker no. 113 which is less than the amount mentioned in the affidavit or in statement u/s.132(4) of the Act. If, the above amount was kept in that locker on 20.01.2018, how, the lesser cash was recovered from that locker. In the facts and circumstances, it is evident that locker no.113 was not operated on 20.01.2018 and hence, no cash was kept on that day. Accordingly, amount found from the lockers remains unexplained. The another plea of the appellant that no adverse view has been taken in the case of M/s. Bhatia Auto Services in whose case shortage of cash was found. It has no bearing in this case.

**3.5.6** In view of the above discussion, addition made by the Ld AO amounting to **Rs. 10,24,500/-**, in the hands of appellant, is **confirmed** under the provisions of section 69A of the Act. Accordingly, provisions of section 115BBE shall apply on the above income. Therefore, appeal on this ground is **dismissed**."

**3.5.3.** In view of the above discussion, addition made by the Ld AO amounting to **Rs. 10,24,500/-**, in the hands of appellant, is **confirmed**. Therefore, appeal on this ground is **dismissed**. "

25. Before us, Ld. AR for assessee made following submissions to oppose the orders passed by lower-authorities:

(i) Firstly, he drew us to Q.No. 3, 6 & 7 of statements recorded u/s 132(4) [Page 753 of Paper-Book] and replies made by assessee, which read as under:

“ प्रश्न 3 कृपया बताये कि आपके एवं आपके परिवार के नाम से लॉकर नं. 302, लॉकर 121 एवं 113 में कौन-कौन सी बहुमूल्य सामग्री, आभूषण एवं कागजात रखे हैं कृपया बतायें ?

उत्तर - मुझे यह नहीं ध्यान है कि किस लॉकर में क्या हैं परंतु जहाँ तक ध्यान है लॉकर नं. 121 एवं लॉकर नं. 113 में, मेरे सोने के आभूषण, मेरे छोटे बच्चों के कुछ आभूषण एवं कुल रु. 22,00,000/- लगभग नकदी होनी चाहिए जिसमें रु. 21,00,000/- मेरी देवरानी श्रीमती मनदीप कौर पति अरविंद सिंह भाटिया, A-26, LIG Colony खंडवा से संबंधित है। लॉकर नं. 302 में क्या है मुझे कुछ ध्यान नहीं है। ”

प्रश्न 6: कृपया बताये कि आपकी देवरानी श्रीमती मनदीप कौर आपको कभी कोई राशि/रकम रखने को दी है ?

उत्तर : इससे पहले उन्होंने मुझे 10-20 हजार से ज्यादा रखने को नहीं दिया। इस बार वह इंदौर जा रही थी, इसलिए उन्होंने इतनी बड़ी राशि / रकम रखने को दी है।

प्रश्न 7 : कृपया बताये कि आपकी देवरानी श्रीमती मनदीप ने आपको रु. 21,00,000/- की राशि किस दिनांक को रखने को दी थी ? और किस समय दी थी ? और उनके साथ कौन था?

उत्तर : श्रीमती मनदीप कौर ने रु. 21,00,000/- की राशि दिनांक 19/01/2018 को शाम 5 से 6 के बीच दी थी वह अपने पति अरविंद भाटिया के साथ आयी थी।”

Referring to above, Ld. AR submitted that the assessee instantly stated in the statements u/s 132(4) itself that (i) the approximate currency in locker No. 121 and 113 should be Rs. 22,00,000/- out of which currency of Rs. 21,00,000/- belonged to Smt. Mandeep Kaur

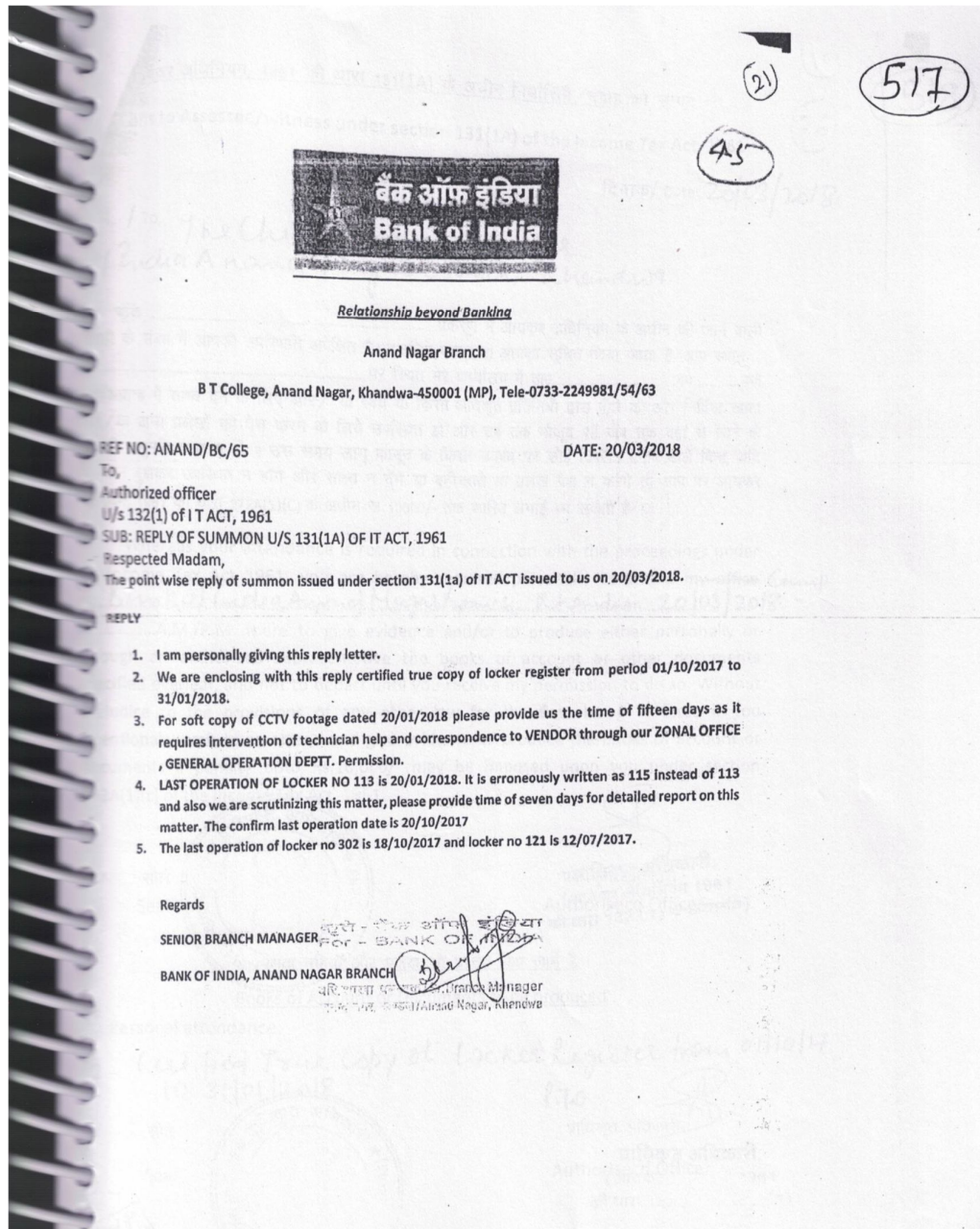
Bhatia, (ii) that Smt. Mandeep Kaur Bhatia was going to Indore that is why she gave such a hefty cash for safe keeping, (iii) that Smt. Mandeep Kaur Bhatia gave currency of Rs. 21,00,000/- on 19.01.2018 at about 5-6 PM with her husband Shri Arvind Bhatia. Ld. AR pointed that the actual currency found in lockers was Rs. 20,49,000/- because the assessee made '*लगभग* (i.e. approximate)' submission to authorities which is clearly discernible from assessee's reply to Q.No. 3 itself. This is quite possible due to mental pressure during recording of statements.

- (ii) Then, Ld. AR drew us to a para on Page No. 15 of the order dated 20.03.2023 passed by same CIT(A) in **Appeal No. CIT(A)-3/BPL/IT-10032 to 10038/2019-20 of M/s Bhatia Auto Service**, a partnership firm of assessee-group, which was also a part of same search (Paper-Book Page No. 938). Referring to same, Ld. AR demonstrated that at the time of search, M/s Bhatia Auto Service was having cash balance of Rs. 17,64,090/- as per books of account but the physical cash balance available was Rs. 64,770/- only. Therefore, when the search authorities confronted Shri Mangal Singh Bhatia, a partner of M/s Bhatia Auto Service, to explain the shortage/difference, he stated that a sum of Rs. 2,00,000/- was sent to home for safe keeping and for balance amount, another partner Shri Arvind Bhatia would reply. Shri Arvind Bhatia vide an affidavit stated that a

sum of Rs. 15,00,000/- was taken by him for safe keeping and Shri Mangal Singh Bhatia was not aware about the same. Thus, a total cash of Rs. 2,00,000 + Rs. 15,00,000 = 17,00,000/- was available with Smt. Mandeep Kaur Bhatia/Shri Arvind Bhatia from M/s Bhatia Auto Service. Ld. AR submitted that this explanation stands accepted by CIT(A) in appeal order of M/s Bhatia Auto Service. That apart, Smt. Mandeep Kaur Bhatia was also having a cash balance of Rs. 71,29,001/- as per her cash-book filed to lower-authorities. Therefore, Smt. Mandeep Kaur Bhatia had sufficient cash from explained sources to give money of Rs. 19,00,000/- to assessee. So far as the remaining cash of Rs. 1,49,000/- is concerned, Ld. AR submitted that the assessee and her husband Shri Jarnal Beer Singh Bhatia were well off persons declaring high incomes to income-tax department year after year, therefore the miniscule cash balance of Rs. 1,49,000/- held by them should not be doubted.

- (iii) Ld. AR next submitted that during first-appeal, the CIT(A) has given adverse conclusion based on the correspondence between Authorised Officer and bank u/s 131 regarding locker operations but those correspondences were never brought to assessee's knowledge. The assessee has, for the first time, got to know from order of CIT(A) about any such exercise between Authorised Officer and bank. Without prejudice, Ld. AR submitted, the correspondence between Authorised Officer and bank u/s 131 are also not against assessee, they are very

much in favour of assessee. To show this, Ld. AR drew us to Page 518 where a summon issued by the Authorised Officer of search directly to the Bank Manager u/s 131(1A) is placed and also to Page No. 517 where the following reply-letter dated 20.03.2018 filed by Bank Manager to Authorised Officer is placed:



Referring to same, Ld. AR pointed that the Bank has clearly informed in Para No. 4 of above letter dated 20.03.2018 to the Authorised Officer that the locker No. 113 was operated on 20.01.2018. Further, the Bank also requested the Authorised Officer to provide time of

seven days for detailed report on locker No. 115 erroneously written instead of locker No. 113 in 'Locker Operations Register'. Thereafter, the bank also made internal enquiry from their staff members and the letters exchanged between Bank Manager and concerned Bank Officer (Page No. 496-497 of Paper-Book) are as follows:

बैंक ऑफ इंडिया  
Bank of India **BOI** ★

ANAND NAGAR BRANCH / KHANDWA  
Tele.No. 0733-2249981, 2249954  
E-mail: [AnandNagar.Khandwa@bankofindia.co.in](mailto:AnandNagar.Khandwa@bankofindia.co.in)

SC/88

Dt.23-03-2018

Officer Name: Mr Aseem Sandya  
PF No: 187727  
Scale: JM-I

Explanation for Locker Operation Dated 20.01.2018

It has been pointed out in the operation carried out by Income Tax department in our branch that Locker Operation was not as per the guidelines wherein no officer had signed in the locker register to verify the locker number, time and signature of Ms Jatinder Kaur Bhatia.

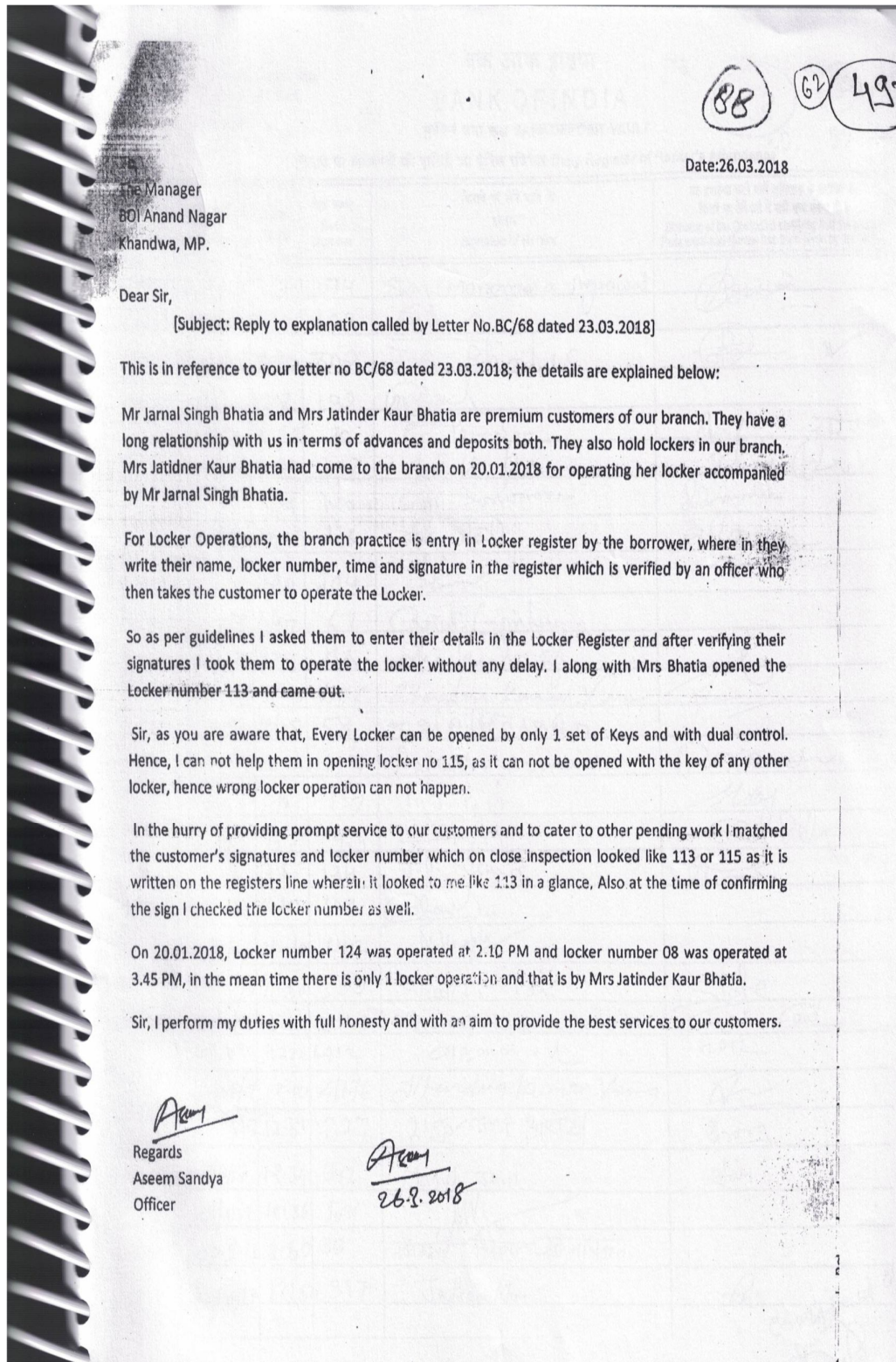
Locker Attendance Register shows that Locker No 115 was accessed by Ms Bhatia whereas her original locker number is 113. Please confirm which locker you had helped her in operating on 20.01.2018.

Please provide a reply by the day end of 26.03.2018.

Senior Manager  
Anand Nagar Branch

89  
62  
496

Received  
23/3/2018



Ld. AR submitted that in these letters, the Senior Manager of bank raised a memo upon Bank officer Mr. Aseem Sandhya seeking explanation about operation of locker No. 113 on 20.01.2018 and in reply, the bank officer informed that locker no. 113 was operated by Mrs. Jatinder Kaur Bhatia (assessee) on 20.01.2018. Ld. AR further submitted that the Locker Operations Register filed at Page No. 498-516 of Paper-Book also contains an entry of locker operation on 20.01.2018. Having showed thus, Ld. AR raised a very strong contention that the letter dated 20.03.2018 was directly filed by bank to the Authorised Officer containing a clear acceptance that the locker No. 113 was operated on 20.01.2018. Further, the letters dated 23.03.2018/26.03.2018 exchanged between Bank Manager-Bank Officer and the 'Locker Operations Register' showing operation of locker on 20.01.2018 are the records of Bank of India and not of assessee. Further, they are the records of Bank of India which is not a private party but a nationalised bank. Therefore, the CIT(A) is very much wrong in adversely concluding, without any basis, that the records were manipulated by the connivance of bank authority with assessee-group. Ld. AR submitted that such heightened remarks made by CIT(A) are baseless. He submitted that the bank record was submitted by bank authorities to the authorised officer of department in response to summon u/s 131 dated 20.03.2018 and if the authorised officer/AO/CIT(A) had any doubt on authenticity, they

could very well carry out further investigation in the matter from bank instead of blaming assessee.

26. Replying to above, Ld. DR for revenue relied strongly upon the orders of lower-authorities, more particularly the order of CIT(A). Ld. AR emphasised the inconsistency in the statements of the assessee u/s 132(4) and submission made before AO in the amount claimed to have been given by Smt. Mandeep Kaur Bhatia i.e. in statements, the assessee stated that Smt. Mandeep Kaur gave her Rs. 21,00,000/- but before AO the assessee claimed to have kept Rs. 19,00,000/- belonging to Smt. Mandeep Kaur Bhatia in locker.

27. We have considered rival submissions of both sides and carefully perused the orders of lower-authorities as also the documents filed in Paper-Book. Admittedly, total currency notes of Rs. 20,49,000/- were found during search from two lockers of assessee (Rs. 5,51,000/- from locker No. 121 and Rs. 14,98,000/- from locker No. 113). The question here is what was source of those currency notes? The search authorities recorded statements of assessee u/s 132(4) wherein Q.No. 3, 6 and 7 (as re-produced above) were direct questions regarding currency notes in lockers. The assessee instantly replied that approximate cash of Rs. 22,00,000/- would be in the lockers out of which Rs. 21,00,000/- related to Smt. Smt. Mandeep Kaur Bhatia. The actual cash found from lockers was, however, slightly different (Rs. 20,49,000/-) because the assessee made '**लगभग**' (i.e. approximate)

submission which is possible in the stressed situation in which the statements are recorded u/s 132(4). During assessment-proceeding, the assessee explained two sources of such notes of Rs. 29,40,000/-, namely Rs. 19,00,000/- belonged to Smt. Mandeep Kaur Bhatia who had given money to her for safe custody plus Rs. 1,49,000/- belonged to assessee and her husband. So far as the source of Rs. 19,00,000/- available to Smt. Mandeep Kaur Bhatia is concerned, it is discernible from record that a sum of Rs. 17,00,000/- was available to her from partnership business of Bhatia Auto Service and she was also having hefty cash balance of Rs. 71,29,001/- as per her cash-book. Thus, sufficient cash was available with Smt. Mandeep Kaur Bhatia. For remaining cash of Rs. 1,49,000/- also, there is a sufficient strength in assessee's claim that she and her husband are well off persons declaring sizeable incomes to department and therefore the availability of just Rs. 1,49,000/- should not be doubted. Thus, in a way, the availability of Rs. 20,49,000/- from sources explained by assessee cannot be doubted. However, there is a technical issue being raised by department with regard to the last operation date of lockers and keeping cash therein. In this regard, we only suffice to note that the Bank of India has filed a letter dated 20.03.2018 (re-produced earlier) in response to summon u/s 131 issued by authorities and in Para 4 thereof, the operation date of locker No. 113 is informed as 20.01.2018 and in Para 5 thereof, the operation date of locker No. 121 is informed as 12.07.2017. Further, the internal letters dated 23.03.2018 and 26.03.2018 of Bank of India and the

Locker Operations Register are also on record to confirm that the locker No. 113 was operated on 20.01.2018. These documents are part of record of Bank of India and not made by assessee. Needless to mention that Bank of India is a nationalised bank and their record should not be doubted. In any case, if the lower-authorities had any doubt qua those records, they could make further enquiry to ascertain the truth but they have not done. In fact, the AO has not even brought those documents to the notice of assessee during assessment-proceeding and provided only to CIT(A) on 21.10.2022 during first appeal (this fact is mentioned by CIT(A) on page 40 of order). Then, the CIT(A) has made adverse observations, without any basis, about the connivance of bank and assessee. We do not find any legal justification in such observation of CIT(A) in absence of any further enquiry by authorities. Therefore, we accept that based on the reporting made by Bank of India, the locker No. 113 was operated on 20.01.2018 and locker No. 121 was operated on 12.07.2017. Now, when it is so, the currency notes of Rs. 14,98,000/- only found in locker No. 113 can be said to have been kept in that locker out of cash provided by Smt. Mandeep Singh Bhatia and assessee's own funds. The cash of Rs. 5,51,000/- found in locker No. 121 which was lastly operated on 12.07.2017 remains unexplained. In that view of matter, we direct the AO to modify assessment-order so as to delete addition of Rs. 7,49,000/- (50% of Rs. 14,98,000/-) and maintain addition of Rs. 2,75,500/- (50% of Rs. 5,51,000/-). The assessee succeeds accordingly and partly in her appeal.

**28. Resultantly, the revenue's appeals are dismissed and assessee's appeal is partly allowed.**

Order pronounced in open court on 22.08.2024.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक/ Dated : 22.08.2024  
CPU/Sr. PS

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

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