

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
and
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2321/DEL/2023
(Assessment Year: 2014-15)**

**ITA No.2322/DEL/2023
(Assessment Year: 2018-19)**

**ITA No.2323/DEL/2023
(Assessment Year: 2019-20)**

**ITA No.2324/DEL/2023
(Assessment Year: 2020-21)**

Brij Gopal Construction Company (P) Ltd.,
A-7/2, Shivaji Apartments, Sector 14,
Rohini,
Delhi – 110 085.

vs. DCIT, Central Circle 3,
New Delhi.

(PAN : AADCB7702J)

**ITA No.2472/DEL/2023
(Assessment Year: 2012-13)**

**ITA No.2473/DEL/2023
(Assessment Year: 2013-14)**

**ITA No.2751/DEL/2023
(Assessment Year: 2014-15)**

**ITA No.2752/DEL/2023
(Assessment Year: 2016-17)**

**ITA No.2753/DEL/2023
(Assessment Year: 2018-19)**

**ITA No.2754/DEL/2023
(Assessment Year: 2019-20)**

DCIT, Central Circle 3, vs.
New Delhi.

Brij Gopal Construction Company (P) Ltd.,
A-7/2, Shivaji Apartments, Sector 14,
Rohini,
Delhi – 110 085.

(PAN : AADCB7702J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
Shri Lalit Mohan, CA
Shri Parth, Advocate

REVENUE BY : Ms. Nimisha Singh, CIT DR

Date of Hearing : 25.07.2024

Date of Order : 04.09.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

The assessee has filed appeals against the orders of Id. Commissioner of Income-tax Appeals-23, New Delhi dated 07.07.2023, 14.07.2023, 26.07.2023 & 27.07.2023 for the Assessment Years 2014-15, 2018-19, 2019-20 & 2020-21 respectively whereas the Revenue has filed appeals against the orders of Id. Commissioner of Income-tax Appeals-23, New Delhi dated 05.07.2023, 21.06.2023, 07.07.2023, 03.07.2023, 14.07.2023 & 26.07.2023 for the Assessment Years 2012-13, 2013-14, 2014-15, 2016-17, 2018-19 & 2019-20 respectively.

2. Since common issues have been raised in all these appeals, therefore, they were heard together and are being disposed off by this common order. We are taking ITA No. 2472/D/2023 (Deptt.) for Assessment year 2012-13 as lead case.

3. Brief facts of the case are, original return u/s 139 of the Income Tax Act, 1961 (in Short 'Act') was e-filed by the assessee on 29.9.2012 vide acknowledgement no. 504284811290913 declaring total income of Rs.3,92,60,202/- for the financial year 2011-12 relevant to assessment year 2012-13. The assessment for the instant assessment year was framed on 12.12.2014 at an income of Rs. 3,92,34,700/- u/s 143(3) of the Act. A search and seizure proceedings u/s 132 of the Act was conducted in the case of assessee and others on 11.2.2021. A notice u/s 153A of the Act dated 19.11.2021 has been issued and duly served to the assessee for furnishing the return of income. In response to the notice u/s 153A, the assessee filed return of income on 3.12.2021 declaring total income of Rs. 3,92,60,202/-. Thereafter, the case was assessed at an income of Rs. 31,97,70,030/- after making addition of Rs. 27,23,39,640/- which represents sale consideration received on account of sale of shares of M/s BG Power and Gas (P) Ltd. held as unexplained credits u/s 68 of the Act and further addition of Rs 81,70,189/- was made representing

commission paid for receiving accommodation entries and, held as unexplained expenditure u/s 69C of the Act.

4. Aggrieved, the assessee filed an appeal before the Id. CIT(A) on 11.5.2022. After considering the submissions made by the assessee, the Id. CIT(A) deleted both the aforesaid additions made in the assessment order dated 11.4.2022 u/s 153A of the Act.

5. Aggrieved, the Revenue is in appeal before us and has raised the following grounds of appeal :-

“1 The Id. CIT(A) has erred on facts and in law in deleting the disallowance of Rs. 27,23,39,640/- made by the Assessing Officer u/s 68 of the Act.

2 The Id. CIT(A) has erred on facts in law in deleting the disallowance of Rs. 81,70,189/- made by the Assessing Officer u/s 69C of the Act

3 The Id. CIT(A) has erred on facts and in law in holding that the impounded material in the form of tally data did not pertain to Gopal Bansal.

4 The Id. CIT(A) has erred is not regarding the fact that the impounded data in the form of tally data was authentic as it contained the name of the assessee, transactions through banking channels as well as cash transactions.

5 The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

6. Before us, the Id. counsel for the assessee moved an application u/r 27 of the ITAT Rules claiming that the assessment order is devoid of any

incriminating material and deserve to be quashed and has raised the following legal grounds of appeal :-

“1 That the ld. Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the assumption of jurisdiction u/s 153A of the Act and, framing of assessment u/s 153A of the Act both of which deserve to be quashed as such.

2 That the additions made are without jurisdiction since it is not based on any incriminating material found as a result of search on the appellant, as have been also held by the judgments of Hon’ble Apex Court in the case of Pr. CIT v. Abhisar Buildwell (P) Ltd. reported in 454 ITR 212.”

7. All the aforesaid grounds essentially relate to the validity of addition of Rs.27,23,39,640/- u/s 68 of the Act and addition of Rs 81,70,189/- representing alleged commission paid for receiving aforesaid alleged accommodation entries and, held as unexplained expenditure u/s 69C of the Act.. The Ld. Authorised Representative (AR) has contended that additions made are without jurisdiction since it is not based on any incriminating material found as a result of search on the assessee. The Ld. AR for the assessee submitted that notice issued u/s 153A of the Act, additions made and disputed in this appeal and the impugned assessment framed u/s 153A/143(3) of the Act are without jurisdiction since additions made by the Assessing Officer is not based on any incriminating material found as a result of search on the assessee. It was submitted that in the instant case, search u/s 132 of the Act was conducted on 11.2.2021 and no proceedings were pending on the date of search for the instant assessment year.

It was submitted that the original return of income was filed by the assessee on 29.9.2012 u/s 139(1) of the Act and accepted in an order of assessment dated 12.12.2014 u/s 143(3) of the Act and, as such, the assessment for the instant year was not pending on the date of search. Thus, the assessment made prior to search had not abated under second proviso to section 153A of the Act and, therefore, the additions made are beyond the scope of assessment framed u/s 153A/143(3) of the Act. It was submitted that as a result of search on the assessee, no incriminating material has been detected as a result of search and, therefore, additions made are without jurisdiction.

8. The issue raised before us is that the impugned addition made are devoid of any incriminating material found at the time of search and therefore, the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla (380 ITR 573) affirmed by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt Ltd (454 ITR 212) are squarely apply making the impugned assessment order null and void.

9. The relevant facts relating to the issue under consideration are, the assessee during preceding assessment year i.e. assessment year 2011-12 had invested in the equity shares (9,999 and 41,85,000) of M/s BG Power & Gas (P) Ltd. at Rs. 10 and Rs. 300 per share respectively, for total sum of Rs. 125,55,99,990/-. That said investment has been duly accepted in order of

assessment of assessee vide order dated 21.03.2014 u/s 143(3) of the Act for assessment year 2011-12. It is further submitted that even allotment of shares in the hands of M/s BG Power & Gas (P) Ltd. has also been accepted in order of assessment dated 20.12.2013 u/s 143(3) of the Act (refer pages 1091-1092 of CPB-II).

10. Further, it is submitted that during the assessment year 2012-13, assessee has disinvested the aforesaid investment in following manner to following entities:

Sr. No.	Name of transferee entities	Amount (In Rs.)
i)	M/s Autolite Agencies (P) Ltd.	12,71,92,280
ii)	M/s Magnum Power Tech (P) Ltd. (formerly known as Fidelo Securities (P) Ltd.)	14,51,47,360
	Total	27,23,39,640

11. The Id. Assessing Officer has dealt the issue of sale of shares of M/s BG Power and Gas (P) Ltd. for assessment year 2012-13 to 2016-17 in consolidated manner in para C.1 from pages 37-71 of assessment order. The seized material referred in the assessment order stated at pages 53-54 are as under:

“On a thorough examination, it has been revealed that the above investor entities are not genuine investors and mere entry providing vehicles which were controlled and used by various entry providers. The fact has been established on examination of data impounded/seized from the premise of Sh. Gopal Bansal, whose case was also covered during the course of search action carried out in the case of the assessee.

ITA Nos.2321 to 2324/DEL/2023
 ITA Nos.2472 & 2473/DEL/2023
 ITA Nos.2751 to 2754/DEL/2023

The alleged investing companies, as tabulated above, are discussed in detail as under:-

Autolite Agencies Pvt. Ltd.

The Autolite agencies Pvt. Ltd. Purchased 10.13% of total holding in BG Power and Gas from the assessee for a alleged consideration price amounting to Rs. 12,71,92,280/-. The same fact has also been verified from the banks of the assessee where it received Rs. 12,73,00,000/- from Autolite agencies Pvt. Ltd. during the AY 2012-13.

On examination of the data impounded/seized from Sh. Gopal Bansal, it has been found that the Autolite agencies Pvt. Ltd. was controlled and used to provide entries by sh. Gopal Bansal to various companies in lieu of cash. The fact can easily be evidenced from the following screen shots taken from the tally data(relevant to the assessee) found from the premises of Sh. Gopal Bansal:-

Tally name - Trainee Frm 1/8/11 to 31/3/12
 Ledger Name - Bgc

Date	Particulars	Vch Type	Vch No	Debit	Credit
	BGC (CHQ)			12,71,92,280.00 Cr	
	AAPL			12,71,92,280.00 Cr	
	BANK OF INDIA				12,71,92,280.00 Cr
30-12-2011 (as per details)		Receipt	215		12,71,92,280.00
	Cash			12,71,92,280.00 Cr	

Image 1.1.1

Date	Particulars	Vch Type	Vch No	Debit	Credit
30-12-2011 Cash		Receipt	216		12,71,92,280.00
30-12-2011 (as per details)		Receipt	214		12,71,92,280.00
	BGC (CHQ)			12,71,92,280.00 Cr	
	AAPL			12,71,92,280.00 Cr	
	BANK OF INDIA				12,71,92,280.00 Cr
30-12-2011 Cash		Receipt	211		12,71,92,280.00
30-12-2011 (as per details)		Receipt	212		12,71,92,280.00
	BGC (CHQ)			12,71,92,280.00 Cr	
	AAPL			12,71,92,280.00 Cr	
	BANK OF INDIA				12,71,92,280.00 Cr

Image 1.1.2

Date	Particulars	Vch Type	Vch No	Debit	Credit
30-12-2011 (as per details)	BGC (CHQ)	Journal	211		12,71,92,280.00
	AAPL			12,71,92,280.00 Cr	
	BANK OF INDIA				12,71,92,280.00 Cr

Image 1.1.3

The above image has been taken from the computer data found from the premises of Sh. Gopal Bansal. From the above shots it is evident that it is a tally account of transaction between BGC (Brij Gopal Construction company) and Autolite Agencies Pvt. Ltd. (AAPL). In

above tally data the receipt of cash from Brij Gopal Construction Company has been recorded along with the entry from Autolite Agencies Pvt. Ltd. given to the assessee.”

12. The Id. Assessing Officer has relied upon the following material in relation to the aforesaid addition :-

- i) tally data impounded/seized from one Sh. Gopal Bansal (page 53 of order of assessment);
- ii) Statement of Mrs.Rachna Gambhir, Company Secretary, working in office of Sh. Gopal Bansal, recorded u/s 131(1A) of the Act; (pages 67-69 of order of assessment) and,
- iii) Statement of one Sh. J.P. Gupta recorded on 11.2.2021 u/s 131(1A) of the Act (page 70 of order of assessment)

13. The Id. Assessing Officer has finally concluded as under :-

“From the above facts, records, statements, it is evident that the assessee is routing it unaccounted funds/cash to receive fund back in the form of entries as allegedly sale consideration for sale of shares. Whereas, in fact, there was no real assets in hands of the assessee.

The first step was to create fictitious assets in the books of the assessee by rotating a small amount multiple times among its own closely held entities resulted in creation of false assets in the books. The second step was to sale such fictitious assets to some shell companies and receiving huge amount in form of sale consideration from such false investors. To receive such entries, the assessee gave cash to Sh. Gopal Bansal and in return Sh. Gopal Bansal provided/arranged bogus entries as sale consideration to the assessee. As such the sale consideration received by the assessee

during the year is nothing but its own routed cash which is unaccounted.”

14. In appeal, the Id. Commissioner of Income Tax (Appeals) has granted the relief to the assessee on merit at pages 17-49 of his order, However, he has not adjudicated the jurisdictional issues raised by the assessee and has dismissed the same for statistical purpose at page 5 para 6 of order. He has held as under :-

“6 Ground No. 2,3,5,6,7,9 and 10 are regarding the additions made by the Assessing Officer is deleted on merits, therefore, there is no need to separately adjudicate technical grounds i.e. Ground No. 2,3,5,6,7,9 and 10. For statistical purpose ground no. 2,3,5,6,7,9 and 10 are dismissed.”

15. The Id. Commissioner of Income Tax (Appeals) on merits has deleted the addition by observing as under:-

“i) That investment in shares of M/s BG Power BG Power and Gas (P) Ltd. has been duly reflected in books of accounts of the appellant and has been accepted in order of assessment dated 21.3.2014 u/s 143(3) of the Act and allotment of shares has also been accepted in order of assessment dated 20.12.2013 u/s 143(3) of the Act;

ii) The entire addition is made on the basis of data found in tally software on one of the computers at the business/office premise of Shri Gopal Bansal that was covered by survey u/s 133A of the Act;

iii) The main reason for making the addition by the Assessing Officer is that the assessee company gave cash to the transferee company and the same cash after being converted was received back in the form of sale consideration for sale of BG Power & Gas (P) Ltd. shares. However, from reading of order of assessment, it appears that the Assessing Officer has presumed that cash must have been deposited somewhere and it came back in the form of sale of shares through banking transaction to the appellant;

iv) *The assessee has discharged burden lies on it u/s 68 of the Act and even the transferee entities replies to the notice issued u/s 133(6) of the Act;*

v) *During the post search enquiries, statements of directors of transferee companies were recorder under oath u/s 131 of the Act and has confirmed the transaction under dispute it is evident from;*

vi) *Despite the aforesaid, the ld. AO has made the addition essentially on the basis of tally data extracted from the electronic data impounded during the course of survey at office premises of Sh. Gopal Bansal;*

vii) *Even from the statement of Sh. Gopal Bansal, recorded at his premises u/s 131(1A) of the Act, it is evident that SH. Gopal Bansal has not stated that the transaction was not a genuine transaction and also he did not state that cash was taken by him from the appellant for providing entry in shape of sale of shares;*

viii) *Furthermore, ld. Assessing Officer has also recorded statement of Sh. Gopal Bansal on 19.3.2022 u/s 131 of the Act, and from that statement alongwith affidavit dated 11.4.2022 of Sh. Gopal Bansal it is evident that he has denied the allegation of ld. Assessing Officer and even denies that such tally data does not belongs to him;*

ix) *The data which is relied by ld. AO, was found from the premises of Sh. Gopal Bansal and even it is presumed the he was the author of such data though he denies the knowledge of such data, according to presumption u/s 292C of the Act, then also sale consideration has not been received from Sh. Gopal Bansal but was received from transferee companies, whose statement was also recorded by ld. Assessing Officer, wherein they had not accepted that they had received any cash in lieu of sale of shares;*

16. The ld. AR submitted by referring to the above facts on record that it is thus admittedly no material much less incriminating material has been found as a result of search from the premises of assessee and transactions under

consideration was duly recorded in books of assessee and, assessed u/s 143(3) of the Act. The only material relied against the assessee was found from third party premises, there is material found at the business/office premise of Shri Gopal Bansal that infact was covered by survey u/s 133A of the Act.

17. The ld. DR has not refuted the aforesaid position during the course of hearing and relied on the findings of AO.

18. Considered the rival submissions and material placed on record. We observe that the addition was made in the hands of the assessee without their being any incriminating material found and merely relied on the material found in the premises of Shri Gopal Bansal in the survey proceedings. We observe that the Hon'ble Supreme Court in the case of Abhisar Buildwell [supra] has set at rest the entire quarrel revolving around the assessments devoid of incriminating material. The relevant findings read as under:

“In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the ‘total income’ taking into consideration the incriminating material unearthed during the search

and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

15. Insofar as the aforesaid Civil Appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 passed in the review application

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under Section 143(1)(a) or 143(3) of the Act, 1961 and to re-assess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to

reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs.”

19. Considering the facts on record in totality, we are of the considered view that the additions in the hands of assessee company has been made without there being any incriminating material found from their premises at the time of search. Therefore, following the decisions of the Hon'ble Supreme Court in the case of Abhisar Buildwell [supra], we delete the addition which has no relevance of any incriminating material.

20. Application u/r 27 of the ITAT Rules in the case of the assessee is allowed and accordingly, appeal filed by the revenue is dismissed.

21. The remaining appeals of revenue are in ITA No. 2473/D/2023 for Assessment year 2013-14, ITA No. 2751/D/2023 for Assessment year 2014-15, ITA No. 2752/D/2023 for Assessment year 2016-17, ITA No. 2753/D/2023 for Assessment year 2018-19, ITA No. 2754/D/2023 for Assessment year 2019-20. Against these appeals, the assessee has filed application u/r 27 of ITAT Rules in Assessment years 2013-14 and 2016-17. So far as Assessment years 2014-15, 2018-19 and 2019-20, the assessee has filed cross appeals in ITA No(s). 2321/Del/2023, 2322/ Del/2023 and 2323/ Del/2023.

22. Application u/r 27 of the ITAT Rules filed by the assessee for Assessment years 2013-14 and 2016-17 and Grounds 2 raised by the assessee in there cross appeals for Assessment years 2014-15, 2018-19 and 2019-20 are identical to the application under Rule 27 of ITAT Rules raised in ITA No. 2472/Del/2023 Assessment year 2012-13. Since the facts relating to the above said grounds are identical, we have already decided the issue and the application u/r 27 of ITAT rules filed by the assessee has been allowed in Para 18 & 19 above for AY 2012-13, following similar reasoning, the application u/r 27 of ITAT Rules filed by the assessee and Ground 2 raised by the assessee in cross appeals are allowed to the extent of additions made sans any incriminating material found as a result of search on assessee company. Consequently appeals filed by the revenue and grounds raised are exactly similar, the appeals preferred by the revenue are dismissed.

23. The next common issue involved in Grounds 4 to 4.2 raised in the appeals filed by the assessee in Assessment year 2014-15, Assessment year 2018-19, Assessment year 2019-20 and Assessment year 2020-21 are:

“Grounds 4 to 4.2 raised by the assessee in ITA No.2321/D/2023 are regarding that addition of Rs. 35,000/- representing expenditure incurred under the head ‘xyz’ expenses and held as unexplained expenditure u/s 69C read with section 115BBE of the Act.

24. The relevant finding of the Ld. CIT (A) on the issue in dispute is extracted as under:

“75 I have considered the facts of the issue and submissions of the appellant. It is seen from the record the AO has made the addition of Rs. 35,000/- by holding as under:

“During the course of search and seizure proceedings, various soft data has been seized/ impounded. In this data various sheets have been found where huge amount of expenditure has been incurred under the head ‘xyz’ expenses.

XYZ				
AY 2014-15	AY 2018-19	AY 2019-20	AY 2020-21	AY 2021-22
35,000	34,7000	7,68,5000	25,02,820	35,22,900
	1,55,000	35,10,400	53,14,610	48,52,066
	1,62,340	1,53,300	1,19,35,747	28,06,000
	5,10,000	50,19,000	5,00,000	43,67,780
	3,72,945	35,00,000	3,24,880	36,23,670
	4,84,500	25,14,200	2,04,500	30,46,131
	20,000	7,42,800	1,03,000	33,12,500
	22,22,890	27,69,000		52,87,000
	7,50,000	12,72,500		10,81,100
	5,90,000	2,77,000		37,31,450
	15,72,500			35,86,700
	29,71,100			13,45,800
				26,92,162
				18,67,000
				15,96,000
				10,57,000
				5,42,000
				7,31,200
				5,00,000
				45,000
				1,21,200
35,000	98,45,975	2,05,26,700	2,08,85,557	4,97,14,659

.....

78 The relevant text for the impugned year based on which addition has been made is as under:

S.No.	Dated	Amount received from	Bill amount w/c tax	95%	cash	Vikas 0 6	St 0 5	v nod 0 4	Dinesh 0 55	Ky harvnder	Paid date
3	27/08/2013	For SDO from Lileder			35000			35000			paid on 29/08/2013

79 During the course of appellate proceedings, Vide letter dated 04.07.2023, a Copy of the impugned document was sent and confronted to the appellant. The appellant in response to the letter has stated as under (vide his letter dated 04.07.2023):-

“It is respectfully submitted that it is undisputed that the printout now supplied was never confronted to the appellant during the assessment proceedings. It is submitted since the aforesaid printout has never been made the basis of addition by confronting the same to the appellant no addition can now be validity be made particularly when it is a apparently third party document and not a document signed by the appellant or prepared by the directors of the appellant. It is thus submitted in absence of any inquiries having been conducted by the ld. Assessing Officer no addition can validity be made on the basis of the aforesaid dumb document.”

.....

84 The document was seized from the premise of the appellant. Therefore, the primary onus lies on the appellant to rebut the contents of the document. As the appellant has not been able to explain the source of money for making the payment, therefore, the Assessing Officer was correct in making addition u/s 69C of the Act

85 In view of the above discussion, the addition of Rs. 35,000/- u/s 69C is upheld.”

25. Both the parties during the course of hearing were in agreement that since the seized material was not confronted to the assessee during the course of assessment proceedings, the matter be restored to the file of Assessing Officer. We find, the assessee in letter dated 4.7.2023 addressed to the ld. CIT(A) and has stated as under:

“It is respectfully submitted that it is undisputed that the printout now supplied was never confronted to the appellant during the assessment proceedings. It is submitted since the aforesaid printout has never been

made the basis of addition by confronting the same to the appellant no addition can now be validity be made particularly when it is a apparently third party document and not a document signed by the appellant or prepared by the directors of the appellant. It is thus submitted in absence of any inquiries having been conducted by the ld. Assessing Officer no addition can validity be made on the basis of the aforesaid dumb document."

26. We, therefore, consider it appropriate to restore the issue to the file of the Assessing Officer for considering the issue afresh with a direction to decide the issue after granting proper opportunity of being heard to the assessee. Thus, grounds 4 to 4.2 of the assessee's appeal in ITA No. 2321/D/2023 are accordingly allowed for statistical purposes.

27. Grounds 4 to 4.2 raised by the assessee in two cross appeals for Assessment years 2018-19 & 2019-20 and appeal preferred by assessee in AY 2020-21 are identical to the Grounds 4 to 4.2 raised in ITA No. 2321/D/2023 Assessment year 2014-15. We have already decided the issue and grounds raised by the assessee has been restored to the file of the Assessing Officer for considering the issue afresh with a direction to decide the issue after granting proper opportunity of being heard to the assessee. Following similar reasons, the Grounds 4 to 4.2 raised by the assessee are accordingly allowed for statistical purposes.

28. Ground 1 is general and Ground 3 raised by the assessee was not pressed and therefore they are dismissed as such for all the four Assessment years 2014-15, 2018-19, 2019-20 and 2020-21.

29. This leaves us with Grounds 5 to 5.2 raised by the assessee in ITA No.2322/D/2023 for Assessment year 2018-19 which is as under:

“5 That the ld. Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining an addition of Rs. 75,86,034/- representing alleged unexplained investment made by the appellant u/s 69B of the Act.

5.1 that while confirming the above addition, the ld. Commissioner of Income Tax (Appeals) has failed to appreciate the factual substratum of the case, statutory provision of law and as such, addition so made and sustained is highly misconceived, totally arbitrary, wholly unjustified and therefore unsustainable.

5.2 That the ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the burden is on revenue u/s 69B of the Act such burden has not been discharged on the facts of the appellant.”

30. The relevant facts in brief are, during the instant year assessee has purchased a property situated at Kamka Near Bhopal, Madhya Pradesh for Rs.57,81,774/-. The Assessing Officer on the basis of seized material found from the one of the construction site situated at Khasra No. 186/2/2, 27/63, Purani Tehsil-Gouharganj, Sultanpur, Raisen near Bhopal Madhya Pradesh has held that actual market value of the land was Rs. 1,30,00,000/-. He thus made an addition on account of unexplained payments of Rs. 75,86,034/- in cash u/s

69 of the Act. The Id. CIT(A) however has upheld the addition by holding as under:

“92 The facts of the case and reply of the appellant is considered. The seized documents as found from the office of the appellant is as under:

Total Amount paid by	
Anand Kumar Pandey & Vinod Singh	
Against Land purchase.	
①	Registration - 57,81,774 (Total Registry amount)
②	Cash - 40,00,000 (paid)
③	Anand Kumar Pandey - 1,00,000 Check
④	Anand T. D.S - 15,229
⑤	Vinod T.D.S - 12,00,139.53
<hr/>	
Total = 79,93,966	
Total Land value = 1,30,00,000	
deduct - 79,93,966	
Balance => 50,00,000	
Crusher price = 50,00,000	
Total value = 10,00,000	

93 From the aforesaid seized documents it is noticed that total sale consideration paid and recorded in registered document is Rs. 57,81,774/-. Further cash paid of Rs. 40,00,000/- and Rs. 35,86,034/- which aggregates to Rs. 75,86,034/- remained was made in cash from unaccounted sources. Thus, while the total value of investment was Rs. 1,30,00,000/-, the appellant has only disclosed on account of Rs. 57,81,774/- in the books of accounts. Hence, the investment was not fully disclosed in the books of accounts of the appellant.....

96 Thus by virtue of section 69B of the Act, it becomes obligatory on the part of the appellant to explain, to the satisfaction of the AO, the source of expenditure/investment made by the appellant. The appellant during the course of assessment and appellate proceedings has failed to prove the source of excess investment of Rs.75,86,034/-”.

31. The ld. counsel for the assessee contended that the addition is untenable since in the affidavits both the sellers of the property namely Anand Pandey and Vinod Singh Thakur have denied receipt of any cash. It has also been stated that sale deed dated 22.6.2017 further supports the contention that the property was purchased at Rs. 57,81,774/- and no on-money was paid by the appellant. It has been stated that no enquiries have been made from the sellers and also no corroborative evidence has been found as a result of search.

32. The ld. DR placed reliance on the orders of the lower authorities.

33. Considered the rival submissions and material placed on record. We observe that the Income Tax Authorities have heavily relied upon the loose slips found during the course of search. The loose slips are undated and unsigned. During the course of search, no corroborative evidence has been recovered or seized to support the inference arrived on the basis of loose sheet. The sellers in their affidavits stated that they have not received any amount over and above what is stated in the sale deed. No receipt of any cash payment by the assessee was found during the course of search. No corroborative evidence was found during the course of search so as to prove the assessee has paid cash over and above what is stated in the sale deed. The AO did not make any independent enquiry into the matter to establish that the assessee has actually paid any cash

payment over and above the stated amount in the agreement. No further enquiry has been made with the sellers as well.

34. We observe that the Hon'ble Delhi High Court in the case of CIT vs. Ved Prakash Choudhary reported in 305 ITR 245 held as under:-

“During the search conducted at the residential premises of the assessee, two memorandums of understanding were recovered. Memorandums were entered into between the assessee, R and M. In terms of the memorandum, the assessee had paid Rs.25 lakhs each towards part consideration for the purchase of agricultural land valued at Rs.123.30 lakhs to R and M. The Assessing Officer concluded that denial by the assessee was only to escape payment of tax liabilities and added Rs.50 lakhs in the hands of the assessee under section 69 of the Income-tax Act, 1961. The Commissioner (Appeals) as well as the Tribunal held that there was not enough evidence to add the amount in the hands of the assessee. On appeal:

Held, dismissing the appeal, that the assessee had stated that there was no transfer of money between the assessee, R and M and they had denied the receipt of any money from the assessee. In the face of these denials, there ought to have been corroborative evidence to show that there was in fact such a transfer of money. Both the Commissioner (Appeals) as well as the Tribunal had come to the conclusion that there was no such material on record. The Assessing Officer relied on certain other transactions entered into by the assessee with R and M for drawing a presumption in respect of the transfer of money but the Tribunal rightly held that those were independent transactions and had nothing to do with the memorandums of understanding. No substantial question of law arose.”

35. Similarly, the Hon'ble Madras High Court in the case of CIT vs. P.V. Kalyanasundaram reported in 282 ITR 259 (Madras) has held as under :

"The burden of proving actual consideration in such transaction is that of the revenue. The Tribunal had given factual finding and, inter alia, held that the Apex Court in K.P. Varghese v. ITO [1991] 131 ITR

597 / 7 Taxman 13 held that the burden of proving actual consideration in such transaction is that of the revenue. The revenue, in the instant case, had failed to discharge its duties. [Para 5]

The Assessing Officer did not conduct any independent enquiry relating to the value of the property purchased. He merely relied upon the statement given by the seller. If he would have taken independent enquiry by referring the matter to the Valuation Officer, the controversy could have been avoided. Failing to refer the matter was a fatal one. [Para 6]

In view of the above, there was no error in the order of the Tribunal and required no interference."

36. The Hon'ble Supreme Court in the case of CIT vs. P.V. Kalyanasundaram reported in 294 ITR 49 has confirmed the above Judgment of the Hon'ble Madras High Court by dismissing the Departmental Appeal.

37. The Hon'ble Kerala High Court in the case of CIT vs. Smt. K.C. Agnes (2003) 262 ITR 354 (Kerala) held as under :-

"After considering the evidence and on the basis of the assessment order passed against the assessee, the case of the assessee that the property was purchased at the rate of Rs.8,000 per cent, had been accepted. Thus, the Tribunal allowed the appeal. The sale deed showed that the price was Rs.8,000 per cent while the agreement showed that the parties agreed to purchase the property at Rs.12,951 per cent. A receipt was also relied on in the form of a letter to show that the property was agreed to be purchased at Rs.12,951 per cent.

When a document shows a fixed price, there would be a presumption that it is the correct price agreed upon by the parties. It is true that on the basis of the agreement, the sale deed is executed. But it is not necessary that the price stated in the agreement will be the price shown in the sale deed.

Sometimes, it may be higher and sometimes it may be lower. Sometimes intentionally a lesser value may be shown in the sale deed. Even if it is assumed to be so, unless it is proved that the agreement was acted upon and unless the amount stated in the agreement was paid for the sale, none can come to the conclusion that the price mentioned in the sale deed is not correct. In the instant case, in the assessment of the purchaser, it was finally found that the amount was received only at Rs.8,000 per cent.

Taking all these matters into consideration, the Tribunal held that the property was sold at the rate of Rs.8,000 per cent. Thus, the Tribunal, on the basis of the facts and circumstances of the case and on the appreciation of evidence, came to the conclusion that Rs.12,951 was not the amount for which the property was sold. There is no rule that the amount shown in the receipt is the-actual amount paid.

Accordingly, the amount stated in the sale deed was the correct amount unless there were circumstances to ignore the same. In the above view of the matter, the questions were answered in favour of the assessee and against the revenue."

38. The Hon'ble Punjab and Haryana High Court in the case of Paramjit Singh vs. ITO reported in 323 ITR 588 (P&H) held as under :

"Whether in view of settled principle that no oral evidence is admissible once documents contain all terms and conditions, sale consideration disclosed in sale deed in instant case was to be accepted and no oral evidence could have been adduced to contradict such sale consideration - Held, yes - Whether, thus, view taken by Assessing Officer as also confirmed by Tribunal was correct - Held yes."

39. Considering the totality of the facts and circumstances, in the light of the above discussions, since the explanation of assessee was not called for at any time of search proceedings or thereafter and that the sellers have denied to have received any consideration in cash, there was no justification for the ld. CIT(A)

to have sustained the addition of Rs. 75,86,034/-. In view of the above discussion, Grounds 5 to 5.2 for Assessment year 2018-19 raised by the assessee are allowed.

40. Grounds 5 to 5.2 raised by the assessee in ITA No.2323/D/2023 for Assessment year 2019-20 which is as under:

“5 That the ld. Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining an addition of Rs. 4,35,45,834/- representing long term capital loss on account of sale of shares held as bogus long term capital loss and added back to the income of the appellant .

5.1 That the ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the shares were sold by the appellant at the prevailing market rates only, therefore addition sustained is illegal, invalid and, untenable.

5.2 That the ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the consideration paid by the appellant to M/s Niftys Technologies (P) Ltd. for purchasing the shares has been accepted and assessed as such in the hands of M/s Niftys Technologies (P) Ltd. therefore no addition sustained in the hands of the appellant is not in accordance with law.”

41. The relevant facts in brief are, assessee purchased shares of following companies for a consideration of Rs. 4,85,45,835/- from Niftys Technologies (P) Ltd., a group company on 9.4.2018, details of which are as under :-

S. No.	Name of the Scrip	No. of shares	Total consideration (Rs.)
1	Cals Refineries	2,09,73,226	89,67,778
2	Everon Education	6,599	14,53,814
3	Sanghvi Forging	2,000	1,97,473

ITA Nos.2321 to 2324/DEL/2023
 ITA Nos.2472 & 2473/DEL/2023
 ITA Nos.2751 to 2754/DEL/2023

4	Servallaxmi Paper	50,000	9,83,959
5	Shree Asthavinayak Cine Vision	81,11,169	3,64,86,133
6	SRS Ltd.	70,000	4,56,678
		Total	4,85,45,835

Further assessee sold the aforesaid shares on 30.3.2019 in the open market, details of which is as under:-

S. No.	Name of the Scrip	No. of shares	Total consideration (Rs.)
1	CalsRefineries	2,09,73,226	2,09,732
2	Everon Education	6,599	66
3	Sanghvi Forging	2,000	56,400
4	Servallaxmi Paper	50,000	500
5	Shree Asthavinayak Cine Vision	81,11,169	81,112
6	SRS Ltd.	70,000	17,500
		Total	3,65,310

As a consequence of the aforesaid purchase and sale, there was long term capital loss of Rs. 4,35,45,834/- which has been claimed by the assessee company.

42. The AO has made the addition of Rs. 4,35,45,834/- by holding as under:-

“During the search and seizure action evidences have been found, GO-1, annexure 4, 236 (page 116 of Paper book), which depicts that the assessee has entered into transaction of sale/purchase of shares with its closely held entity M/s Nifty technologies Pvt. Ltd. wherein the assessee purchased shares from Nifty technologies and sold them to other entity. The complete transaction has been carried out off market and the assessee has incurred huge loss.

It is also not out of context to mention that the transaction has not been reported by the assessee and no explanation has been offered in this regard. The same fact is corroborated with the statement of sh. Sankalp Sharma, CS of the assessee, recorded on oath during the search action, that this transaction was carried out off market.

Assessee was asked to furnish details and genuineness of the transaction. It was also asked to furnish complete ledger of d mat account and also the factors/logic which prompt the assessee to enter into such transaction where no apparent prospects were evident.

Further, there are various fact which indicates that this was not a genuine transaction and only an arrangement to take bogus loss by the assessee.

The above fact has been established by the fact that the assessee has received back Rs. 4,35,45,835/- in its UBI account no. 358101010430015 from M/s Nifty technologies Pvt. Ltd.

In view of the above, it can easily be inferred that the assessee has taken bogus losses from its closely held entity through an arrangement of alleged transfer of shares. While doing so the assessee has reduced its income to the extent of sum received back from M/s Nifty technologies.”

43. Before us, the ld. counsel for the assessee submitted that addition is not made on the basis of any incriminating material and therefore the addition is without jurisdiction in view of the judgment of Apex Court in the case of Pr. CIT v. Abhisar Buildwell (P) Ltd. reported in 454 ITR 212. It has been contended that any material found in an excel sheet reflecting the transaction duly recorded in the audited books of account and therefore such excel sheet cannot be said to be incriminating material found as a result of search. Further, it was contended that all the transactions were entered into through banking channel duly supported by purchase agreement and sale bills. It was further contended that all the transactions were duly recorded in the books of accounts

of the assessee company and seller i.e. Niftys Technologies (P) Ltd. It was also contended that only vague comment is made without any corroborative evidence. It was next contended that assessee has not received any money from Niftys Technologies (P) Ltd. as submitted by the assessee vide reply dated 7.4.2022. It was contended that the transactions has been duly accepted in order of assessment in the case of seller i.e. M/s Niftys Technologies (P) Ltd. in order dated 9.4.2022 u/s 153A of the Act. The documentary evidence stands accepted which has not been rebutted by the ld. AO in the order of assessment.

44. The ld. DR relied upon the findings of the authorities below.

45. Considered the rival submissions and material placed on record. We observe that the ld. CIT(A) has sustained the addition by holding that the excel sheet constitute incriminating material seized during the course of search. There is no denial that the excel sheet as seized does not state anything over and above what has been recorded in the books of accounts. For the instant year, the return of income was furnished on 1.11.2019 which pertains to financial year 2018-19. The search took place on 11.2.2021. The return of income was not selected for scrutiny and all the transactions stated in the excel sheet are part of books of accounts. Thus, a disclosed transaction forming part of regular audited books of accounts in respect of which return of income has already been furnished cannot be said to be incriminating material and therefore following

**ITA Nos.2321 to 2324/DEL/2023
ITA Nos.2472 & 2473/DEL/2023
ITA Nos.2751 to 2754/DEL/2023**

the binding dicta of Apex Court in the case of Abhisar Buildwell (P) Ltd. (Supra) the year under consideration being unabated assessment year no addition can be made sans any incriminating material found as a result of search on assessee company. In view of the above discussion, Grounds 5 to 5.2 raised by the assessee are allowed.

46. In the result, all the appeals filed by the Revenue in ITA Nos. 2472/Del/2023, 2473/ Del/2023, 2751/ Del/2023, 2752/ Del/2023, 2753/Del/2023 and 2754/Del/2023 are dismissed and cross appeals filed by the assessee in ITA Nos.2321/Del/2023, 2322/Del./2023 and 2323/Del/2023 along with assessee's appeal in ITA No.2324/Del/2023 are partly allowed.

Order pronounced in the open court on this 4th day of September, 2024.

**Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT**

**Sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 04.09.2024
TS

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**

ITA Nos.2321 to 2324/DEL/2023
ITA Nos.2472 & 2473/DEL/2023
ITA Nos.2751 to 2754/DEL/2023