

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

IT(SS)A Nos.19 to 23/Ind/2023 & ITA No.226/Ind/2023
AYs : 2013-14 to 2018-19

Jarnalbeer Singh Bhatia, Bhatia Transport Services, Old Indore Lines, Pandhana Road, Khandwa (PAN: AIXPB4565C) (Assessee/Appellant)	<u>बनाम/</u> Vs.	DCIT/ACIT, (Central)-3, Indore. (Revenue/Respondent)
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IT(SS)A Nos.24 to 27/Ind/2023 & ITA Nos.228/Ind/2023
AYs : 2013-14 to 2014-15, 2016-17 to 2018-19

DCIT/ACIT, (Central)-3, Indore. (Revenue/Appellant)	<u>बनाम/</u> Vs.	Jarnalbeer Singh Bhatia, Bhatia Transport Services, Old Indore Lines, Pandhana Road, Khandwa (PAN: AIXPB4565C) (Assessee /Respondent)
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Assessee by	Shri Harsh Vijaywargiya, AR
Revenue by	Shri Ram Kumar Yadav, CIT-DR

Date of Hearing	26.06.2024
Date of Pronouncement	18.09.2024

आदेश / O R D E R

Per Bench:

This bunch of 11 appeals by assessee and revenue is directed against a consolidated appeal-order dated 30.03.2023 passed by learned Commissioner of Income-tax (Appeals)-3, Bhopal ["CIT(A)"] which in turn

arises out of a consolidated assessment-order dated 30.12.2019 passed by ACIT (Central)-3, Indore ["AO"] u/s 153A/143(3) of the Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2013-14 to 2018-19.

2. Since these appeals relate to the same assessee and arise out of common orders passed by lower-authorities, 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 goods handling and transportation services in a proprietorship concern named 'M/s Bhatia Transport Services' and also earning income from salary, interest, rent, sale of petrol, diesel, lubricants, etc. 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 AYs 2013-14 to 2018-19 in these appeals. The AO made assessments of these years after making certain additions. The assessee carried matters in first-appeal and succeeded to a large extent. Now, the assessee and revenue both are aggrieved by order of CIT(A) and have come in these appeals for redressal of their respective grievances.

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

Assessee's appeals:

IT(SS)A No.19/Ind/2023 – A.Y. 2013-14:

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 cash loans amounting to Rs. 50,05,000/- as peak of unexplained investment u/s 69 of Income-tax Act, 1961.*
2. *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 interest on cash loans amounting to Rs. 36,000/- as undisclosed interest income.*

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

IT(SS)A No.20/Ind/2023 – A.Y. 2014-15:

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 interest on cash loans amounting to Rs. 9,34,191/- as undisclosed interest income.
2. That the impugned order so passed in this regard by Ld. AO and Ld. CIT(A) is illegal, and wrong.

IT(SS)A No.21/Ind/2023 – A.Y. 2015-16:

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 interest on cash loans amounting to Rs. 9,67,815/- as undisclosed interest income.
2. That the impugned order so passed in this regard by Ld. AO and Ld. CIT(A) is illegal, and wrong.

IT(SS)A No.22/Ind/2023 – A.Y. 2016-17:

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 cash loans amounting to Rs. 2,31,02,579/- as peak of unexplained investment u/s 69 of Income-tax Act, 1961.
2. 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 interest on cash loans amounting to Rs. 8,05,695/- as undisclosed interest income.
3. That the impugned order so passed in this regard by Ld. AO and Ld. CIT(A) is illegal, and wrong.

IT(SS)A No.23/Ind/2023 – A.Y. 2017-18:

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 cash loans amounting to Rs. 42,71,104/- as undisclosed interest income.
2. 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 unexplained investment in jewellery amounting to Rs. 81,000/- u/s 69 r.w.s. 115BBE of Income-tax Act, 1961.
3. That the impugned order so passed in this regard by Ld. AO and Ld. CIT(A) is illegal, and wrong.

ITA No. 226/Ind/2023 – A.Y. 2018-19:

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 interest on cash loans amounting to Rs. 27,03,934/- as undisclosed interest income.
2. 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.
3. That the impugned order so passed in this regard by Ld. AO and Ld. CIT(A) is illegal, and wrong.

Revenue's Appeals:

IT(SS)A No.24/Ind/2023 - A.Y. 2013-14:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in accepting the additional evidence filed by assessee during appellate proceedings and deciding the case without the remand report of the AO, ignoring that :
 - a) Sufficient opportunity has not been provided to the AO to submit his remand report ;
 - b) Letter no. 974 dated 07.12.2022 of the Ld. CIT(A), calling for remand report to be submitted on or before 22.12.2022, was itself received by AO through speed post on 26.12.2022?
 - c) Only application of the assessee for acceptance of additional evidence (5 pages) was attached to the letter of Ld. CIT(A), but the additional evidence proposed to be admitted (i.e. documents, such as copies of ledger accounts of freight expenses, etc.) were not sent/attached?
 - d) The AO was busy in time barring assessments and an adjournment was sought till 31.01.2023?
 - e) In another case of Shri Manoj Agarwal, the Ld. CIT(A) wrote twice during/around the same months to prioritize the remand report, which led the AO to focus on the remand report in the case of Shri Manoj Agarwal taking it to be a priority work, in addition to his office and assessment work?
 - f) Without prejudice to the above, the letter dated 07.12.2022 of the Ld. CIT(A), while directing to “..examine/verify the documents and submit your report...” , did not specifically indicate that inquiry needs to be made in terms of section 250(4) of the Income-tax Act, 1961, and therefore the directions of the Ld. CIT(A) were incomplete?

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 44,60,000/- made for unexplained cash credit u/s 68 of the IT Act from M/s. Vedic Commotrade Pvt. Ltd. (formerly known as Vaibhav Pipes Pvt. Ltd.), ignoring that :*
 - a) *As per facts on record, noted in the Assessment Order, the lender company was established to be a paper company?*
 - b) *In response to commission u/s 131(1)(d), the ACIT, Satna has reported that no company by the name of Vedic Commotrade Pvt. Ltd. is operational at the registered address and the summons issued to the present Director of the said company, i.e. Shri Laxmi Kant Patel elicited no response?*
 - c) *Without prejudice to the above, the assessee denied during the course of assessment proceedings to have taken such loan?*
 - d) *Without prejudice to the above, additional evidence was admitted without giving adequate opportunity to the AO?*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by disallowing freight expenses amounting to Rs. 5,10,46,140/- u/s 40(a)(ia) of Income-tax Act, 1961, for non-deduction of TDS on freight expenses by assessee, ignoring that :-*
 - a) *The assessee was liable to deduct TDS on such expenses and has failed to do so?*
 - b) *Without prejudice to the above, additional evidence was admitted without giving adequate opportunity to the AO?*
 - c) *Without prejudice to the above, there is non-compliance of section 194C(7) of the Income-tax Act by the assessee since the assessee failed to furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within prescribed time as envisaged in section 194C(7)?*
 - d) *Without prejudice to the above, provisions of the section 194C(6) and 194C(7) need to be read together and once there is violation of section 194C disallowance u/s 40(a)(ia) is attracted ?*

IT(SS)A No.25/Ind/2023 – A.Y. 2014-15:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in accepting the additional evidence filed by assessee during appellate proceedings and deciding the case without the remand report of the AO, ignoring that :*
 - a) *Sufficient opportunity has not been provided to the AO to submit his remand report;*

- b) Letter no. 974 dated 07.12.2022 of the Ld. CIT(A), calling for remand report to be submitted on or before 22.12.2022, was itself received by AO through speed post on 26.12.2022?
 - c) Only application of the assessee for acceptance of additional evidence (5 pages) was attached to the letter of Ld. CIT(A), but the additional evidence proposed to be admitted (i.e. documents, such as copies of ledger accounts of freight expenses, etc.) were not sent/attached?
 - d) The AO was busy in time barring assessments and an adjournment was sought till 31.01.2023?
 - e) In another case of Shri Manoj Agarwal, the Ld. CIT(A) wrote twice during/around the same months to prioritize the remand report, which led the AO to focus on the remand report in the case of Shri Manoj Agarwal taking it to be a priority work, in addition to his office and assessment work?
 - f) Without prejudice to the above, the letter dated 07.12.2022 of the Ld. CIT(A), while directing to "...examine/verify the documents and submit your report..." , did not specifically indicate that inquiry needs to be made in terms of section 250(4) of the Income-tax Act, 1961, and therefore the directions of the Ld. CIT(A) were incomplete?
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by disallowing freight expenses amounting to Rs. 2,56,17,454/- u/s 40(a)(ia) of Income-tax Act, 1961, for non-deduction of TDS on freight expenses by assessee, ignoring that:-
- a) The assessee was liable to deduct TDS on such expenses and has failed to do so?
 - b) Without prejudice to the above, additional evidence was admitted without giving adequate opportunity to the AO?
 - c) Without prejudice to the above, there is non-compliance of section 194C(7) of the Income-tax Act, 1961, by the assessee since the assessee failed to furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within prescribed time as envisaged in section 194C(7)?.
 - d) Without prejudice to the above, provisions of the section 194C(6) and 194C(7) need to be read together, and once there is violation of section 194C(7) disallowance u/s 40(a)(ia) is attracted?

IT(SS)A No.26/Ind/2023 – A.Y. 2016-17:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in accepting the additional evidence filed by assessee

during appellate proceedings and deciding the case without the remand report of the AO, ignoring that :

- a) Sufficient opportunity has not been provided to the AO to submit his remand report ;
 - b) Letter no. 974 dated 07.12.2022 of the Ld. CIT(A), calling for remand report to be submitted on or before 22.12.2022, was itself received by AO through speed post on 26.12.2022 ?
 - c) Only application of the assessee for acceptance of additional evidence (5 pages) was attached to the letter of Ld. CIT(A), but the additional evidence proposed to be admitted (i.e. documents, such as copies of ledger accounts of freight expenses, etc.) were not sent/attached ?
 - d) The AO was busy in time barring assessments and an adjournment was sought till 31.01.2023 ?
 - e) In another case of Shri Manoj Agarwal, the Ld. CIT(A) wrote twice during/around the same months to prioritize the remand report, which led the AO to focus on the remand report in the case of Shri Manoj Agarwal taking it to be a priority work, in addition to his office and assessment work ?
 - f) Without prejudice to the above, the letter dated 07.12.2022 of the Ld. CIT(A), while directing to “..examine/verify the documents and submit your report...” , did not specifically indicate that inquiry needs to be made in terms of section 250(4) of the Income-tax Act, 1961, and therefore the directions of the Ld. CIT(A) were incomplete ?
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition for cash loan advanced made at Rs. 3,00,45,585/-, addition that was made based on diaries seized during search proceedings u/s 132 of the Income-tax Act, 1961, to Rs. 2,31,02,579/-, thereby deleting addition of Rs. 69,43,006/- by allowing telescoping for cash loans advanced by the assessee in earlier years, ignoring that :
- a) Assessee has not established any nexus between the cash loans of different years ?
 - b) Assessee has not provided any justification for such relief ?
3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 15,17,280/- made in AY 2016-17 based on DVO report for unexplained investment u/s 69 of the IT Act in construction of house, without appreciating that :
- a) In the case law relied by him Abeeson Hotels P.Ltd., (2004) 191 CTR 263 (M P), the Hon'ble Court has granted relief when DVO's valuation is within 10% of the assessee's valuation, while the Ld. CIT(A) has compared his

own valuation (after deducting all possible reliefs) without the assessee 's valuation and, therefore, the relief based on the case law is erroneous ?

- b) *Even while quoting the DVO's report on para 3.3.5 of Ld. CIT(A) order regarding the superior structure/specifications of the property under consideration, giving following reliefs is contradictory :-*
- (i) Relief of Rs. 48,07,238/- (para 3.3.5) ignoring that the 'furniture and fixtures' involve completely different items as dealt by Ld. CIT(A) at para 3.4 ?*
 - (ii) Relief given based on use by DVO of CPWD rates, as compared to the lower State PWD rates ?*
 - (iii) Relief given on architect fees and consultancy charges and approval of drawings ?*
- c) *DVO is a specialized agency and, accordingly, an accomplished expert in his area and his recommendations cannot be brushed aside?*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by disallowing freight expenses amounting to Rs. 1,52,32,690/- u/s 40(a)(ia) of Income-tax Act, 1961, for non-deduction of TDS on freight expenses by assessee, ignoring that:*
- a) The assessee was liable to deduct TDS on such expenses and has failed to do so ?*
 - b) Without prejudice to the above, additional evidence was admitted without giving adequate opportunity to the AO ?*
 - c) Without prejudice to the above, there is non-compliance of section 194C(7) of the Income-tax Act by the assessee since the assessee failed to furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within prescribed time as envisaged in section 194C(7) ?*
 - d) Without prejudice to the above, provisions of the section 194C(6) and 194C(7) need to be read together and once there is violation of section 194C disallowance u/s 40(a)(ia) is attracted ?*
5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 25,00,000/- made for unexplained cash credits u/s 68 of IT Act for gifts received from his mother Smt. Manjeet Kaur Bhatia, as source of the gift remained unexplained and the creditworthiness of donor and genuineness of transaction was not established?*

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in accepting the additional evidence filed by assessee during appellate proceedings and deciding the case without the remand report of the AO, ignoring that :*
 - a) *Sufficient opportunity has not been provided to the AO to submit his remand report ;*
 - b) *Letter no. 974 dated 07.12.2022 of the Ld. CIT(A), calling for remand report to be submitted on or before 22.12.2022, was itself received by AO through speed post on 26.12.2022 ?*
 - c) *Only application of the assessee for acceptance of additional evidence (5 pages) was attached to the letter of Ld. CIT(A), but the additional evidence proposed to be admitted (i.e. documents, such as copies of ledger accounts of freight expenses, etc.) were not sent/attached ?*
 - d) *The AO was busy in time barring assessments and an adjournment was sought till 31.01.2023 ?*
 - e) *In another case of Shri Manoj Agarwal, the Ld. CIT(A) wrote twice during/around the same months to prioritize the remand report, which led the AO to focus on the remand report in the case of Shri Manoj Agarwal taking it to be a priority work, in addition to his office and assessment work ?*
 - f) *Without prejudice to the above, the letter dated 07.12.2022 of the Ld. CIT(A), while directing to “..examine/verify the documents and submit your report...” , did not specifically indicate that inquiry needs to be made in terms of section 250(4) of the Income-tax Act, 1961, and therefore the directions of the Ld. CIT(A) were incomplete ?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition, that was made based on diaries seized during search proceedings u/s 132 of the IT Act, for cash loan advanced of Rs. 1,15,05,695/-, by allowing telescoping for cash loans advanced by the assessee in earlier years, ignoring that :*
 - a) *Assessee has not established any nexus between the cash loans of different years ?*
 - b) *Assessee has not provided any justification for such relief ?*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 26,29,149/- made in A.Y. 2017-18 based on report for unexplained investment u/s 69 of the IT Act in construction of house, without appreciating that :*
 - a) *In the case law relied by him Abeeson Hotels P.Ltd., (2004) 191 CTR 263 (MP), the Hon'ble Court has granted relief when DVO's valuation is within*

10% of the assessee's valuation, while the Ld. CIT(A) has compared his own valuation (after deducting all possible reliefs) without the assessee's valuation and, therefore, the relief based on the case law is erroneous ?

b) Even while quoting the DVO's report on para 3.3.5 of Ld. CIT(A) order regarding the superior structure/specifications of the property under consideration, giving following reliefs is contradictory :-

(i) Relief of Rs. 48,07,238/- (para 3.3.5) ignoring that the 'furniture and fixtures' involve completely different items as dealt by Ld. CIT(A) at para 3.4 ?

(ii) Relief given based on use by DVO of CPWD rates, as compared to the lower State PWD rates ?

(iii) Relief given on architect fees and consultancy charges and approval of drawings ?

c) DVO is a specialized agency and, accordingly, an accomplished expert in his area and his recommendations cannot be brushed aside ?

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,99,589/- made for unexplained expenditure in furniture and fixture as mentioned in loose papers and marked as LPS-03 during the course of search & seizure proceedings u/s 132 of the IT Act, without appreciating that, as stated in the Assessment Order (para 13.3) since as per the DVO report (Note-3) the value of furniture and fixtures were not accounted for in the DVO's report as such separate addition was made on the basis of seized papers?

5. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made by disallowing freight expenses amounting to, Rs. 1,57,51,980/- u/s 40(a)(ia) of Income-tax Act, 1961, for non-deduction of TDS on freight expenses by assessee, ignoring that :

a) The assessee was liable to deduct TDS on such expenses and has failed to do so ?

b) Without prejudice to the above, additional evidence was admitted without giving adequate opportunity to the AO ?

c) Without prejudice to the above, there is non-compliance of section 194C(7) of the Income-tax Act by the assessee since the assessee failed to furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within prescribed time as envisaged in section 194C(7) ?

d) Without prejudice to the above, provisions of the section 194C(6) and 194C(7) need to be read together and once there is violation of section 194C disallowance u/s 40(a)(ia) is attracted ?

ITA No. 228/Ind/2023 – A.Y. 2018-19:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in accepting the additional evidence filed by assessee during appellate proceedings and deciding the case without the remand report of the AO, ignoring that :*
 - a) *Sufficient opportunity has not been provided to the AO to submit his remand report ;*
 - b) *Letter no. 974 dated 07.12.2022 of the Ld. CIT(A), calling for remand report to be submitted on or before 22.12.2022, was itself received by AO through speed post on 26.12.2022 ?*
 - c) *Only application of the assessee for acceptance of additional evidence (5 pages) was attached to the letter of Ld. CIT(A), but the additional evidence proposed to be admitted (i.e. documents, such as copies of ledger accounts of freight expenses, etc.) were not sent/attached ?*
 - d) *The AO was busy in time barring assessments and an adjournment was sought till 31.01.2023 ?*
 - e) *In another case of Shri Manoj Agarwal, the Ld. CIT(A) wrote twice during/around the same months to prioritize the remand report, which led the AO to focus on the remand report in the case of Shri Manoj Agarwal taking it to be a priority work, in addition to his office and assessment work ?*
 - f) *Without prejudice to the above, the letter dated 07.12.2022 of the Ld. CIT(A), while directing to “..examine/verify the documents and submit your report...” , did not specifically indicate that inquiry needs to be made in terms of section 250(4) of the Income-tax Act, 1961, and therefore the directions of the Ld. CIT(A) were incomplete ?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition, that was made based on diaries seized during search proceedings u/s 132 of the IT Act, for cash loan advanced of Rs. 2,94,28,250/-, by allowing telescoping for cash loans advanced by the assessee in earlier years, ignoring that:*
 - a) *assessee has not established any nexus between the cash loans of different years ?*
 - b) *assessee has not provided any justification for such relief ?*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 18,57,075/- made in AY 2018-19 based on DVO report for unexplained investment u/s 69 of the IT Act in construction of house, without appreciating that :*

- a) *In the case law relied by him Abeeson Hotels P.Ltd., (2004) 191 CTR 263 (MP), the Hon'ble Court has granted relief when DVO's valuation is within 10% of the assessee's valuation, while the Ld. CIT(A) has compared his own valuation (after deducting all possible reliefs) without the assessee's valuation and, therefore, the relief based on the case law is erroneous ?*
- b) *Even while quoting the DVO's report on para 3.3.5 of Ld. CIT(A) order regarding the superior structure/specifications of the property under consideration, giving following reliefs is contradictory :-*
- (i) Relief of Rs. 48,07,238/- (para 3.3.5) ignoring that the 'furniture and fixtures' involve completely different items as dealt by Ld. CIT(A) at para 3.4 ?*
 - (ii) Relief given based on use by DVO of CPWD rates, as compared to the lower State PWD rates ?*
 - (iii) Relief given on architect fees and consultancy charges and approval of drawings ?*
- c) *DVO is a specialized agency and, accordingly, an accomplished expert in his area and his recommendations cannot be brushed aside*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 10,95,458/- made for unexplained expenditure in furniture and fixture as mentioned in loose papers and marked as LPS-03 during the course of search & seizure proceedings u/s 132 of the IT Act, without appreciating that, as stated in the Assessment Order (para 13.3), since as per the DVO report (Note-3) the value of furniture and fixtures were not accounted for in the DVO's report as such separate addition was made on the basis of seized papers ?*
5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 44,00,000/-, made for unexplained cash credits u/s 68 of Income-tax Act, 1961, for gifts received from Smt. Mandeep Kaur Bhatia, as source of the gift remained unexplained and the creditworthiness of donor and genuineness of transaction was not established ?*
6. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 25,00,000/-, made for unexplained cash credits u/s 68 of Income-tax Act, 1961, for gifts received from Smt. Manjeet Kaur Bhatia, as source of the gift remained unexplained and the creditworthiness of donor and genuineness of transaction was not established ?*
7. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made by disallowing freight expenses*

amounting to Rs. 1,93,63,082/- u/s 40(a)(ia) of Income-tax Act, 1961, for non-deduction of TDS on freight expenses by assessee, ignoring that :

- a) The assessee was liable to deduct TDS on such expenses and has failed to do so ?
- b) Without prejudice to the above, additional evidence was admitted without giving adequate opportunity to the AO ?
- c) Without prejudice to the above, there is non-compliance of section 194C(7) of the Income-tax Act by the assessee since the assessee failed to furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within prescribed time as envisaged in section 194C(7) ?
- d) Without prejudice to the above, provisions of the section 194C(6) and 194C(7) need to be read together and once there is violation of section 194C disallowance u/s 40(a)(ia) is attracted ?

5. The issues involved in various grounds raised by parties are identified and tabulated thus:

No.	Issue	A.Y.	Assessee's Ground No.	Revenue's Ground No.
1	Unexplained investment in the form of cash loans and notional interest thereon u/s 69	2013-14	1,2,3	
		2014-15	1,2	
		2015-16	1,2	
		2016-17	1,2,3	2
		2017-18	1,3	2
		2018-19	1,3	2
2	Unexplained investment in jewellery u/s 69	2017-18	2	
3	Unexplained money in lockers u/s 69A	2018-19	2	
4	Admission of additional evidences by CIT(A)	2013-14		1
		2014-15		1
		2016-17		1
		2017-18		1
		2018-19		1
5	Unexplained cash credit u/s 68 from M/s Vedic	2013-14		2

	Commotrade Pvt. Ltd.			
6	Disallowance of freight expenses u/s 40(a)(ia)	2013-14		3
		2014-15		2
		2016-17		4
		2017-18		5
		2018-19		7
7	Unexplained investment in construction of house u/s 69	2016-17		3
		2017-18		3
		2018-19		3
8	Unexplained investment in furniture & fixture	2017-18		4
		2018-19		4
9	Unexplained cash credit u/s 68 related to gift from Smt. Manjeet Kaur Bhatia	2016-17		5
		2018-19		6
10	Unexplained cash credit u/s 68 related to gift from Smt. Mandeep Kaur Bhatia	2018-19		5

We shall proceed to adjudicate these issues one by one in subsequent discussions.

Issue No. 1 – Unexplained investment in cash loans:

6. This is a cross-issue raised by both sides. The dispute in this issue relates to the additions made by AO and partly upheld/deleted by CIT(A) on account of unexplained investment in cash loans given by assessee to various persons and interest earned thereon. The relevant figures are given in following table:

AY	Additions made by AO		Additions upheld by CIT(A)	
	Cash loans	Interest income	Cash loans	Interest income
2013-14	50,05,000	36,000	50,05,000	36,000
2014-15	--	9,34,191	--	9,34,191
2015-16	--	9,67,815	--	9,67,815
2016-17	3,00,45,585	8,05,695	2,31,02,759	8,05,695

2017-18	1,15,05,695	42,71,104	--	42,71,104
2018-19	2,94,28,250	27,03,934	--	27,03,934

7. The AO has made this addition vide Para 7 / Page 2 to 107 of assessment-order. Basically, the crux of the matter is such that during search operations, one 'Radiant Delux Account Book' inventorised as BS-1 (Page No. 1 to 47) was found and seized. Further, one more "Radiant Delux Account Book" inventorized as BS-3 (Page No. 1 to 54), one writing pad inventorised as BS-57 (Page No. 1 to 101) and other writing pad inventorised as BS-59 (Page No. 1 to 39) were also found and seized. On perusal, the AO found that the BS-1 contained Ledger A/cs in the names of various persons showing Opening balance, Credit-Debit entries, Interest calculation, etc. which revealed that the assessee had advanced cash loans to several persons and earned interest income. The AO also found a corroboration/ interlinking of transactions mentioned in BS-1 with the transactions noted in BS-3, BS-57 and BS-59. By analysing all seized diaries/writing pads, the AO compiled figures of cash loans given by assessee and interest earned to/from different persons in various tables in Para 7.1 to 7.14 of assessment-order. When the AO show-caused assessee to explain transactions, the assessee submitted reply mainly contending that the seized material did not belong to assessee; that the statements of assessee's staff wherein they confirmed that the seized documents/transactions belonged to assessee were obtained under pressure/coercion for which the assessee was not responsible; etc. The AO, however, rejected assessee's reply in Para 7.16 to 7.18 of assessment-order and concluded that all seized diaries/writing pads pertained to assessee and the assessee cannot dissociate himself from the transactions noted therein. Ultimately, the AO made additions of varying amounts in different years on account of unexplained investment in cash loans u/s 69 and interest income.

8. During first-appeal, the CIT(A) adjudicated this issue in Para 3.2.2 to 3.2.6 of his order whereby he granted part-relief to assessee. The order passed by CIT(A) is re-produced below for an immediate reference:

***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 findings of the AO inter alia material brought on record. The Ld. AO has made person wise additions to whom unaccounted cash loan was advanced and undisclosed interest income earned from them. The appellant during assessment proceedings as well as during appellate proceedings has strongly contended that the impugned seized material 'Radiant Deluxe Account Book' inventoried as BS-1 does not belong to him or his family member or any of his business establishment. He further stated that he is usually visited by 150-200 people including people of transport community, labourers which includes labours of Gurukripa Warehouse which is leased out to M/s Ambuja Cement and Venkatesh Mercantile and the seized ledger account i.e. BS-1 may have pertained to them and for which no adverse inference can be drawn on appellant. A similar stand has also been taken by appellant while giving statement under oath u/s 132(4) of the Act. The appellant by taking an alternate plea, during appellate proceedings, stated that the Ld AO has erred in making additions in different assessment years without giving benefit of telescoping. He further stated that the unexplained income of one year which is part of unexplained investment in later part of year and without there being anything contrary on record, it may be treated that the unexplained investment has been made through unexplained income and in such cases the peak theory must be applied.*

***3.2.3.** After considering claim of the appellant and findings of the Ld. AO, I find that the BS-1 found and seized during the course of search pertained to appellant for the reason clearly mentioned by the Ld. AO in para 7.19 of the assessment order. Another documents BS-3 was found and seized during the course of search. The appellant in his statement recorded u/s 132(4) in reply to Q.No 8 admitted that BS-3 belongs to him and contain transactions of freight charges paid for loading and unloading of Ambuja, Orient and Perfect cement. The seized ledger account (BS-3) mentions loan/interest/repayment of loan transaction with M/s Balaji Construction, M/s R.K.V.K, Shri Sunil Gupta, Shri Kiran Bhai, M/s Hindustan Abhikaran, Shri Agniwash Soni, M/s Chadha Tyre and M/s Uttam Seeds. These transactions are fully recorded in seized ledger account BS-1 which has been denied by the appellant to have any relation with. Thus, there is clear nexus between the both ledger accounts. Also, statement of employees of appellant were also recorded on oath wherein they have also confirmed that the loan transaction belongs to appellant. However, the appellant before the Ld. AO have filed an affidavit contradicting the earlier statement which in present sets of facts discussed herein above, is nothing but an afterthought. Therefore, the seized ledger account BS-1 belonged to appellant and so the transactions mentioned therein.*

***3.2.4.** Since, the appellant is the owner of the document BS-1, the moot question arises that whether the entire transactions mentioned therein can be added in the hands of appellant even when there is clear mention of repayment of loan. The ledger account mentions opening loan balance/fresh loan given, interest charged, interest repaid and loan repaid. However, the Ld. AO by applying pick and choose method has only picked opening loan balance, fresh loan given and interest earned by appellant, however, has completely ignored the other transactions viz. loan repayment and interest received. The Ld. AO cannot pick and choose certain transaction on his free will and ignore other key transactions benefiting the appellant. The Ld. AO ought to have considered the repayment transaction before making the impugned addition and should*

have allowed proper set-off or telescoping effect of these transactions. Thus, after considering the nature of transactions appearing in the seized material, telescoping benefit should have been allowed by the Ld. AO.

3.2.5. Furthermore and most importantly the appellant failed to explain the source of cash loan and have also not shown interest income earned thereon while filing return of income. Here, it is worth mentioning that the loans given by appellant have also been repaid subsequently with interest and this fact is apparent from the seized ledger account and was not disputed by the Ld. AO. Since, there are evidence of advancement of loans by appellant for short period of time and the same were repaid with interest subsequently, therefore, making addition of entire loan and interest amount will tantamount to double addition and therefore, the only remedy to give telescopic benefit. As evident from seized diary the cash loans were given for a short period of time which were repaid subsequently and therefore, amounts including interest were available with the appellant which were utilized in providing further cash loans in the same and subsequent years. Thus, it is now abundantly clear that correct unaccounted income can be derived by giving telescopic effect. However, the appellant has taken alternate plea, though not accepted that peak credit theory should be adopted for ascertaining unexplained investment. The appellant has summarized all the transactions in a table and worked out peak credit. The same is reproduced hereunder:

Date (MM/DD/YYYY)	Ledger	DR.	Cr.	Balance	Remarks
4/1/2016	Total Opening			30,045,585	Opening Balance
4/5/2016	Chadha Tyre		50,000	29,995,585	Int Jama
4/5/2016	Hindustan Abhikaran		200,330	29,795,255	Int Jama
4/5/2016	Sunil Gupta		200,000	29,595,255	Int Jama
4/6/2016	Chadha Tyre		18,250	29,577,005	Int Jama 03.01.16 To 31.03.2016
4/6/2016	Uttam Seeds	500,000		30,077,005	
4/7/2016	Agniwash Soni		50,000	30,027,005	Int Jama 18.01.16 To 18.03.16
4/8/2016	Knw Oils		2,000,000	28,027,005	Return
4/10/2016	Kiran Bhai		30,000	27,997,005	Int Jama 28.01.16 To 28.03.16
4/11/2016	Sunil Gupta		157,000	27,840,005	Int Jama
4/16/2016	Agniwash Soni		10,000	27,830,005	Int Jama
4/25/2016	R.K.V.K		37,500	27,792,505	Int Jama 21.03 To 21.04
4/30/2016	Shree Surjeet Singh Bhatia		57,000	27,735,505	Int Pete Jama
5/4/2016	Hindustan Abhikaran		1,000,000	26,735,505	Cash Jama
5/6/2016	Uttam Seeds	1,000,000		27,735,505	

5/6/2016	Uttam Seeds	1,000,000		28,735,505	
5/7/2016	Hindustan Abhikaran		1,000,000	27,735,505	Cash Jama
5/23/2016	R.K.V.K		37,500	27,698,005	Int Jama
6/6/2016	Uttam Seeds		36,700	27,661,305	
6/7/2016	Sunil Gupta		178,000	27,483,305	Int A/c Jama
6/8/2016	Agniwash Soni		30,000	27,453,305	Int Jama 18.04 To 18.05
6/18/2016	Agniwash Soni		30,000	27,423,305	Int Jama 18.05 To 18.06
6/22/2016	R.K.V.K		37,500	27,385,805	Int Jama
6/27/2016	R.K.V.K	1,500,000		28,885,805	Cash Naame
6/30/2016	Hindustan Abhikaran		200,000	28,685,805	Int A/c Jama
6/30/2016	Sunil Gupta		200,000	28,485,805	Int & Jama
6/30/2016	Sunil Gupta		1,000,000	27,485,805	Cash Jama
6/30/2016	R.K.V.K	1,000,000		28,485,805	Cash Naame
7/1/2016	Hindustan Abhikaran		78,000	28,407,805	Int A/c Jama
7/3/2016	Chadha Tyre		68,250	28,339,555	Int A/c Jama
7/8/2016	Hindustan Abhikaran		1,000,000	27,339,555	Cash Jama
7/9/2016	Kiran Bhai		45,000	27,294,555	Int A/c Jama 28.03 To 28.06.16
7/30/2016	Hindustan Abhikaran		1,000,000	26,294,555	Cash Jama
8/1/2016	Uttam Seeds		75,000	26,219,555	
8/10/2016	R.K.V.K		88,500	26,131,055	Int A/c Jama
8/16/2016	Agniwash Soni		50,000	26,081,055	Int Jama
9/6/2016	Hindustan Abhikaran		1,000,000	25,081,055	Nagdi Jama
9/8/2016	Sunil Gupta		336,000	24,745,055	Int Received
10/1/2016	Uttam Seeds		75,000	24,670,055	
10/2/2016	Agniwash Soni		40,000	24,630,055	Intt A/c Jama
10/2/2016	Hindustan Abhikaran		199,334	24,430,721	Int A/c Jama
10/3/2016	Chadha Tyre		68,250	24,362,471	Int Jama July To Sep
10/4/2016	Kiran Bhai		45,000	24,317,471	Int A/c Jama

10/4/2016	R.K.V.K		150,000	24,167,471	Int A/c Jama
10/10/2016	Hindustan Abhikaran		250,000	23,917,471	Cash Jama
10/12/2016	Hindustan Abhikaran		250,000	23,667,471	Cash Jama
10/14/2016	R.K.V.K	2,500,000		26,167,471	Cash Naame
12/1/2016	Uttam Seeds		2,600,000	23,567,471	
12/7/2016	R.K.V.K		208,750	23,358,721	Int Received
12/18/2016	Agniwash Soni		60,000	23,298,721	Cheque Rs.
12/20/2016	Hindustan Abhikaran	500,000		23,798,721	Cash Naame
12/24/2016	Hindustan Abhikaran	250,000		24,048,721	Cash Naame
12/31/2016	Hindustan Abhikaran	250,000		24,298,721	Cash Naame
12/31/2016	Hindustan Abhikaran		154,420	24,144,301	Int A/c Jama
1/8/2017	R.K.V.K		112,500	24,031,801	Int A/c Jama
1/11/2017	Chadha Tyre		68,250	23,963,551	Int A/c Jama Sep To Dec
1/14/2017	Kiran Bhai		30,000	23,933,551	Int A/c Jama
1/19/2017	Sunil Gupta		336,000	23,597,551	Int Received
2/3/2017	R.K.V.K		112,500	23,485,051	Int A/c Jama
2/10/2017	Ashok Kothari		2,000,000	21,485,051	Int Jama
3/1/2017	Hindustan Abhikaran		900,000	20,585,051	Cash Received
3/1/2017	Uttam Seeds		1,000,000	19,585,051	
3/7/2017	Hindustan Abhikaran		270,000	19,315,051	Cash Received Am + Int
3/8/2017	Sunil Gupta		1,000,000	18,315,051	Cash Received
3/8/2017	R.K.V.K		112,500	18,202,551	Int A/c Jama
3/10/2017	Kiran Bhai		45,000	18,157,551	Int A/c Jama
3/11/2017	Agniwash Soni		60,000	18,097,551	Int A/c Jama
3/16/2017	Sunil Gupta		324,000	17,773,551	Int A/c Jama
4/11/2017	Sunil Gupta		1,500,000	16,273,551	Cash Received
4/11/2017	R.K.V.K	1,500,000		17,773,551	Cash Naame
4/11/2017	R.K.V.K		112,500	17,661,051	Int A/c Jama

4/12/2017	Hindustan Abhikaran	500,000		18,161,051	Cash Paid
4/15/2017	Chadha Tyre		68,250	18,092,801	Int A/c Jama
5/3/2017	R.K.V.K		5,000,000	13,092,801	Cash Received
5/17/2017	R.K.V.K		127,500	12,965,301	Int A/c Jama
6/12/2017	R.K.V.K		135,000	12,830,301	Int A/c Jama
6/14/2017	R.K.V.K	1,000,000		13,830,301	Cash Naame
7/5/2017	Hindustan Abhikaran		163,166	13,667,135	Int A/c Jama
7/7/2017	R.K.V.K		143,500	13,523,635	Int A/c Jama
7/10/2017	Sunil Gupta		206,250	13,317,385	Int A/c Jama
7/12/2017	Chadha Tyre		68,250	13,249,135	Int A/c Jama
7/16/2017	Agniwash Soni		180,000	13,069,135	Int A/c Jama
7/19/2017	Kiran Bhai		30,000	13,039,135	Int Jama
8/4/2017	Uttam Seeds	2,500,000		15,539,135	Cash Nagdi
8/5/2017	R.K.V.K		155,000	15,384,135	Int A/c Naame
8/19/2017	Kiran Bhai		30,000	15,354,135	Int Jama
9/5/2017	R.K.V.K		1,300,000	14,054,135	Nagdi Jama
9/7/2017	R.K.V.K		800,000	13,254,135	Cash Received
9/8/2017	R.K.V.K		1,400,000	11,854,135	Cash Received
9/8/2017	Uttam Seeds	3,500,000		15,354,135	Cash Paid
9/9/2017	R.K.V.K		1,400,000	13,954,135	Cash Received
9/9/2017	Uttam Seeds	1,500,000		15,454,135	Cash Paid
9/12/2017	R.K.V.K		100,000	15,354,135	Cash Received
9/12/2017	R.K.V.K		91,050	15,263,085	Int Jama
9/18/2017	Sunil Gupta		3,000,000	12,263,085	Nagdi Jama (L Me)
9/25/2017	Hindustan Abhikaran		165,000	12,098,085	Int A/c Jama
10/9/2017	Hindustan Abhikaran		500,000	11,598,085	Cash Received
10/18/2017	Hindustan Abhikaran		1,500,000	10,098,085	Cash Received
10/21/2017	Hindustan Abhikaran		500,000	9,598,085	Cash Received

10/23/2017	Chadha Tyre		68,250	9,529,835	Int Jama
10/25/2017	R.K.V.K	2,000,000		11,529,835	Cash Paid
10/26/2017	Sunil Gupta		190,000	11,339,835	Received
10/26/2017	Uttam Seeds		107,709	11,232,126	Int Received
10/28/2017	Kiran Bhai			11,232,126	Int A/c Naame
10/29/2017	Hindustan Abhikaran		500,000	10,732,126	Cash Received
10/30/2017	Hindustan Abhikaran		700,000	10,032,126	Cash Received
10/30/2017	R.K.V.K	500,000		10,532,126	Cash Paid
10/31/2017	Kiran Bhai		30,000	10,502,126	Int Received
10/31/2017	R.K.V.K	500,000		11,002,126	Cash Paid
11/10/2017	Hindustan Abhikaran		700,000	10,302,126	Cash Received
11/10/2017	R.K.V.K	800,000		11,102,126	Cash Paid
11/11/2017	Hindustan Abhikaran		300,000	10,802,126	Cash Received
11/11/2017	R.K.V.K	300,000		11,102,126	Cash Paid
11/13/2017	Hindustan Abhikaran		800,000	10,302,126	Cash Received
11/13/2017	R.K.V.K	900,000		11,202,126	Cash Paid
11/17/2017	Hindustan Abhikaran		48,900	11,153,226	Int A/c Jama
12/2/2017	R.K.V.K	3,600,000		14,753,226	Cash Paid
12/8/2017	R.K.V.K	1,400,000		16,153,226	Cash Paid
12/13/2017	Kiran Bhai		30,000	16,123,226	Int A/c Jama
12/20/2017	Sunil Gupta		1,000,000	15,123,226	Received
12/20/2017	R.K.V.K		69,900	15,053,326	Int Received
1/11/2018	R.K.V.K		150,000	14,903,326	Int Jama
1/13/2018	Kiran Bhai		15,000	14,888,326	Int A/c Jama 28.10 To 28.11
1/13/2018	Kiran Bhai		500,000	14,388,326	Cash Nagdi Jama
1/14/2018	Sunil Gupta		89,167	14,299,159	

The appellant submitted that peak credit comes to Rs. 3,00,77,005/- on 06.04.2016. This amount may be considered as unexplained investment in advancing cash loan and hence, no other addition is required to be made. Above submission has been made by

the appellant subject to its earlier submission, wherein, he denied the ledger BS-1. I do not agree with the view of the appellant. In the facts and circumstances as discussed earlier, quantum of unexplained investment after taking into consideration of undisclosed interest income can only be derived correctly by giving telescopic effect to the income and resultant investment in different assessment years. Considering this discussion, quantum of unexplained investment and undisclosed interest income for the various years is worked out as under:

(i) On perusal of impugned diary and loose papers, as tabulated in para 7.20 of the assessment order, the appellant had made following investment and had earned interest thereon:-

S.No	Name of the party	AY	Cash loan given (opening + fresh) (In Rs.)	Interest earned (In Rs.)
1	Balaji Construction	2013-14 2014-15 2015-16 2016-17 2017-18	2502500 377947	18000 450000 454450 377947
2	Ashok Kothari	2013-14 2014-15 2015-16 2016-17 2017-18	2502500 427748	18000 484191 513365 427748
3	Uttam Seeds	2017-18 2018-19	2500000 7500000	186750 388959
4	Chhadha Tyres	2016-17 2017-18 2018-19	1368250 1368250	273000 204750
5	Agniwash Soni	2016-17 2017-18 2018-19	2060000 2060000	330000 270000
6	Hindustan Abhikaran	2016-17 2017-18 2018-19	10700335 1000000 500000	801754 377066
7	Kiran Bhai	2016-17 2017-18 2018-19	1030000 	180000 120000
8	Gurukripa Lab	2017-18	1700000	
9	Sunil Gupta	2016-17 2017-18 2018-19	9357000 3000000	1374000 485417
10	Keshav Fibre	2018-19	2500000	28292
11	Surjit Singh Bhatia	2016-17 2017-18	1030000 	183350
12	Namit Lubricant	2017-18	500000	45000
13	RKVK	2016-17 2017-18 2018-19	2500000 5000000 12500000	897250 829450
14	KNW	2016-17	2000000	

(ii) Hence the total investment and interest earned there from is as under:-

AY	Cash loan (opening balance + fresh) (In Rs.)	Interest earned (In Rs.)
2013-14	5005000	36000
2014-15	0	934191
2015-16	0	967815
2016-17	30045585	805695
2017-18	11505695	4271104
2018-19	29428250	2703934

(iii) Therefore, after considering the details mentioned in the assessment order, seized material and telescopic effect, the addition of unexplained investment and interest income in each A.Y. is worked out as under:-

A.Y.	Principal Amount (In Rs.)	Interest income earned (In Rs.)	Availability of Fund at the year end (In Rs.)	Fresh fund introduced: Addition of principal amount to be made after telescopic effect (In Rs.)	Addition of Interest earned (In Rs.)
2013-14	5005000	36000	5041000	5005000	36000
2014-15	0	934191	5975191	0	934191
2015-16	0	967815	6943006	0	967815
2016-17	30045585	805695	30851280	23102579	805695
2017-18	11505695	4271104	35122384	-19345585	4271104
2018-19	29428250	2703934		-5694134	2703934

From the above, it is abundantly clear that the appellant has advanced initial amount of Rs. 50,05,000/- as loan on interest and earned interest income of Rs. 36,000/- in AY 2013-14. Thus, the fund of Rs. 50,41,000/- (Rs. 50,05,000 + Rs. 36,000) was available with the appellant for lending in AY 2014-15. In AY 2014-15, the appellant earned interest income of Rs. 9,34,191/- and thus, at the year end total fund of Rs. 59,75,191/- (Rs. 50,41,000 + Rs. 9,34,191) was available for the money lending business in AY 2015-16. In AY 2015-16, the appellant earned interest income of Rs. 9,67,815/- and thus, at the year end total fund of Rs. 69,43,006/- (Rs. 59,75,191 + Rs. 9,67,815) was available for the next year. During AY 2016-17, the appellant advanced money amounting to Rs. 3,00,45,585/-, out of which amount of Rs. 69,43,006/- pertains to AY 2015-16. Therefore, fresh capital/fund infused in money lending business comes to Rs. 2,31,02,579/- (Rs. 3,00,45,585 - Rs. 69,43,006). In subsequent years, as per the above table, no fresh fund has been introduced by the appellant. The appellant has earned interest income in the above years and quantum of interest earned has been indicated in the table above. Considering above discussion, investment made initially and fresh fund introduced in subsequent years are required to be treated as unexplained investment of the appellant. The interest

earned in each assessment year is required to be taxed on account of undisclosed interest income. Accordingly, following additions are confirmed:-

AY	Peak of unexplained investment (In Rs.)	Undisclosed Interest Income (In Rs.)	Total Addition (In Rs.)
2013-14	50,05,000/-	36,000/-	50,41,000/-
2014-15	0	9,34,191/-	9,34,191/-
2015-16	0	9,67,815/-	9,67,815/-
2016-17	2,31,02,579/-	8,05,695/-	2,39,08,264/-
2017-18	-	42,71,104/-	42,71,104/-
2018-19	-	27,03,934/-	27,03,934/-

Hence, above additions in the respective years as indicated above are **confirmed** and the appellant gets relief accordingly.

3.2.6. In view of the above discussion and decisions cited, the additions of Rs.50,05,000/- in A.Y.2013-14 and Rs. 2,31,02,579/- in AY 2016-17 on account of unexplained investment u/s 69 is **confirmed**. Amended provisions of section 115BBE of the Act with effect from 01.04.2017 will not be applicable to the above additions. Pre amended provisions of section 115BBE of the Act shall apply in the above additions. Further, additions of Rs.36,000/- in 2013-14, Rs.9,34,191/- in 2014-15, Rs.9,67,815/- in A.Y.2015-16, Rs.8,05,695/- in A.Y.2016-17, Rs. 42,71,104/- in A.Y. 2017-18 and Rs. 27,03,934/- in A.Y.2018-19 on account of undisclosed interest income are also **confirmed**. The appellant gets relief accordingly. Therefore, appeal on this ground is **partly allowed.**

Thus, the CIT(A) has upheld the action of AO but, however, given quantum-relief to assessee by considering the details compiled by AO in assessment-order, seized material and telescoping effect [Para 3.2.5(iii) of order of CIT(A)].

9. During hearing before us, Ld. AR for assessee broadly re-iterated the same submissions as made by assessee before lower-authorities. Ld. AR submitted that during search, when the authorities interrogated assessee qua diary BS-1 in Q.No. 2 to 5 in statements u/s 132(4), the assessee categorically denied the ownership of diary BS-1. So far as other diaries/writing pads BS-3, BS-57 and BS-59 are concerned, the search-authorities confronted assessee only qua BS-1, hence the assessee made replies qua BS-1 in statements. No question was asked from assessee qua BS-3, BS-57 and BS-59 in statements except for the entries of 'Dala charges' recorded in BS-3 which were paid in cash and already recorded in assessee's books. The correlation of BS-1 with BS-3, BS-57 and BS-59 made and noted

by AO in assessment-order was never asked from assessee and it came to assessee's knowledge only from assessment-order. No opportunity was given to assessee to clarify the corroboration/linkage of BS-1 with BS-3, BS-57 and BS-59. So far as the statements of employees are concerned, Ld. AR submitted that it is true that the assessee's employees firstly accepted that the diaries belonged to assessee but it is also a fact that subsequently they retracted statements by filing affidavits describing the exercise of coercion and pressure by authorities. During assessment-proceeding also, the AO issued notice u/s 142(1) dated 08.08.2019 asking assessee about BS-1, BS-3, BS-57 and BS-59 but in the notice, the AO never sought any clarification from assessee about the correlation/linkage of BS-1 with BS-3, BS-57 and BS-59. In show-cause notice dated 15.10.2019 also, the AO sought clarification regarding BS-1 only and yet in subsequent show-cause notice dated 19.12.2019, the AO did not raise any query qua the whole issue leave alone the corroboration/linkage of various diaries. Therefore, the issue of correlation/linkage of various diaries has been considered by AO at the back of assessee without providing any opportunity to assessee. Ld. AR also contended that during post-search investigation or even assessment proceeding, the investigating authorities or AO never interrogated any of the persons to whom the cash loans were alleged to have been given by assessee. In such a situation, Ld. AR contended, the addition made by AO is not sustainable as per various decisions including *Andman Timber (SC)*, *Dhakeshwari Cotton (SC)*, *Kishand Chelaram (SC)*, *Pukhraj Soni (MP HC)*, *ACIT Vs. Late Shri Puneet Agarwal (ITAT, Indore)*.

10. Per contra, Ld. DR for revenue firstly submitted that the diary BS-1 was seized from assessee's premise and very much belonged to assessee even if the assessee has made a denial in statements. He submitted that the employees of assessee also accepted that the diaries belonged to assessee and filing of retraction affidavit was just an after-thought. Secondly, the AO has not made addition solely on the basis of BS-1, the AO has vehemently

correlated the transactions noted in BS-1 with the transactions noted in BS-3, BS-57 and BS-59 and thereafter made addition. Ld. DR pointed out that even if the assessee has denied BS-1, BS-3 is very well accepted by assessee himself and the AO has found a complete corroboration of transactions noted in BS-1 with BS-3. Therefore, the CIT(A) is very correct in finding, vide Para 3.2.3 of his order, that the seized diary BS-1 belonged to assessee and so also the transactions mentioned therein. Ld. DR went on submitting that the entries noted in the seized diaries contain complete details of the transactions like names of persons, dates on which amounts were given and repayments received, calculation of interest, etc. and some pages of diaries also contain signature of assessee. Therefore, the CIT(A) has rightly approved AO's action of making addition based on seized documents but, however, the department is against telescoping benefit given by CIT(A) without any cash flow statement to prove telescoping or rotation of funds.

11. We have considered rival submissions made by both sides and perused the orders passed by lower-authorities as also the documents held in Paper-Book to which our attention has been drawn. Admittedly, it is a fact that diaries/writing pads inventorised as BS-1, BS-3, BS-57 and BS-59 were found by search authorities at the premise of assessee during search proceeding. In statements recorded u/s 132(4), the search authorities interrogated assessee vide Q.No. 5 about diary BS-1 and vide Q.No. 8 about diary BS-3. In Q.No. 8 (Page No. 63 of Paper-Book), the search-authorities showed all Pages 1 to 54 of diary BS-3 to assessee and asked assessee to explain the transactions noted therein but in reply, the assessee stated that the diary BS-3 contained entries of "Dala charges" recorded in regular books of account. Thus, the assessee accepted ownership as well as contents of BS-3 but made reply qua the entries of "Dala charges" in BS-3 without making any explanation qua other transactions noted in BS-3 which were relating to transactions of cash loans. During assessment-proceeding also, the AO issued notice dated 08.08.2019 u/s 142(1) to assessee (Ld. AR has

also drawn us to this very notice in his arguments) and in Para B-2 to B-4 in Part-B of notice, the AO made three lists of documents/loose-papers/incriminating documents found and seized from various premises and thereafter asked the assessee to explain the transactions appearing in those documents/items and reconcile with the books of account (Page 5-8 of Paper-Book). The list in Para B-3 includes not only BS-1 but also BS-3, BS-57 and BS-59. Thus, the AO confronted assessee qua BS-3 as well as BS-57 and BS-59. In response, the assessee filed reply dated 06.11.2019 (filed to AO's office on 08.11.2019) wherein the assessee submitted explanation qua BS-3, BS-57 and BS-59 also but the assessee again confined his submission qua the entries of "Dala charges" recorded in books of account (Page 25-29 of Paper-Book). Thus, the assessee consciously did not make any submission to AO qua other entries of cash loans contained in BS-3, BS-57 and BS-59 which were not recorded in assessee's books of account. Be that as it may, the ownership and contents of BS-3 to the extent relating to "Dala charges" recorded in books of account stand admitted by assessee in the statements u/s 132(4) as well as reply-letter dated 06.11.2019 to AO. Once the entries of "Dala charges" noted in BS-3 are accepted by assessee as having been recorded in regular books of account, it becomes an undisputable fact that the assessee did own other entries relating to transactions of cash loans noted in the very same diary BS-3. The fact also remains that the AO has made a corroborative analysis of transactions noted in BS-1 with BS-3, BS-57 and BS-59 in assessment-order. Further, the CIT(A) has adequately dealt the order of AO, the seized material, the statements of assessee, the statements and retraction of assessee's employees and addressed all contentions raised by assessee. After a careful consideration, the CIT(A) has arrived at a conclusion that the AO has rightly made addition and the assessee only deserved quantum-relief on account of telescoping. We have already re-produced CIT(A)'s order in foregoing para and on perusal, do not find any error, illegality or perversity in the adjudication done by CIT(A).

Therefore, we uphold CIT(A)'s order and the issue raised by both sides is rejected.

Issue No. 2 – Unexplained investment in jewellery:

12. This issue is raised by assessee. The AO made addition vide Para 12 of assessment-order on the basis of "LPS-02" seized from assessee which was Invoice No. 83321 dated 28.12.2016 of M/s Josco Fashion Jewellers reflecting purchase of jewellery for Rs. 1,56,000/- made by assessee. When the AO show-caused assessee to explain source of purchase, the assessee filed a reply stating that payment of Rs. 50,000/- was made through Debit Card of Bank of India and Rs. 25,000/- by online transfer from Bank of India on India on 28.12.2016 and remaining sum of Rs. 81,000/- was paid in cash available with assessee and his wife. The AO did not accept assessee's submission qua payment of Rs. 81,000/- in cash and made addition. During first appeal, the assessee made same submission before CIT(A). The CIT(A) rejected assessee's submission by observing that (i) the assessee has not filed any documentary evidence explaining the availability of cash and (ii) there was no cash withdrawal made by assessee from bank a/c before making payment. Therefore, CIT(A) concluded, the assessee failed to explain the source of cash payment of Rs. 81,000/- and accordingly upheld the addition made by AO. Before us, the position remains same as observed by both of the lower-authorities. Ld. AR for assessee is only claiming that considering the status of assessee, Rs. 81,000/- was a small sum and must be accepted without any evidence but the facts remains that the assessee has not adduced any evidence to explain the source of impugned cash payment. Therefore, we do not have any reason to infer with the analogous conclusion taken by both of lower authorities. Accordingly, this issue raised by assessee is rejected being devoid of any merit.

Issue No. 3 – Unexplained money in lockers:

13. This issue is raised by assessee. The issue relates to an addition of Rs. 10,24,500/- made by AO u/s 69A on account of unexplained money found in lockers of assessee. The precise facts are such that during search operations, cash (currency notes) worth Rs. 20,49,000/- were found from two bank lockers of assessee and his wife (Mrs. Jatinder Kaur Bhatia) which the AO treated as unexplained and made 50% addition in assessee's hands (Rs. 10,24,500/-) and 50% addition in the hands of assessee's wife (Rs. 10,24,500/-). During first-appeal, the CIT(A) upheld addition and that is why the assessee has brought this issue before us. It is noteworthy that the same issue involved in appeal of assessee's wife has already been decided by ITAT, Indore in **ITA No. 227/Ind/2023 order dated 22.08.2024** whereby the addition has been finally restricted to Rs. 2,75,500/- in assessee's wife. For the sake of immediate reference, we re-produce before the relevant part of ITAT's order:

"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 1020 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:

(Not reproduced being scanned matter)

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:

(Not reproduced being scanned matter)

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."**

14. Since the very same issue has already been decided by ITAT, Indore in assessee's wife's case, the same view shall follow here. Accordingly, we direct the AO to modify assessment-order so as to delete addition of Rs. 7,49,000/- and maintain addition of Rs. 2,75,500/-. The assessee succeeds partly in this issue.

Issue No. 4 – Admission of additional evidences by CIT(A):

15. This issue is raised by revenue. The issue shall be relevant at a later stage for adjudication of twin issues i.e. Issue No. 5 [relating to addition of unexplained cash credit u/s 68 from M/s Vedic Commotrade Pvt. Ltd.] and Issue No. 6 [relating to disallowance u/s 40(a)(ia) for non-deduction of TDS out of freight payments made to truck-owners].

16. Ld. DR for revenue submitted that during first-appellate proceeding, the assessee filed certain 'additional evidences' under Rule 46A of Income-tax Rules, 1962 to CIT(A) with regard to Issue No. 5 and 6. Acting thereupon, the CIT(A) sent a letter No. CIT(A)-3/BPL/RR/Jarnabeer Sigh Bhatia/2022-23/974 dated 07.12.2022 to AO, copy at Page 881-882 of Paper-Book, asking the AO to submit remand-report by 22.12.2022. In response, the AO filed a letter No. ACIT(Central)-3/Ind/2022-23/142 dated 26.12.2022, copy at Page 883-884 of Paper-Book. In this letter, the AO responded to CIT(A) that (i) the letter of CIT(A) was received on 26.12.2022 which was after 22.12.2022, (ii) the AO was busy in time-barring assessments, (iii) the verification of additional evidences would need a suitable period, (iv) accordingly, the AO requested the CIT(A) to allow time upto 31.01.2023 for submission of remand-report. Ld. DR submitted that the CIT(A) passed appeal-order and adjudicated Issue No. 5 and 6 in favour of assessee without considering response submitted by AO and therefore the

adjudication done by CIT(A) on Issue No. 5 and 6 is against Rule 46A and must be set aside.

17. Per contra, Ld. AR for assessee supported the action of CIT(A). For this, Ld. AR firstly carried us to Paper-Book Page 50-53 where a letter dated 23.12.2019 submitted by assessee to AO during assessment-proceeding, duly acknowledged by AO's official seal, is placed. Ld. AR drew our attention to following paras of this letter:

"1. That during A.Y. 2014-15 assessee has made payments on account of freight expenses of Rs. 2,56,17,454/- to truck owners without TDS on such payments since the truck owners had furnished their PAN/Form 15G to the assessee and the same are in the possession of assessee (Copies of ledger A/c of Freight Expenses of A.Y. 2014-15 is annexed for your ready reference). It is pertinent to note here that accounts of the assessee were audited for the said year and clause no. 34(a) of 3CD Report clearly demonstrates the same, meaning assessee was in possession of the PAN/Form 15G of the transporters and was not required under law to deduct TDS while making payment of freight to respective transporters. (Copies of audited financial statements for subject A.Y. already provided with reply to questionnaire).

..... Assessee with reference to point 1 and 2 above further wishes to bring to your kind notice that regarding production of documents/books of accounts assessee had received letter from ADIT (Inv.)-1, Indore, dated 16.07.2018 in which documents, books of accounts of the assessee were called from A.Y. 2012-13 to 2017-18 on 30.07.2018 at 11.40 a.m. Assessee duly submitted through letter and made available all the documents and books of accounts from A.Y. 2012-13 to 2017-18 before ADIT(Inv.)-1, Indore, on 30.07.2018 at 11.30 a.m. The above documents were bulky and were brought by assessee in a truck lorry along with 8 labourers from Khandwa to handle the same after spending around Rs. 30,000 on logistics and photocopies but ADIT (Inv.)-1, Indore, over phone. Assessee had then sent detailed complaint in this regard to Hon'ble Chairman CBDT through Speed Post. (Copies of notices, reply and communication between investigation department and assessee alongwith relevant affidavit and compliant to Hon'ble CB Chief is annexed for your ready reference.)

Now if your honour again wishes to peruse the copies of PAN/15G of transporters, bills and supporting for expenses on tyre and transit expenses, sale and purchase of trucks for the subject AY to examine already audited freight expenses, transit expenses, tyre expenses and value of trucks, assessee will be pleased to produce the same but needed at least 3-4 days time to collate and present the same.

Kindly bring the above said documents/information in your assessment-records in order and oblige."

Referring to above paras, Ld. AR pointed out that the assessee was having the very same documents, as subsequently produced before CIT(A) by way of additional evidences, in possession even before/during assessment-

proceedings and those documents were very bulky and brought by assessee in a truck lorry with labourers to the office of Investigating Officer of search [ADIT(Inv)-1, Indore]. Further, the assessee also made a specific request to AO that if the AO again wished to peruse those documents, the assessee would be pleased to produce the same but it would require 3-4 days. Thus, the assessee has not only produced documents before Investigating Officer but also reported willingness in letter dated 23.12.2019 to re-produce before AO if the AO desired to re-examine the same, subject to giving of 3-4 days' time period. But the AO passed adverse assessment-order on 30.12.2019 against assessee. Therefore, the assessee submitted had to submit those documents to CIT(A) as "additional evidences" in terms of Rule 46A during first-appeal. The CIT(A) accepted assessee's request and acting thereupon sought remand-report from AO. In response, the AO requested the CIT(A) to allow time upto 31.01.2023 which the CIT(A) allowed as is evident from the fact that CIT(A) passed impugned order lately on 30.03.2023 after waiting for a considerable period; in fact the CIT(A) passed impugned order after giving an additional grace of 2 more months to AO. But the AO was not concerned to file remand-report upto the deadline of 31.01.2023 set up by himself or even upto passing of order by CIT(A) on 30.03.2023. Thus, there was a lapse on the part of AO himself and not on the part of assessee or CIT(A) either during assessment-proceeding or first appellate proceeding. Ld. AR also pointed out that although in its ground, the revenue has taken a plea that the documents were not sent by CIT(A) with the letter seeking remand-report but there is no such whisper qua absence of documents by AO in response-letter filed to CIT(A), the AO only demanded time upto 31.01.2023 which the CIT(A) allowed upto 30.03.2023.

18. In rejoinder, Ld. DR only submitted that the AO needed time to verify additional evidences and therefore the AO was justified in requesting the CIT(A) to allow time upto 31.01.2023. He submitted that the CIT(A) ought to

have allowed time to AO by means of a "speaking order" which has not been done.

19. We have considered rival submissions of both sides and perused the documents to which our attention has been drawn. From the documents held on record, we find that the assessee has produced bulky documents before Investigating Officer and also filed willingness to AO to re-produce those documents if the AO so desired. Further, during first-appeal, the assessee filed those documents to CIT(A) as additional evidences in terms of Rule 46A. The CIT(A) sought remand report from AO by 22.12.2022. The AO filed a reply to CIT(A) requesting to allow time upto 31.01.2023 for filing of remand-report. At this stage, it is a clinching fact that the CIT(A) did not pass order before or upto 31.01.2023, the CIT(A) passed his order lately on 30.03.2023 after waiting for additional two months even from the deadline demanded by AO. In this regard, the CIT(A) has made following notings in Para 3.6.2 and 3.7.4 of his order:

"3.6.2 As additional evidence, the appellant filed incorporation certificate, audited balance sheet of the lender. The documents filed as an additional evidences are always available in public domain to which the Ld AO has also obtained the same and analyzed the figures of balance sheet and profit and loss account for the period AY 2014-15 to 2017-18, whereas, the loan was taken during AY 2013-14. However, the additional evidences so filed were forwarded to the Ld AO vide letter dated 07.12.2022 for his comments. The Ld AO vide letter dated 26.12.2022 requested for further time till 31.01.2023. However, till date no report has been submitted by the AO."

"3.7.4 During the appellate proceedings, the appellant has also filed copies of Form 15G, bills/bilty/RC books, PAN details before me as additional evidences u/r 46A of the Rules. Due to this reason, a copy of which for verification and comments were forwarded to Ld. AO vide letter dated 07.12.2022. The Ld AO vide letter dated 26.12.2022 requested for further time till 31.01.2023. However, till date no report has been submitted by the Ld. AO. In the circumstances, the issue involved here is being decided on merit and as per law."

Since the AO did not file remand report upto 30.03.2023, the CIT(A) himself considered the evidences filed by assessee and decided assessee's issues on merit taking into account those evidences. Faced with this situation, we do

not find any error or perversity in the order of CIT(A). Therefore, there is no merit in the issue raised by revenue and the same is hereby rejected.

Issue No. 5 – Unexplained cash credit from M/s Vedic Commotrade Pvt. Ltd.:

20. This issue is raised by revenue. The issue here is the addition of Rs. 44,60,000/- made by AO consisting of a loan of Rs. 41,00,000/- taken by assessee from "M/s Vedic Commotrade Pvt. Ltd." (erstwhile "M/s Vaibhav Pipes Pvt. Ltd.") on account of unexplained cash-credit u/s 68 and interest of Rs. 3,60,000/- paid on such loan. During first-appeal, the CIT(A) has deleted entire addition and that is why the revenue is aggrieved.

21. Ld. DR for revenue strongly supported the assessment-order of AO and opposed the order of CIT(A) by raising two-fold contentions:

- (i) Firstly, it is submitted that the assessee did not file documentary evidences relating to impugned loan before AO and it is only during first-appellate proceeding that additional evidences were filed to CIT(A). The CIT(A) admitted additional evidences without giving adequate opportunity to AO. Therefore, the adjudication done by CIT(A) is illegal.
- (ii) Secondly, the AO has clearly noted that the ingredients of section 68 were not satisfied. Therefore, the addition made by AO is valid on merit also.

22. Per contra, Ld. AR for assessee strongly supported the order of CIT(A) and opposed the contentions raised by Ld. DR by making following replies:

- (i) In so far as the admission of additional evidences by CIT(A) is concerned, Ld. AR relied upon his submissions already narrated in foregoing Para while dealing Issue No. 4.

- (ii) With regard to merit of the issue, Ld. AR carried us to following Para 2 of show-cause notice dated 15.10.2019 issued by AO during assessment-proceeding, copy at Page 33 of Paper-Book reading as under:

"2. During the course of search and seizure operation, balance sheet and profit and loss account of the M/s. Vedic Commotrade Private Limited was found. On examination of financial of the companies and other investigations, it is observed that the Unsecured Loan of Rs. 40,60,000/- during F.Y. 2012-13 was given by M/s. Vedic Commotrade Private Limited to Jarnalbeer Singh Bhatia. You are requested to please establish identity and creditworthiness of the aforesaid party and genuineness of transaction. In case of failure in doing so, you are requested to please show cause as to why the amount of Rs. 40,60,000/- should not be treated as your unexplained cash credit and not be added to your total income for A.Y. 2013-14."

Referring to same, Ld. AR submitted that the AO show-caused assessee on the basis of Balance-Sheet of "M/s Vedic Commotrade Pvt. Ltd." found during search, to explain the loan taken by assessee from that company. But the assessee took loan from "M/s Vaibhav Pipes Pvt. Ltd." whose name was subsequently changed to "M/s Vedic Commotrade Pvt. Ltd." and the assessee was not aware of change in name. Therefore, when the AO show-caused assessee to explain the loan taken from "M/s Vedic Commotrade Pvt. Ltd." even without making any reference to erstwhile name "M/s Vaibhav Pipes Pvt. Ltd." in above Para 2 of show-cause notice, the assessee denied having any loan taken from "M/s Vedic Commotrade Pvt. Ltd.". However, it is also a fact that prior to issuance of show-cause notice, the AO also issued a notice dated 08.08.2019 u/s 142(1) and vide Para No. A-20 and A-21 of such notice, copy at Page 4-5 of Paper-Book, the AO asked the assessee to explain all unsecured loans as well as the details of interest paid & received by assessee and in response, the assessee, vide Para No. A-20 & A-21 of reply-letter dated 08.11.2019, copy at Page 17-21 of Paper-Book, submitted complete details of all loans taken and interest paid including the details of "M/s Vaibhav Pipes Pvt. Ltd." In support of change in name of creditor company

from "M/s Vaibhav Pipes Pvt. Ltd." to "M/s Vedic Commotrade Pvt. Ltd.", the assessee has filed a Certificate of name change dated 03.07.2015 issued by Registrar of Companies, Gwalior at Page 625 of Paper-Book. Ld. AR submitted that it is a simple case of mistaken identity of creditor due to change in name otherwise the assessee had already explained complete details of impugned loan taken from and interest paid to "M/s Vaibhav Pipes Pvt. Ltd.". Having explained thus, Ld. AR drew us to Page 644-645 of Paper-Book to show one more fact that the assessee had also repaid entire loan as early as by 21.06.2013 with accumulated interest after deduction of TDS, even before the name change of creditor and much prior to the date of search. Ld. AR submitted that the CIT(A) has carefully considered all these facts with reference to the evidences filed before him and thereafter deleted the addition made by AO; the order of CIT(A) is well-reasoned and must be upheld.

23. We have considered rival submissions of both sides and perused the orders of lower-authorities as also the documents filed in Paper-Book. At first, we re-produce the order passed by Ld. CIT(A) by which the addition made by AO has been deleted:

"3.6.2. 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. The appellant has taken unsecured loan of Rs. 41,00,000/- from M/s Vaibhav Pipes (now known as Vedic Commotrade Pvt Ltd) during FY 2012-13 and paid interest of Rs. 3,60,000/- by deducting TDS @ 10% amounting to Rs. 36,000/-. The Ld AO during assessment proceedings on perusal of balance sheet and profit & loss account statement of the lender company for AYS 2014-15 to 2017-18, also being tabulated in para 8 of the assessment order, observed that the lender company though have shown sales and purchase activities, however, has no creditors through your years. The cash and bank balance are shown very nominal. The company have meager fixed assets. The lender company have shown nominal financial and administrative cost as compared to turnover and reserves & surplus. After making these observations, the Id AO held that the lender company hardly have any genuine business activity. The Ld. AO for further verification issued commissions to ACIT, Satna, who in his report submitted that no company by name of Vedic Commotrade is operational at the registered address. The Ld. AO considering all held that the lender company is only involved in providing bogus accommodation entry in guise of unsecured loan. The appellant was also required by the Ld. AO to establish

identity and creditworthiness of the lender and genuineness of the transaction. The appellant in reply submitted that he has not taken any loan from M/s Vedic Commotrade Pvt Ltd and therefore, there is no need for recording the same in books of account. The appellant during appellate proceedings has explained that it was at later stage he got to know about change in name of the lender company from M/s Vaibhav Pipes to M/s Vedic Commotrade Pvt Ltd, however, necessary documents regarding the lender M/s Vaibhav Pipes were furnished before the Ld. AO which includes copy of confirmation for the period 01.04.2012 to 31.03.2014 alongwith ITR and bank account of lender. As additional evidence, the appellant filed incorporation certificate, audited balance sheet of the lender. The documents filed as an additional evidences are always available in public domain to which the Ld AO has also obtained the same and analyzed the figures of balance sheet and profit and loss account for the period AY 2014-15 to 2017-18, whereas, the loan was taken during AY 2013-14. However, the additional evidences so filed were forwarded to the Ld AO vide letter dated 07.12.2022 for his comments. The Ld AO vide letter dated 26.12.2022 requested for further time till 31.01.2023. However, till date no report has been submitted by the AO.

3.6.3. After considering evidences on record, I find that the lender company M/s Vaibhav Pipes now known as M/s Vedic Commotrade Pvt Ltd changed its name as on 03.07.2015 and appellant has taken loan during FY 2012-13 which was repaid completely during FY 2013-14. Therefore, the appellant was in no position to be aware of the name change and for that reason he during assessment proceedings denied of taking any loan from M/s Vedic Commotrade Pvt Ltd. Nevertheless, the lender company is having PAN AACCV0700B and is registered with Registrar of Companies, Gwalior under CIN-U25202MP1999PTC013250. The company has registered address at New Lucky Super Market, Shop No 11, Chandidevi Mandir Road, Maihar-485771. The company has also filed confirmation for giving loan of Rs. 41,00,000/- to appellant company which was also filed with the Ld AO. On perusal of balance sheet of the lender company for AY 2013-14 it has been observed that the lender has shown share capital of Rs. 34,99,200/- and reserves and surplus of Rs.6,45,45,985/-. The lender has shown trade payable at Rs. 45,98,187/- and trade receivable at Rs. 16,71,464/- which shows that the Ld AO was not justified in alleging that the lender company has no creditors. Further, on perusal of profit and loss statement as on 31.03.2013 the lender company has shown revenue from operations at Rs. 1,46,67,946/- and other income at Rs. 63,27,508/-. Further, the company has shown expenses towards purchase of stock of Rs.1,50,89,459/-, employees benefit Rs. 4,26,000/-, finance cost Rs. 4,37,500/- and other expenses Rs. 34,05,062/- and has shown profit of Rs. 23,271/-. The lender company has also taken long and short term loan and the same have been advanced to various concerns and from that the lender company has earned interest income of Rs. 62,53,113/- which in AY 2012-13 was at Rs.50,31,671/-. Therefore, lending money on interest seems regular source of income of the lender company. Thus, the lender company have sufficient funds for lending the same to appellant. It is pertinent to reiterate that the Ld AO has compared the balance sheet and P&L A/c for AY 2014-15 to 2017-18, whereas, the loan was taken by the appellant in AY 2013-14. The appellant has also filed copy of bank account statement of the lender company before me as well as the Ld AO. On perusal I find that no cash was deposited prior to advancement of loan to appellant. Here it is important to mention that the appellant has repaid entire loan with interest which have also been offered to tax by the lender company while filing return of income. The appellant has also deducted TDS on interest and the credit of the same has also been taken by the lender company. Most importantly, the Ld. AO has made addition on account of closing loan balance as on 31.03.2013 and without considering the fact that it includes interest of Rs. 3,60,000/-. The appellant has also paid interest of Rs. 84,660/- in AY 2014-15 which have been treated as genuine by the Ld AO. Hence, the Ld. AO in one

year has treated the loan non-genuine and in other year as genuine which is contradictory. Hence, considering above findings, it cannot be said that the lender company is a bogus accommodation entry provider. Thus, the appellant has discharged its onus enshrined under section 68 of the Act.

The appellant during assessment proceedings has submitted all the documents to establish identity and creditworthiness of the lender and genuineness of the transaction. From above discussion, it is evident that the lender company have substantial funds available with it to lend the same to appellant company. The appellant has also filed necessary documents to prove its identity, creditworthiness of these companies and also filed bank statement reflecting the transactions. Further, confirmation filed by the appellant before the Ld AO itself shows that the repayment of the entire amount was completed by 21.06.2013 by paying interest and deducting TDS thereon. In the similar facts and circumstances where the repayment alongwith interest of loan was done, **Hon'ble Jurisdictional Bench of Indore ITAT** in the case of **Pramod Kumar Sethi - ITA No. 382/IND/2014 order dated 06.11.2018** deleted the addition made u/s 68. Relevant para of the said decision is reproduced hereunder:

Para 22 - ".....It is not in dispute that all the loan transactions were through account payee cheques, confirmations were given, creditworthiness were also proved from the balance sheet. Furthermore, all the loans were also repaid by cheques, we, therefore, do not find any merit in the action of Assessing Officer for making any addition in respect of these loan transactions."

3.6.4. In view of above discussion and decision of jurisdictional ITAT, addition of Rs. 44,60,000/- in AY 2013-14 made by the Ld AO on account of unexplained cash credit u/s 68 of the Act are hereby **deleted. Therefore, appeal on this ground is **allowed**."**

24. On perusal and careful consideration, we find no merit in the contentions raised by revenue. So far as the first contention against admission of "additional evidences" by CIT(A) is concerned, Ld. AR has successfully explained that it was a case of change in name of creditor company. The assessee took loan from old-named company whereas the AO show-caused assessee regarding new-named company. The assessee had already filed complete details of impugned loan taken from and interest paid to old-named company to AO vide letter dated 08.11.2019. When the AO show-caused assessee to explain the loan taken from new-named company, the assessee denied having taken any such loan because the assessee was not aware of change in name. Therefore, during first-appellate proceeding, when the assessee became aware of change in name, the assessee filed certificate of name change issued by ROC alongwith other documents of creditor as additional evidences before CIT(A). The CIT(A) admitted

additional evidences and also sought remand-report from AO. We have already rejected, while adjudicating Issue No. 4 in earlier part of this order, the revenue's contention against admission of additional evidences by CIT(A). Regarding merit of the issue, the CIT(A) has vehemently considered all facts relating to impugned loan and the facts considered in CIT(A)'s order are fully supported by the documents filed in Paper-Book. Therefore, the CIT(A) has rightly concluded that the ingredients of section 68 were fully satisfied. Although Ld. DR for revenue dutifully supported the order of AO yet could not point out any mistake or perversity in the adjudication made by CIT(A). Hence, we uphold the order passed by CIT(A) and the issue raised by revenue is therefore rejected.

Issue No. 6 – Disallowance u/s 40(a)(ia):

25. This issue is raised by revenue. The revenue claims that the CIT(A) has erred in deleting the disallowance made by AO u/s 40(a)(ia) on account of non-deduction of TDS out of freight payments made by assessee to truck-owners.

26. The AO has made disallowance vide Para 16 of assessment-order. During assessment-proceeding, the AO show-caused assessee to explain as to why an adverse view should not be taken in the matter of non-deduction of TDS out of freight payments made to truck-owners and claimed as expenditure. In reply, the assessee submitted that the truck-owners furnished their PANs and declarations in terms of section 194C(6) which enabled them to receive payments from assessee without TDS and those PANs and declarations were in possession of assessee; therefore the assessee did not deduct TDS due to exemption granted by section 194C(6). The AO, however, observed that mere collection of PANs and declarations from truck-owners cannot absolve assessee from his responsibility of making TDS when those details/declarations were not submitted by assessee to the jurisdictional PCIT/AO [although the AO has not mentioned

the basis of such observation in assessment-order yet it is apparent that the AO is harping on section 194C(7)] or during assessment-proceeding. The AO further observed that the assessee only submitted a Ledger A/c of Freight Expenses without evidences. On this basis, the AO made disallowance of varying amounts in different AYs u/s 40(a)(ia).

27. During first-appeal, the assessee made submissions to CIT(A) and also filed evidences of PANs and declarations collected from truck-owners to CIT(A) as additional evidences. The CIT(A) admitted such additional evidences in terms of Rule 46A of Income-tax Rules, 1962 and also analysed the legal interpretation of section 194C(6) and 194C(7) and ultimately reversed AO's action. Now, the revenue is contesting the action of CIT(A).

28. Ld. DR for revenue heavily supported the assessment-order of AO and opposed the order of CIT(A) by raising two-fold contentions:

- (i) Firstly, it is submitted that the assessee did not file PANs and declarations of truck owners to the AO during assessment-proceeding; they were submitted to CIT(A) as additional evidences and the CIT(A) admitted additional evidences without giving adequate opportunity to AO. Therefore, the adjudication done by CIT(A) is against Rule 46A and illegal.
- (ii) Secondly, it is submitted that mere collection of PANs and declarations by assessee from truck-owners in terms of section 194C(6) was not sufficient, there was another requirement of furnishing those PANs and declarations to the jurisdictional PCIT/AO in terms of section 194C(7). The assessee can get benefit of exemption from TDS u/s 194C(6) only when the requirement of section 194C(7) was also satisfied. Since the assessee has not satisfied the requirement of section 194C(7), therefore he was under obligation to deduct TDS.

29. Per contra, Ld. AR for assessee strongly supported the order of CIT(A) and opposed the contentions raised by Ld. DR as under:

- (i) In so far as the admission of additional evidences by CIT(A) is concerned, Ld. AR relied upon his submissions already narrated in foregoing Para while dealing Issue No. 4.
- (ii) For revenue's contention of non-compliance of section 194C(7), Ld. AR relied upon a direct decision of **ITAT, Kolkata Bench in ITA No. 1420/KOL/2015, Soma Rani Ghosh Vs. DCIT, order dated 09.09.2016** holding that if the assessee complies with the provisions of section 194C(6), disallowance u/s [40\(a\)\(ia\)](#) does not arise for violation of [section 194C\(7\)](#).

30. We have considered rival submissions of both sides and also perused the case-records including the orders of lower-authorities and documents filed in Paper-Book. Since the CIT(A) has vehemently dealt the facts of case as well as the legal interpretation of section 194C/194C(6)/194C(7), we firstly extract relevant portion of CIT(A)'s order:

"3.7.3. The appellant during appellate proceedings further stated that the truck owners furnished their Form 15G and PAN details and therefore, appellant did not deduct TDS before making freight payments. The appellant submitted that he was in possession of PAN/Form 15G of the transporters and therefore, he was not liable to deduct TDS as per law. Also, the books of account of the appellant were audited and these facts were clearly mentioned in clause 34(a) of Form 3CD. The appellant also stated that these documents and books of accounts were called for by the ADIT(Inv)-I, Indore for verification on 30.07.2018. The appellant in compliance reached before the Ld ADIT(Inv)-I, Indore on the said date and few documents were collected by the Inspector of Income Tax. Further, the Ld AO did not require the appellant to furnish the required documents during assessment proceedings and passed the assessment order after 6 days from the date of filing of submission on this issue.

3.7.4 .During the appellate proceedings, the appellant has also filed copies of Form 15G, bills/bilty/RC books, PAN details before me as additional evidences u/r 46A of the Rules. Due to this reason, a copy of which for verification and comments were forwarded to Ld. AO vide letter dated 07.12.2022. The Ld AO vide letter dated 26.12.2022 requested for further time till 31.01.2023. However, till date no report has been submitted by the Ld. AO. In the circumstances, the issue involved here is being decided on merit and as per law. I have gone through such evidences during the appellate proceedings. PAN/Form-15G were available with the appellant in respect of deductees. The appellant also submitted copies of RC Book and ledger account. The

required information has been found in the possession of the appellant. I find that Ld. AO has invoked provisions of section 40(a)(ia) of the Act, with effect from 01.04.2015, which for ready reference is reproduced hereunder:-

“Amounts not deductible.

40. Notwithstanding anything to the contrary in [sections 30](#) to [38](#), the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”,—

(a) in the case of any assessee—

(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of [section 139](#) :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of [section 139](#), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of [section 201](#), then, for the purposes of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.

Explanation.—For the purposes of this sub-clause,—

(A) “royalty” shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of [section 9](#);

(B) “fees for technical services” shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of [section 9](#);

(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of [section 139](#) :

Prior to 01.04.2015 the provisions of section 40(a)(ia) of the Act was stood as under:

“Any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work)”

As per provision of section 40(a)(ia) the person shall be treated as assessee in default when on any interest, royalty, fees for technical services or other sum chargeable under this Act, TDS is either not deducted or after deduction was not paid to government. Then, the 100% prior to 01.04.2015 and 30% w.e.f. 01.04.2015 of the said sum shall be disallowed within the meaning of this section. However, in the case of appellant he before the Ld. AO as well as before me has filed copies of declaration forms filed by the transporters u/s 194C(6) alongwith copies of their PAN. Section 194C mandates deduction of TDS @1% for individual or HUF and @ 2% for other than individual and HUF for payments made in lieu of carrying out any work in pursuance of any contract between contractor and specified person. However, sub-section (6) of section 194C provides exemption from deduction of TDS in the case when a sum is paid or payable to a contractor doing business of plying, hiring or leasing goods carriages and owns ten or less goods carriages and furnishes a declaration to this effect with PAN. In the case of appellant, the contractors have furnished their PAN alongwith declaration u/s 194C(6) which has been placed on record. For ready reference provisions of section 194C and 194C(6) are reproduced hereunder:-

“Payments to contractors.

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

...(2) to (5)...

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.”

On perusal of the assessment order, I find that the Ld. AO has made disallowance because the appellant had not complied with the provisions of section 194C(7) of the Act which states as under:

“(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within such time as may be pre-scribed.”

Since, the appellant has not submitted the details in prescribed format to the income tax authority as per the above provisions, the Ld. AO found the appellant ineligible for not making TDS on payment to transporters. Meaning thereby, provisions of section 194C(6) and 194C(7) have to be read together and benefit of section 194C(6) will be

available only when the appellant fulfills the conditions laid down in section 194C(7) of the Act, otherwise, provisions of section 40(a)(ia) will be attracted. However, the appellant was in possession of required information as per section 194C(6) of the Act. I have duly considered the above provisions of the Act and find that if an assessee complies with the provisions of section 194C(6) of the Act, disallowance under section 40(a)(ia) will not arise just because of non-compliance of provisions of section 194C(7) of the Act as both provisions are independent to each other and cannot be read together. I find support from the decision of Hon'ble ITAT in the case of **Soma Rani Ghosh Vs. DCIT, ITA No.1420/KOL/2015, order dated 09.09.2016**. The appellant has also placed above decision in Paper Book. Relevant para of the said decision is reproduced hereunder:

"33. In view of the above and respectfully following the judicial reasoning delineated in the above judgments, we find that if the assessee complies with the provisions of section 194C(6), disallowance under section 40(a)(ia) does not arise just because there is violation of provisions of section 194C(7) of the Act.

34. From our above discussion it follows that,-

i) in the context of Section 194C(1), person undertaking to do the work is the Contractor and the person so engaging the contractor is the contractee;

ii) that by virtue of the Amendment introduced by Finance Act (No.2) 2009, the distinction between a contractor and a sub-contractor has been done away with and Cl. (iii) of Explanation under 194C(7) now clarifies that "contract" shall include sub-contract;

iii) subject to compliance with the provisions of Section 194C(6), immunity from TDS under sec. 194C(1) in relation to payments to transporters, applies transporter and non-transporter contractees alike;

iv) under Sec. 194C(6), as it stood prior to the amendment in 2015, in order to get immunity from the obligation of TDS, filing of PAN of the Payee-Transporter alone is sufficient and no confirmation letter as required by the learned CIT is required;

v) Sections 194C(6) and Section 194C(7) are independent of each other, and cannot be read together to attract disallowance u/s 40(a)(ia) read with Section 194C of the Act; and

vi) If the assessee complies with the provisions of Section 194C(6), no disallowance u/s 40(a)(ia) of the Act is permissible, even there is violation of the provisions of Section 194C(7) of the Act.

35. Consequent to our findings in the preceding paragraphs, we reach a conclusion that the authorities below are not justified in treating the expense incurred by the assessee for Carriage inward and carriage outward as disallowable under section 40(a)(ia) of the Act, and adding back Rs.1,63,78,648/- claimed as expense towards Carriage Inward and Rs.1,13,00,980/- claimed as expense towards Carriage Outward, and such additions shall stand deleted."

3.7.5. *After considering the above discussion and the evidences on record, I am of the view that the appellant was not required to deduct TDS within the meaning of provisions of section 201(1) r.w.s 40a(ia) of the Act. Hence, the Ld. AO was not justified*

*in making disallowance by invoking provisions of section 40(a)(ia) of the Act. Hence, disallowance made by the AO amounting to Rs. 5,10,46,140/- in AY 2013-14, Rs. 2,56,17,454/- in AY 2014-15, Rs. 1,11,85,682/- in AY 2015-16, Rs. 1,52,32,690/- in AY 2016-17, Rs. 1,57,51,980/- in AY 2017-18 and Rs. 1,93,63,082/- in AY 2018-19 are directed to be **deleted**. Therefore, appeal on this ground is **allowed**."*

31. On perusal, we find that the CIT(A) has vehemently considered all aspects of the issue as also the judicial view on interpretation of section 194C(6)/(7) and thereafter deleted the disallowance made by AO. However, there are two contentions being raised by revenue against the order of CIT(A). The first contention that the CIT(A) considered additional evidences filed by assessee without giving proper opportunity to AO is already adjudicated by us against revenue in Issue No. 4 in earlier part of this order. The second contention that there was a violation of section 194C(7) by assessee due to non-furnishing of PANs and declarations collected from truck-owners to Income-tax Department, is adequately dealt by **ITAT, Kolkata** in **Soma Rani Ghosh (supra)** relied upon by Ld. AR which is the same decision as relied by Ld. CIT(A) also. The CIT(A) has re-produced only concluding paras 33 to 35 of ITAT's order but we re-produce the entire order of ITAT for a complete understanding:

"25. Next ground of disallowance stated by the learned CIT is that Sec. 194C(6) and 194C(7) are to be read together, and if after obtaining PAN from the Transporters, the requisite particulars so obtained from the Transporters are not furnished to the prescribed Authority as provided u/s 194C(7), deduction and for that matter disallowance, u/s 194C and 40(a)(ia) would get attracted. On this aspect, as indicated above a reading of provisions of Section 194C (6), prior to the amendment of by [Finance Act, 2015](#) (w.e.f. 1-06-2015), makes it clear that that during the relevant Assessment year, if the sub-contractors have supplied their PAN to the person making payments in respect of hiring/leasing/of vehicles during the course of his business, then such person making such payment shall not deduct any TDS. It is only by way of subsequent amendment by [Finance Act, 2015](#) (w.e.f. 1-06-2015), the expression "where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with" was substituted in the place of "on furnishing of" thereby introducing the requirement of the declaration to the effect indicated by the amendment. Therefore, under Sec. 194C(6), as it stood prior to the amendment in 2015 in order to get immunity from the obligation of TDS, filing of PAN of the Payee-Transporter alone is sufficient and no confirmation letter as required by the learned CIT is required.

26. On the aspect of observation of the learned CIT that Sections 194C(6) and Section 194C(7) have to be read together to extend the immunity from TDS, our attention is

drawn to the fact that though the [Finance Act](#), (NO.2) 2009 introduced, inter alia, Sec. 194C(6) and 194C(7), similar and analogous provision had been very much in existence under proviso 2 and 3 to [Section 194C\(3\)](#) of the Act. Placing such provisions in juxtaposition in the following chart makes it clear that they are very much analogous and the difference is that only in respect of requirement of a declaration and furnishing the particulars to the to the prescribed income-tax authorities under the provisos 2 and 3 of pre-amended section 194C(3) is being replaced by the Permanent Account Number under present Sections 194C(6) and (7) respectively.

194C prior to Amendment by Finance Act, (No.2) 2009	194C as Amended by Finance Act, (No.2) 2009
<p>194C(3) No deduction shall be made under sub section (1) or sub-section (2) from – </p> <p>Provided that</p> <p>Provided further that no deduction shall be made under sub-section (2) from the amount of any sum credited or paid or likely to, be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year :</p> <p>Provided also that the person responsible for paying any sum as aforesaid to the sub-contractor referred to in the second proviso shall furnish to the prescribed income-tax authority or the person authorized by it such particulars as may be prescribed in such form and within such time as may be prescribed; or]</p>	<p>(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, [where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with"], his Permanent Account Number, to the person paying or crediting such sum.</p> <p>(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within such time as may be prescribed.</p>

27. From the above, it could be observed that only slight modification had been introduced as to the procedure by replacing "declaration" with the words "Permanent Account Number" as the thing to be obtained from the Transporter. We are, therefore, inclined to hold that the provisions of Section 194C(6) and 194C(7) are similar to the Proviso (2) and (3) of the pre-amended Section 194C(3), and on this premise we shall

proceed to examine whether Section 194C(6) and 194C(7) are to be read together to invoke provisions under [section 40\(a\)\(ia\)](#) of the Act.

28. After drawing an analogy between the pre-amended proviso between Clause (2) and Clause (3) of section 194C(3) and the present amended section 194C(6) and 194C(7), Learned AR submitted that even on earlier occasions when the declaration obtained in Form 15I (requirement similar to the PAN particulars under Sec. 194C(6)) obtained from the Transporter under Second Proviso is not submitted in Form 15J to the Commissioner of Income Tax in Form 15J (requirement similar as is provided under the third proviso and equivalent to the requirement Sec. 194C(7), the Department made attempts to make additions, but such additions have been deleted and rendered invalid. He submitted that the Courts and Tribunals consistently held that on obtaining of either the declaration contemplated under second proviso to the pre-amended section 194C(3) or the PAN details under the present section 194C(6), the assessee was not required to make any deduction at source on the payments made to the contractor or sub-contractor, irrespective of the fact whether or not such information was furnished to the authorities as prescribed under third proviso to the amended section 194C(3) or the present section 194C(7).

29. In **CIT -vs.- Valibhai Khanbhai Mankad (Tax Appeal No. 1182 of 2011, order dated 01.10.2012)**, it is held by the Hon'ble Gujarat High Court at Ahmedabad that :-

"(6) Section 194C, as already noticed, makes provision where for certain payments, liability of the payee to deduct tax at source arises. Therefore, if there is any breach of such requirement, question of applicability of [section 40\(a\)\(ia\)](#) would arise.

Despite such circumstances existing, sub-section (3) makes exclusion in cases where such liability would not arise. We are concerned with the further proviso to sub- section (3), which provides that no deduction under sub-section (2) shall be made from the amount of any sum credited or paid or likely to be credited or paid to the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum in the prescribed form and verified it in the prescribed manner within the time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.

7) The exclusion provided in sub-section (3) of section 194C from the liability to deduct tax at source under sub-section (2) would thus be complete the moment the requirements contained therein are satisfied. Such requirements, principally, are that the sub-contractor, recipient of the payment produces a necessary declaration in the prescribed format and further that such sub-contractor does not own more than two goods carriages during the entire previous year. The moment, such requirements are fulfilled, the liability of the assessee to deduct tax on the payments made or to be made to such sub-contractors would cease. In fact he would have no authority to make any such deduction.

8) The later portion of sub-section (3) which follow the further proviso is a requirement which would arise at a much later point of time. Such requirement is that the person responsible for paying such sum to the sub-contractor has to furnish such particulars as prescribed. We may notice that under Rule 29D of

the Rules, such declaration has to be made by the end of June of the next accounting year in question.

9) In our view, therefore, once the conditions of further proviso of section 194C(3) are satisfied, the liability of the payee to deduct tax at source would cease. The requirement of such payee to furnish details to the income tax authority in the prescribed form within prescribed time would arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable under sub-section (2) of [section 194C](#) of the Act. In our view, therefore, the Tribunal was perfectly justified in taking the view in the impugned judgment. It may be that failure to comply such requirement by the payee may result into some other adverse consequences if so provided under the Act. However, fulfilment of such requirement cannot be linked to the declaration of tax at source. Any such failure therefore cannot be visualized by adverse consequences provided under [section 40\(a\)\(ia\)](#) of the Act.

10) When on the basis of the record it is not disputed that the requirements of further proviso were fulfilled, the assessee was not required to make any deduction at source on the payments made to the sub-contractors. If that be our conclusion, application of [section 40\(a\)\(ia\)](#) would not arise since, as already noticed, [section 40\(a\)\(ia\)](#) would apply when there is a requirement of deduction of tax at source and such requirement is either not fulfilled or having deducted tax at source is not deposited within prescribed time".

30. In **CIT -vs.- Sri Marikamba Transport Co. in ITA No. 553 of 2013 reported in 379 ITR 129 (Karn.)**, Hon'ble Karnataka High Court has formulated a question as to whether non-filing of Form No. 151/J within the prescribed time is only a technical default or the provisions of [section 40\(a\)\(ia\)](#) of the Act are attracted? and proceeded to answer the same as under:-

["Section 40 \(a\)\(ia\)](#) and [Section 194C\(3\)](#) of the Act reads thus:

["Section 40\(a\)\(ia\)](#) : Any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub- section(i) of [Section 139](#)".

[Section 194C\(3\)](#): No deduction shall be made under sub-section (1) or sub-section (2) from -

(i) the amount of any sum credited or paid or likely to be credited or paid to the account of or to the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-s.(1) or as the case may be sub-s.(2) shall be liable to deduct income-tax under this section:

Provided further that no deduction shall be made under subs. (2) from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.

Provided also that the person responsible for paying any sum as aforesaid to the sub- contractor referred to in the second proviso shall furnish to the prescribed IT authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may be prescribed: or

(ii) any sum credited or paid before the 1st day of June, 1972; or

(iii) any sum credited or paid before the 1st day of June, 1973, in pursuance of a contract between the contractor and a co-operative society or in pursuance of a contract between such contractor and the sub-contractor in relation to any work (including supply of labour for carrying out any work) undertaken by the contractor for the co-operative society. "

4. The combined reading of these two provisions make it clear that if there is any breach of requirements of Section 194C(3), the question of applicability of [Section 40\(a\)\(ia\)](#) arises. The exclusion provided in Sub-Section (3) of Section 194C from the liability to deduct tax at source under sub-section (2) would be complete, the moment the requirements contained therein are satisfied. Once, the declaration forms are filed by the subcontractor, the liability of the assessee to deduct tax on the payments made to the sub-contractor would not arise. As we have examined, the sub-contractors have filed Form No. 15I before the assessee. Such being the case, the assessee is not required to deduct tax under [Section 194C\(3\)](#) of the Act and to file Form No.15J. It is only a technical defect as pointed out by the Tribunal in not filing Form No.15J by the assessee. This matter was extensively considered by the ITAT, Ahmedabad Bench in Valibhai Khanbhai Mankad's case (supra) and the said Judgment has been upheld by the High Court of Gujarat reported in (2013) 216 Taxman 18 (Guj) wherein it is held that once the conditions of Section 194C(3) were satisfied, the liability of the payee to deduct tax at source would cease and accordingly, application of [Section 40\(a\)\(ia\)](#) would also not arise. The Tribunal, placing reliance on the judgment of the ITAT, Ahmedabad Bench, has dismissed the appeal filed by the Revenue. We agree with die said propositions and hold that filing of Form No.15I/j is only directory and not mandatory."

31. A Coordinate Bench of this Tribunal in ITA No. 86/VIZ/2013 in the case of ITO -vs.- Kollli Brothers, order dated 11.12.2013 followed the decision of the Hon'ble High Court of Gujarat in the case of Valibhai Khanbhai Mankad (supra). In the case of M/s. Mahalaxmi Cargo Movers -vs.- ITO in ITA No. 6191/MUM/2013, order dated 09.12.2015, another Coordinate Bench of this Tribunal reached the same conclusion while following the decision of the Coordinate Bench in the case of CIT -vs.- Valibhai Khanbhai Mankad (supra) and CIT -vs.- Sri Marikamba Transport Co. in ITA No. 553 of 2013 reported in 379 ITR 129 (Karn.).

32. It is worth noticing that in ACIT -vs.- Mr. Mohammed Suhail, Kurnool in ITA No. 1536.Hyd/2014, order dated 13.02.2015, the Coordinate Bench of this Tribunal specifically held that the provisions of section 194C(6) are independent of section 194C(7), and just because there is violation of provisions of section 194C(7), disallowance under [section 40\(a\)\(ia\)](#) does not arise if the assessee complies with the provisions of [section 194C\(6\)](#).

33. In view of the above and respectfully following the judicial reasoning delineated in the above judgments, we find that if the assessee complies with the provisions of [section 194C\(6\)](#), disallowance under [section 40\(a\)\(ia\)](#) does not arise just because there is violation of provisions of [section 194C\(7\)](#) of the Act."

It is noteworthy that the ITAT, Kolkata has followed the decision of Hon'ble Gujrat High Court and Hon'ble Karnataka High Court favouring the assessee. Ld. DR for revenue has not shown any decision of ITAT or High Court against assessee qua this issue. Therefore, in view of decision of ITAT, Kolkata read with the decisions of Hon'ble Gujrat High Court and Karnataka High Court, it can be safely concluded that no disallowance is called for u/s 40(a)(ia) for violation of section 194C(7). Thus, the second contention raised by revenue is also rejected. Being so, we do not find any error or perversity in the order of CIT(A). Therefore the order passed by CIT(A) is upheld and the issue raised by revenue is rejected.

32. 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 disallowance u/s 40(a)(ia) in assessment-order passed u/s 153A for alleged violation of section 194C(7) in AYs 2013-14, 2014-15, 2016-17, 2017-18 and 2018-19. It is a fact that first three AYs 2013-14, 2014-15 and 2016-17 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 30.09.2013/01.11.2014/30.09.2016; assessments of those three 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 the 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. Abhishar 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 impugned disallowance for alleged violation of legal provision of section 194C(7) but without having any incriminating material found during search. Therefore, in the light of legal view taken in these decisions, the disallowance made in three AYs 2013-14, 2014-15 and 2016-17 is legally not sustainable.

Issue No. 7 – Unexplained investment in construction of house:

33. This issue is raised by revenue. The issue relates to an addition of 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 made by AO u/s 69 on account of unexplained investment in construction of house and deleted by CIT(A). The precise facts are such that 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. Since the impugned house was owned by assessee and his wife (Mrs. Jatinder Kaur Bhatia), therefore the AO made 50% addition in assessee's hands and 50% addition in the hands of assessee's wife. During first-appeal, the CIT(A) deleted addition and that is why revenue has brought this issue before us.

34. We only suffice it to note that the revenue's appeal on same issue in assessee's wife has already been decided by ITAT, Indore in ***ITA No. 206 &***

207/Ind/2023 order dated 22.08.2024 against revenue and in favour of assessee's wife. For the sake of immediate reference, we re-produce the relevant paras of order of ITAT:

"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 investment declared by assessee	of investment as 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 of 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:

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

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:

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

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 than 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 heightened both on 1st floor and 2nd floor. However, no such double heightened 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	
Double heighted @ 22528	31.52	710083			
Gurudwara @ 15860	14.49	229811			
Servant quarters @ 18327	39.37	721622			
Total area of civil work	939.59	18798644	Total area of civil work @ 13455	875.43	12250000
Other extra item		4807238	Water supply arrangement		100000
Architect fees and consultancy charges		944235	Compound wall		368000
Local bodies		118029	Pavement		150000
Total estimate		24668147	Total estimate		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:-

S.No	Expenditure towards	Amount (In Rs.)
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
	Total	11742758

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. Abhishar 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."*

35. Therefore, we adopt the very same reasoning and conclusion as taken by ITAT, Indore in assessee's wife's case. Accordingly, the issue raised by revenue is held to be meritless and rejected.

36. However, for the sake of clarity, we may mention that in present appeals, we are concerned with AYs 2016-17, 2017-18 and 2018-19 out of which the AY 2016-17 was in the nature of "completed or unabated assessment year" as the search was conducted on 23.01.2018; the assessee had already filed return of that year on 30.09.2016; assessment of that year was not pending on the date of search (23.01.2018) and the time-limit for issuance of notice u/s 143(2) had also expired. Therefore, the benefit of decision of **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. Abhishar Buildwell Pvt. Ltd. (2023) 454 ITR 212** as narrated in Para 20 of ITAT's order in case of assessee's wife, as re-produced above, shall be available to present assessee for AY 2016-17.

Issue No. 8 – Unexplained investment in furniture & fixture:

37. This issue is raised by revenue. The issue relates to an addition of Rs. 3,99,589/- in AY 2017-18 and Rs. 10,95,458/- in AY 2018-19 on account of unexplained investment in furniture and fixture made by AO but deleted by CIT(A).

38. The AO has made impugned addition vide Para 13 of assessment-order on the basis of certain loose-papers found during search inventorised as "LPS-03". In his statements given to search-authorities u/s 132(4), the assessee accepted those papers as related to 'expenditure on construction of house'. During assessment proceeding, when the AO show-caused, the assessee filed reply which is re-produced by AO in Para 13.2 of assessment-order. The assessee submitted that in the statements recorded u/s 132(4), he has rightly accepted that relevant loose-papers pertained to the quotations, delivery challans and expenditure of construction of house. The assessee further submitted that the expenditure had already been included in the Valuation-Report of Registered Valuer as well as DVO and the expenditure is also explained and verifiable from books of assessee and assessee's wife. However, the AO referred Valuation-Report and made an observation that as per Valuation-Report, the cost of furniture, AC, fans, electrical equipments, plant and machinery were not included in valuation. Accordingly, the AO rejected assessee's submission and treated investment in furniture and fixture as unexplained and made 50% addition in assessee and 50% addition in assessee's wife. During first-appeal, the CIT(A) deleted addition.

39. Having heard the learned Representatives of both sides, we find that CIT(A) has decided this issue in Para 3.4.2 to 3.4.3 of his order as under:

"3.4.2. 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. On the basis of LPS-3, the Ld. AO found that the appellant alongwith his wife Smt. Jatinder Kaur Bhatia had incurred unaccounted expenditure of Rs. 7,99,177/- in A.Y.2017-18 and Rs.21,90,916/- in A.Y.2018-19 and made addition of 50% of such expenditure in the hands of the appellant and remaining 50% has been made in the hands of his wife. The appellant regarding the said addition has contended

that various loose papers were found and seized during the course of search and were inventoried as LPS-3 which pertains to quotation, delivery challans and expenditure towards construction of house. The said expenditure relating to furniture and fixture being utilized in residential premises is included in valuation report of the DVO as well as registered valuer. Further, the expenditure is fully recorded in books of accounts. However, a copy of all the necessary bills and voucher regarding furniture and fixtures have already been submitted before the Ld. AO.

3.4.3. The appellant before the Ld. AO as well as before me has filed copies of bills and vouchers for expenditure made on furniture and fixtures which were also found and seized during the course of search proceedings as LPS-3. On perusal I found that the appellant during the FY 2016-17 & 2017-18 has made following expenditure on electrical accessories and goods:-

S.No	Name of the seller	Bill no/date	Description	Amount (In Rs.)
1	Jasbhai and Co	38/31.05.2016	Electrical wire	73668
2	Jasbhai and Co	713/03.03.2017	Electrical accessories	3690
3	Jasbhai and Co	712/03.03.2017	Electrical accessories	6250
4	Rashmi Electronics	51/03.04.2017	Electrical goods	12932
5	Rashmi Electronics	1239/30.06.2017	Electrical goods	21700
6	Rashmi Electronics	1215/30.06.2017	Electrical goods	26450
7	Rashmi Electronics	945/13.06.2017	Electrical goods(TV)	89990
8	Rashmi Electronics	940/13.06.2017	Electrical goods (RO purifier)	34500
9	Rashmi Electronics	702/20.05.2017	Electrical goods (inverter)	36900
10	Jasbhai and Co	03/14.04.2017	Electrical accessories	52591
11	Rashmi Electronics	470/02.05.2017	Electrical goods	308800
12	Jasbhai and Co	89/29.04.2017	Electrical accessories	2620
13	Jasbhai and Co	64/21.04.2017	Electrical accessories	18442
14	Jasbhai and Co	59/21.04.2017	Electrical accessories	12445
15	Jasbhai and Co	67/28.05.2017	Electrical accessories	35232
16	Jasbhai and Co	66/28.05.2017	Electrical accessories	62599
17	Jasbhai and Co	228/27.06.2017	Electrical accessories	2902
18	Jasbhai and Co	227/27.06.2017	Electrical accessories	15738
19	Jasbhai and Co	20/08.05.2017	Electrical accessories	15354

			Total	832803
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The appellant during the FY 2016-17 & 2017-18 has made following expenditure on ply & furniture goods:-

S.No	Name of the seller	Bill no/date	Description	Amount
1	Rama Woodcraft	RW/1617/2343/28.10.2016	Plywood	832706
2	Sethi plywood and glass house	275/07.11.2016	Plywood	15400
3	Sethi plywood and glass house	398/07.11.2016	Plywood	9663
4	Forest Gold	577/27.10.2016	Laminate sheets	52500
5	Herambh Enterprises	1570/09.01.2017	Plywood	107600
6	Herambh Enterprises	1595/13.01.2017	Plywood	36600
7	Herambh Enterprises	1803/20.02.2017	Plywood	27150
8	Kewalram Krishanlal Peshawari	293/06.03.2017	Foam and mattress	173440
9	Metro Ply & Laminates	655/09.03.2017	DL Sheets	52000
10	Herambh Enterprises	1938/18.03.2017	Plywood	15300
11	Herambh Enterprises	1973/22.03.2017	Plywood	8775
12	Vintus Home Solutions	VMS/16-17/08/07.04.2017	Furniture	200931
13	Sethi plywood and glass house	9/05.04.2017	Plywood	78170
14	Sethi plywood and glass house	10/05.04.2017	Plywood	56248
15	Sethi plywood and glass house	23/09.04.2017	Plywood	40899
16	Sethi plywood and glass house	33/11.04.2017	Plywood	22500
17	MP Ply & Veneers	45/08.04.2017	Decorative ply	20800
18	Surya glass house	159/20.04.2017	Furniture accessories	7766
19	Surya glass house	142/19.04.2017	Furniture accessories	57036
20	Vintus Home Solutions	VMS/16-17/09/07.04.2017	Furniture accessories	490240
21	Sunny lights	33/01.05.2017	Jhoomar	22800

22	Twenty First Century Techno Products Pvt Ltd	SLS/SO/17-18/740 02.05.2017	Furniture accessories	136521
23	Genesis Arts	1018/09.05.2017	Acrylic cutting	16885
24	Bagana Agencies	222/15.05.2017	Hybrid boards	12060
25	Bagana Agencies	158/02.05.2017	Hybrid boards	7806
26	Bagana Agencies	159/03.05.2017	Hybrid boards	7806
27	Shee Jee Hardware	1083/17.05.2017	Locks and door handles	46460
28	Avi Enterprises	437/09.06.2017	Plywood	13100
29	Shibaam	14/22.06.2017	Acrylic design cutting	22800
30	Variety Harwdware Store	432/29.06.2017	Furniture accessories	12000
31	SD Glasas & Aluminium works	860/03.06.2017	Glass	100000
			Total	2701162

*On perusal of evidences on record it is abundantly and evidently clear that the appellant has made expenditure towards furniture and fittings and are fully recorded in books of account and source is found explained. Further, this cost has already been considered in cost of construction of house by the registered valuer. Therefore, the Ld. AO was not justified in ignoring key evidences and facts putforth before him by the appellant during assessment proceedings. Thus, the addition made by the Ld. AO amounting to **Rs. 3,99,589/- in AY 2017-18 and Rs. 10,95,458/- in AY 2018-19** are hereby **deleted**. Therefore, appeal on this ground is **allowed**."*

40. Thus, the CIT(A) has deleted additions by giving a specific finding that the expenditure towards furniture and fittings are fully recorded in books of account and source is found explained. This finding is in line with the claim made by assessee before AO that the expenditure is explained and verifiable from books of assessee. Notably, this claim made by assessee was not rejected by AO even in assessment-order, the AO only rejected assessee's submission that the cost of furniture was already included in Valuation Report. In the ground raised by revenue as well as pleading made before us, the revenue is not controverting the categorical finding made by CIT(A) that

the expenditure is recorded in books, the revenue's endeavour is only to convey that as per Note-3 of Valuation Report, the cost of furniture is not included in valuation. In that view of matter, we do not have any reason or basis to interfere with the clear-cut finding of CIT(A) that the expenditure is recorded in books of accounts and stands explained. Therefore, we uphold the order of CIT(A) and the issue raised by revenue is rejected.

Issue No. 9 – Unexplained cash credit u/s 68 related to gifts received from Smt. Manjeet Kaur Bhatia:

41. This issue is raised by revenue. The issue here is the addition of Rs. 25,00,000/- in AY 2016-17 and Rs. 25,00,000/- in AY 2018-19 made by AO on account of unexplained gifts received by assessee from his mother Smt. Manjeet Kaur Bhatia.

42. The AO has made these additions vide Para 15 of assessment-order as under:

“15.1 From the Audit Report of M/s. Bhatia Transport Service Proprietor Shri Jarnalbeer Singh Bhatia, it is observed that Smt. Manjeet Kaur Bhatia gifted an amount of Rs. 25,00,000/- in F.Y. 2015-16 and Rs. 25,00,000/- in F.Y. 2017-18 to the assessee during F.Y. 2017-18. In this regard, the assessee was show-caused to establish the identity and creditworthiness of the creditor and genuineness of the transaction. In response, the assessee has stated that the source amounts were the payments of freight paid by M/s. Bhatia Transport Service and M/s. Rajbeer Road Lines as per the ledgers attached to Smt. Manjeet Kaur Bhatia. The assessee has also furnished copy of a certificate from the Bank of India, Khandwa, in support of his contention that the amounts were received to Smt. Manjeet Kaur Bhatia from the aforesaid two parties.

15.2 The contention of the assessee cannot be accepted. The bank certificate only says that the amounts were received from the aforesaid parties; but the nature of payments remains unclear. The ledgers furnished by the assessee are only the self-serving documents, and has no independent evidentiary value. Further, the bank statement of Smt. Manjeet Kaur Bhatia of seven years runs in only 3 pages and has very few entries. This establishes that Smt. Manjeet Kaur Bhatia was not in receipt of regular payments of freight. Also, the alleged lumpsum payments of Rs. 25,00,000/- each are not in agreement of the income shown by Smt. Manjeet Kaur Bhatia for respective years. It is, therefore, clear that the assessee has put-forth a cooked up theory, which cannot be substantiated by him.

15.3 From all the above discussion, it is clear as crystal that the money transferred by Smt. Manjeet Kaur Bhatia is unexplained cash credits in the hands of beneficiary

i.e. M/s. Bhatia Transport Service Proprietor Shri Jarnalbeer Singh Bhatia u/s 68 of the Income-tax Act, 1961 ; hence, the amounts of Rs. 25,00,000/- in A.Y. 2016-17 and Rs. 25,00,000/- in A.Y. 2018-19 are hereby added u/s 68 to the total income of the assessee and is taxed @ 30% for A.Y. 2016-17 & @ 60% for A.Y. 2018-19 as per the provisions of section 115BBE of the Income-tax Act, 1961. Further, I am satisfied that the assessee has furnished inaccurate particulars of his income for A.Y. 2016-17. Therefore, penalty proceedings u/s 271(1)(c) is hereby initiated for A.Y. 2016-17. Also, 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."

43. During first-appeal, the CIT(A) deleted addition by passing following order:

"3.8.2 . 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. The appellant during assessment proceedings as well as during appellate proceedings has strongly contended that the appellant had received gift sum of Rs. 25,00,000/- each through cheques from his mother Smt. Manjeet Kaur Bhatia in AY 2016-17 & AY 2018-19 vide gift deeds dated 05.01.2016 and 14.08.2017 respectively. The appellant has also claimed that the said amounts had been earned out of freight from M/s Rajbeer Road Lines and M/s Bhatia Transport Service by the donor. In support appellant has filed copies of bank account statements, copies of ledger account of M/s Rajbeer Road Lines and M/s Bhatia Transport Service and balance sheet of the donor.

3.8.3 After considering claim of the appellant and findings of the Ld. AO, I find that the donor has been providing freight services to M/s Rajbeer Road Lines and M/s Bhatia Transport Service. The appellant before Ld. AO as well as before me has filed copies of ledger account of freight in the books of account of M/s Bhatia Transport Service and balance sheet and profit and loss account statement for FY 2015-16, 2016-17 and 2017-18. On perusal of evidences on record, I find that the appellant has shown freight receipts during FY 2015-16 of Rs. 36,92,820/-, during FY 2016-17 of Rs. 4,09,990/- and during FY 2017-18 of Rs. 3,07,640/- from M/s Rajbeer Roadlines and during FY 2016-17 of Rs. 9,50,730/- and during FY 2017-18 of Rs. 12,30,650/- from M/s Bhatia Transport Service. The appellant has also filed copy of ledger account of donor Mrs Manjeet Kaur Bhatia in the books of M/s Bhatia transport Service for AY 2017-18 and for FY 2015-16 in the books of M/s Rajbeer Roadlines. On perusal, it has been observed that the said ledgers mentions details of datewise freight charges with train rack number. The donor as on 01.04.2017 has an opening credit balance of Rs. 30,76,464/- on account of freight receipts (amount receivable) from M/s Bhatia Transport Services out of the said amount sum of Rs. 10,00,000/- was received vide cheque no 46043 and Rs. 15,00,000/- was received vide cheque no 25851 on 14.08.2017 and the same amount was given by her to the appellant as gift. Likewise, the donor as on 01.04.2015 has an opening credit balance of Rs. 15,40,477/- on account of freight receipts (amount receivable) from M/s Rajbeer Roadlines. Further, as on 05.10.2015 the appellant has earned freight income of Rs. 29,45,594/-. Out of total amount receivable sum of Rs. 15,40,477/- was received vide cheque no 31563 and Rs. 9,60,000/- was received vide cheque no 31564 on 05.10.2015 and out of same amount sum of Rs. 25,00,000/- was given by her to the appellant as gift. This factual position have not been considered by the Ld. AO before making impugned addition on substantive basis in the hands of the appellant and on protective basis in the hands of

the donor smt. Manjeet Kaur Bhatia. The Ld. AO on one hand has simply treated these evidences as self-serving documents and on other hands has accepted returned income of the donor which has been filed on the basis of these documents. Considering the above discussion and material on record, the appellant successfully established the genuineness of gift. The identity and source of income of the donor have been established. Further, the gift has been given out of balances in the bank account of the donor. Thus, the addition on this account is not found sustainable.

3.8.4. *In view of the above discussion and evidences on record the Ld. AO was not justified in making addition without considering the merits of documentary evidences putforth by the appellant during assessment proceedings. Thus, the substantive addition made by the Ld. AO amounting to **Rs. 25,00,000/- in AY 2016-17 and Rs. 25,00,000/- in AY 2018-19** are hereby **deleted**. Therefore, appeal on this ground is **allowed**."*

44. Before us, Ld. DR for revenue advanced the observations made by AO that (i) the assessee claimed to have received impugned gifts from his mother Smt. Manjeet Kaur Bhatia and it is claimed that assessee's mother was having freight receipts from M/s Bhatia Transport Services and M/s Rajbeer Road Lines. The assessee filed a bank certificate in support of freight receipts but the AO has found that bank certificate did not show the nature of receipts, (ii) that the Ledger A/cs filed by assessee to show freight receipts were treated by AO as self-serving documents, (iii) that even the bank statement of the donor was running in 3 pages only, and (iv) that the gifts given by donor did not commensurate with the income of donor. Taking into account these facts, the AO rightly observed that the assessee has only cooked up a theory of receiving gifts which could not be substantiated and accordingly made addition. Ld. DR submitted that the CIT(A) has wrongly disturbed the findings given by AO and deleted addition, therefore the order of CIT(A) must be set aside on this issue.

45. Per contra, Ld. AR for assessee justified the order of CIT(A) with reference to various documents filed in Paper-Book. He submitted that the assessee has received gifts from his mother and not from an unrelated person. The donor, mother of assessee, was providing freight services to M/s Rajbeer Road Lines and M/s Bhatia Transport Services and accordingly the donor had outstanding receivables from M/s Rajbeer Road Lines and M/s Bhatia Transport Services which were recovered through banking channel

and by utilising those amounts, the impugned gifts were made to assessee. The CIT(A) has noted complete details/figures of receivables, amounts received and gifted to assessee with dates and cheques numbers. Therefore, the CIT(A) has passed a well-reasoned order taking into account correct facts and the order of CIT(A) does not demonstrate any mistake or perversity. Ld. AR prayed to uphold the order of CIT(A).

46. We have considered rival submissions of both sides and carefully perused the orders of lower-authorities. Admittedly, the assessee has shown two gifts, each of Rs. 25,00,000/-, having been received from his mother. There are declarations of gift duly signed by donor on stamp papers, at Page 852-855 of Paper-Book. The gifts were given by donor to assessee through cheques and not in cash. The donor has made those gifts out of recoveries made from her business debtors, namely M/s Rajbeer Road Lines and M/s Bhatia Transport Services. The CIT(A) has noted complete details of dates, amounts, cheques, etc. of the receivables from business debtors and receipts made by donor therefrom which were utilised for giving gifts to assessee. The bank certificate dated 20.12.2019 filed by assessee to AO, copy at Page 857 of Paper-Book, also confirms that the donor received moneys from M/s Rajbeer Road Lines and M/s Bhatia Transport Services. The AO also acknowledges this very fact but only raised a concern that the bank certificate does not reveal nature of receipts. The concern/objection raised by AO is not valid because how can AO expect that the bank will mention nature of receipts in certificate; the bank can only mention the dates, amounts, names and accounts details of the persons from whom moneys were received in donor's a/c and those details are very much available in bank certificate. The assessee has also filed documents of freight receipts to AO but the AO brushed aside those documents as 'self-serving documents'. However, the CIT(A) has not agreed with AO's conclusion. We find that the CIT(A) has taken a judicious view of the facts as well as documents of assessee and there is no infirmity in the order of CIT(A).

Hence, we uphold the order of CIT(A). The issue raised by revenue is therefore rejected.

47. 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. The assessment-order clearly shows that the AO has made impugned addition by floating an enquiry on the basis of audit report of assessee in AYs 2016-17 and 2018-19, out of which AY 2016-17 was in the nature of "completed or unabated assessment year" as the search was conducted on 23.01.2018; the assessee had already filed return of that year u/s 139(1) on 30.09.2016; assessment of that year was not pending on the date of search (23.01.2018) and the time-limit for issuance of notice u/s 143(2) had also expired by the 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 impugned addition by appraisal of audit report of assessee but without having any incriminating material found during search. Therefore, in the light of legal view taken in these decisions, the addition made in AY 2016-17 is legally not sustainable.

Issue No. 10 – Unexplained cash credit u/s 68 related to gift received from Smt. Mandeep Kaur Bhatia:

48. This issue is raised by revenue. The issue here is the addition of Rs. 44,00,000/- in AY 2018-19 made by AO on account of unexplained gift received by assessee from Smt. Mandeep Kaur Bhatia, wife of assessee's elder brother Shri Arvind Singh Bhatia.

49. The AO has made this addition vide Para 14 of assessment-order. During assessment-proceeding, from audit-report of assessee, the AO observed that the assessee received a gift of Rs. 44,00,000/- from Smt. Mandeep Kaur Bhatia during financial year 2017-18. When the AO show-caused assessee to explain such gift transaction, the assessee submitted that the donor made gift out of her savings through RTGS. The assessee also submitted that the donor sold certain flats in Pune in the year 2010-11 and received sale proceeds in cash which were advanced to various persons which were subsequently recovered and cash was deposited in bank a/c from those recoveries. The assessee submitted that the donor was having a cash balance of approx. Rs. 65,00,000/- in hand. The AO, however, rejected assessee's reply by observing that (i) the contention of making gift out of savings was baseless and illogical because the donor did not have any major source of income, she had low income from interest and other sources, (ii) mere transfer of money through RTGS is not a proof of genuine transaction, (iii) immediately before transfer to assessee, cash was deposited in donor's bank account, (iv) there was no evidence that cash received in financial year 2010-11 from sale of flats travelled upto financial year 2017-18. Ultimately, the AO treated entire submission of assessee as ethereal and applying the decision of Hon'ble Supreme Court in *CIT Vs. Durga Prasad More (SC) 82 ITR 540, Sumati Dayal Vs. CIT (SC) 214 ITR 801 and CIT Vs. P Mohankala (SC) 291 ITR 278* made addition.

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

"3.9.2. 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. The appellant during assessment proceedings as well as during appellate proceedings has contended that he had received gift of Rs. 44,00,000/- through RTGS from Smt. Mandeep Kaur Bhatia (donor), wife of elder brother shri Arvind Singh Bhatia in AY 2018-19. The gift has been received after the search vide gift deed dated 31.03.2018. I find that gift was given in following manner:

Date	Amount (In Rs.)	Mode	Remarks
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13.03.2018	10,00,000/-	RTGS, Bank of India, Saving Bank Account No.951920110000359	Cash deposits have been made and out of balance available, gift was given through RTGS
15.03.2018	10,00,000/-		
19.03.2018	10,00,000/-		
26.03.2018	14,00,000/-		

The appellant has also claimed that the said amounts have been earned by the donor out of interest income and cash in hand as on date of search. In support appellant has filed copies of cash flow statement/details of advance given to various persons/interest earned on advance amount alongwith copies of return of income and computation sheet of the donor. The appellant has also filed details of sales of flats of Pune by the donor in support of the claim that Rs.28,00,000/- was received in cash from the above sale.

3.9.3. After considering claim of the appellant and findings of the Ld. AO, I find that the appellant alongwith her husband Shri Arvind Singh Bhatia has sold following flats in Pune :-

Details of property sold	Date	Sale consideration
Flat no 902, A-7, Kumar Primevera, Vadgaon Sheri, Pune	17.01.2012	4060000
Flat no 703, A-7, Kumar Primevera, Vadgaon Sheri, Pune	28.10.2010	3100000
Flat no 503, A-7, Kumar Primevera, Vadgaon Sheri, Pune	29.07.2010	3100000
Flat no 502, A-7, Kumar Primevera, Vadgaon Sheri, Pune	14.10.2010	3200000

Out of entire consideration, sum of Rs. 28,00,000/- was received in cash to the donor which has been acknowledged by the Ld. AO in para 7.3 of the assessment order of the donor. The fact that the donor sold flats in Pune, is also find place in the assessment order passed u/s.147/144 of the Act for A.Y.2009-10 on 27.07.2016, as submitted in the case of donor, wherein the then AO rejected the claim of deduction u/s.54 of the Act and stated that the money so received was used for some other purposes. The consideration received by donor in cash was given as petty loans of ranging between Rs.15,000/- to Rs.25,000/- to labours working for loading and unloading railway racks and others. I further find that the loans were given for a short period of time and were subsequently repaid with interest. On perusal of details of donor as place on record by the appellant, it is found that the donor during FY 2015-16 gave fresh loan to 105 different people amounting to Rs. 67,28,807/- and has earned interest of Rs. 2,97,100/-. The donor during FY 2016-17 gave fresh loan to 57 different individuals and earned interest of Rs. 5,42,743/-. Out of these loans majority of loans were repaid back. Likewise in FY 2017-18 the donor gave fresh loan to 105 individuals and has earned interest of Rs. 2,04,602/-. The donor has also shown interest income under the head "income from business/profession". The appellant has also filed copies of cash flow statement and balance sheet for FY 2016-17 and FY 2017-18 of the donor which is being reproduced hereunder:-

Balance Sheet as of 31.03.2017

Liabilities		Assets	
Particulars	Amount	Particulars	Amount
Capital account		Fixed assets	
Agricultural income	7500	Land at gram Jalna	156125
Mandeep Kaur Bhatia		Land at gram Singot	308475

	7342935.80	Current Assets	
		Loans & advances	5399765
		Cash in hand	1485288.90
		Bank account	781.90
Total	7350435.80	Total	7350435.80

Cash flow summary 01.04.2016 to 31.03.2017

Inflow		Outflow	
Particulars	Amount	Particulars	Amount
Capital account		Capital account	
Agricultural income	7500	Mandeep Kaur Bhatia	173350
Current assets		Current assets	
Loans & advances	1102370	Loans & advances	525150
Indirect income		Indirect Expenses	
Interest income	542524	Other Exp	28800
		Salary & wages	108000
Total	1652394	Total	835300

Balance Sheet as of 31.03.2018

Liabilities		Assets	
Particulars	Amount	Particulars	Amount
Capital account		Fixed assets	
Agricultural income	7500	Land at gram Jalna	156125
Mandeep Kaur Bhatia	2694451.80	Land at gram Singot	308475
Profit & Loss A/c		Current Assets	
Current period	64088.20	Loans & advances	201185
		Cash in hand	2052500.90
		Bank account	47754.10
Total	2766040	Total	2766040

Cash flow summary 01.04.2017 to 31.03.2018

Inflow		Outflow	
Particulars	Amount	Particulars	Amount
Capital account		Capital account	
Mandeep Kaur Bhatia	72716	Mandeep Kaur Bhatia	321200
Current assets		Current assets	
Loans & advances	5198580	Loans & advances	4400000
Indirect income		Indirect Expenses	
Interest income	205717	Bank charges	4828.80
		Other Exp	28800
		Salary & wages	108000
Total	5477013	Total	4862828.80

From the above it is evident that the loans and advances were reduced to Rs.2,01,185/- in the year under consideration from Rs.53,99,765/- of immediate preceding year which shows recovery of loans from borrowers. Capital balance amounting to Rs.73,50,435/- of earlier year is reduced to Rs.27,66,040/- in the year under consideration which shows the withdrawal of substantial amount from capital account. The donor during the year under consideration has received sum of Rs.51,98,580/- from borrowers and has also earned interest income in cash of Rs. 2,05,717/-. Therefore, there was sufficient cash in hand with the donor to get the same deposited in her bank account and giving subsequently gift of Rs. 44,00,000/- to the appellant. The evidence filed by appellant were also filed before Ld AO, however, the Ld. AO has treated them as self serving documents. The Ld AO here has failed to point out any defect in the balance sheet and

cash flow statement furnished by the appellant. Mere making a plain statement without pointing any adversity is of no use, the Ld. AO ought to have made contrary findings which could prove claim of the appellant incorrect, which is completely missing here. The Ld. AO has also alleged that the appellant failed to furnish any evidence substantiating how the cash received in FY 2010-11 travelled upto FY 2017-18. Here, it becomes important to mention that the donor had advanced petty loans to more than 250 different individuals in different years and loans with interest were repaid back to by these individual year after year and thus, the cash received on sale of flats accompanying with interest earned over the years travelled to the year under consideration. Accordingly, source of deposit of cash in the bank account is found explained out of which the donor gifted sum of Rs.44,00,000/- to the appellant, her brother-in-law. Considering the above discussion and material on record, the appellant successfully established the genuineness of gift. The identity and source of income of the donor have been established. Further, the gift has been given out of balances in the bank account of the donor. Thus, the addition on this account is not found sustainable.

3.9.4. *In view of the above discussion, the Ld. AO was not justified in not considering evidences filed by the appellant and also in treating the same as self serving. Thus, addition made by the Ld. AO amounting to **Rs. 44,00,000/-** is **deleted**. Therefore, appeal on this round is **allowed**."*

51. Before us, Ld. Representatives of both sides made their respective contentions for and against the addition and drew our attention to the documents filed in Paper-Book. While Ld. DR for revenue strongly supported the order of AO, Ld. AR for assessee supported the action of CIT(A).

52. We have considered rival submissions of both sides and perused the orders passed by lower-authorities. After a careful consideration, we find that the assessee has received gift from wife of his brother. The gift has been received through RTGS. There is a declaration of gift duly signed by donor on stamp paper at Page 704-705 of Paper-Book. The donor has basically sold flats at Pune and received consideration in cash, the details of properties sold and considerations received are noted in CIT(A)'s order. The sale proceed was given to different persons as interest-bearing loans. The donor has shown interest income to department in the returns filed which the department has assessed. The donor claims to have utilised the recoveries made from debtors for making cash deposit in her bank a/c. Thus, a complete chain of transactions is available with the donor to explain the source of cash deposit in her bank a/c and thereafter making gift to assessee. It is further notable that the donor was also an income-tax

assessee with PAN: AIDPB1588K in the jurisdiction of same AO. Therefore, if the AO had any doubt on genuineness of transaction or with respect to the donor, the AO could very well make enquiries from the donor but there is no such exercise done by AO. The AO has merely acted on probabilities and human behaviour, etc. whereas the CIT(A) has taken into account complete facts, Balance-Sheets and Cash Flow Summaries of the donor and thereafter arrived at a conclusion to accept the genuineness of gift received by assessee from donor. We do not find any reason to make interference with the order passed by CIT(A). Consequently, the order of CIT(A) is upheld and the issue raised by revenue is rejected.

53. Resultantly, assessee's appeal for AY 2018-19 is partly allowed. All other appeals of assessee and revenue are dismissed.

Order pronounced in open court on 18.09.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक/ Dated : 18.09.2024

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