

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.3387/Mum/2023
(Assessment Year: 2011-12)

M/s Om Developers Mukund Niwas, Near Shwet Plaza Building, Viva Jangid Complex, Manvel Pada Road Virar (East) – 401 303 PAN : AAGFO2713A	vs	DCIT, Central Circle-1, Thane Asher IT Park, 6 th Floor, Road No.167-Z, Wagle Industrial Estate, Thane (West) – 400 604
APPELLANT		RESPONDENT

I.T.A No.3388/Mum/2023	-	A.Y. 2011-12
I.T.A No.3389/Mum/2023	-	A.Y. 2012-13
I.T.A No.3390/Mum/2023	-	A.Y. 2013-14
I.T.A No.3391/Mum/2023	-	A.Y. 2014-15
I.T.A No.3392/Mum/2023	-	A.Y. 2015-16
I.T.A No.3393/Mum/2023	-	A.Y. 2016-17
I.T.A No.3394/Mum/2023	-	A.Y. 2017-18

Mr. Pramod Mukund Dalvi Mukund Niwas, Near Shwet Plaza Building, Viva Jangid Complex, Manvel Pada, Virar (East) – 401 303 PAN : AIPPD9565L	vs	DCIT, Central Circle-1, Thane Asher IT Park, 6 th Floor, Road No.167-Z, Wagle Industrial Estate, Thane (West) – 400 604
APPELLANT		RESPONDENT

I.T.A No.3380/Mum/2023	-	A.Y. 2011-12
I.T.A No.3381/Mum/2023	-	A.Y. 2012-13
I.T.A No.3382/Mum/2023	-	A.Y. 2013-14

I.T.A No.3383/Mum/2023	-	A.Y. 2014-15
I.T.A No.3384/Mum/2023	-	A.Y. 2015-16
I.T.A No.3385/Mum/2023	-	A.Y. 2016-17
I.T.A No.3386/Mum/2023	-	A.Y. 2017-18

Mrs. Sujata Pramod Dalvi Mukund Niwas, Near Shwet Plaza Building, Viva Jangid Complex, Manvel Pada, Virar (East) – 401 303 PAN : AIQPD4229C	vs	DCIT, Central Circle-1, Thane Asher IT Park, 6 th Floor, Road No.167-Z, Wagle Industrial Estate, Thane (West) – 400 604
APPELLANT		RESPONDENT

**I.T.A 3521/Mum/2023
(Assessment Year: 2017-18)**

DCIT, Central Circle-1, Thane Asher IT Park, 6 th Floor, Road No.167-Z, Wagle Industrial Estate, Thane (West) – 400 604	vs	Mrs. Sujata Pramod Dalvi Mukund Niwas, Near Shwet Plaza Building, Viva Jangid Complex, Manvel Pada, Virar (East) – 401 303 PAN: AIQPD4229C
APPELLANT		RESPONDENT

Assessee by : Mr. Mani Jain & Prateek Jain
Respondent by : Smt.Madhu Malti Ghosh (CIT DR)&
Shri Yogendra T. Wakare (Sr.DR)

Date of hearing : 07/08/2024
Date of pronouncement : 22/10/2024

ORDER

PER BENCH:

This bunch of 16 appeals, 7 each by two assesses, one by the firm and one by the department were filed against the independent orders of the Commissioner

of Income-tax (Appeals), Pune-11 [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Years mentioned above, all dated 31.07.2024. The impugned orders were emanated from the order of the Deputy Commissioner of Income-tax, Central Circle-1, Thane (in short, 'the A.O.') passed under section 143(3) of the Act date of order 24/12/2018.

2. The grounds taken by the assesses in their respective appeals are almost common; but for the figures; therefore, grounds of appeal for the initial assessment year 2011-12, ITA No. 3380 & 3387/Mum/2023 and in ITA No 3388 & 3390/Mum/2023 are taken as lead cases and the grounds are reproduced below, in each assessee's case: -

Shri Pramod Mukund Dalvi, ITA No 3388/Mum/2023 (AY 2011-12)

"Grounds of Appeal (attached to Form No. 36) Before IT AT, Mumbai Bench.

1. *The Assessing Officer has passed the order after obtaining approval u/s 153D dated 21/12/2018 which is mechanically granted as can be seen from the above said additions made more than once & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.*

Without prejudice to the above and alternatively,

2. *In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs.1,00,000/- by way of alleged unexplained expenditure u/s 69 r.w.s 115BBE without making any inquiry u/s 133(6) and u/s 131 and by overlooking the fact that the same amount was never received by the Appellant & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.*

3. *In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs.9,00,000/- by way of alleged unexplained expenditure u/s 69C r.w.s 115BBE the same does not belong to the Appellant & the CIT[A] erred in*

dismissing this ground without appreciating detailed submissions made from time to time.

4. In the facts and circumstances of the case and in law, the assessing officer erred in adding Rs 4.47,700/- u/s 69A r.w.s 115BBE by way of unaccounted income even though the same was already offered u/s 44AD in the returned filed there by making multiple addition of same receipt & the CIT(A) erred in dismissing this ground without appreciating detailed submissions made from time to time.

5. In the facts and circumstances of the case and in law, the CIT(A) erred in passing the appellate order by overlooking the order of Pune 1TAT in which his order in the case of Shri Manoj MadanlalChhajed Vs AC1T, Central Circle-1, Pune [ITA no (IT(SS)A Nos.91/PUN/2022] was completely overturned by holding that dumb document cannot, be basis of addition.

6. In the facts and circumstances of the case and in law, the Assessing Officer erred in levying interest u/s 234A, 234B and 234C and also initiating penalty u/s 271(1)(c) even though no income is concealed & CIT(A) erred in confirming the same.”

2.1. Shri Pramod Mukund Dalvi, ITA No 3390/Mum/2023 (AY 2013-14)

“Grounds of Appeal (attached to Form No. 36) Before ITAT, Mumbai Bench.

1. The Assessing Officer has passed the order after obtaining approval u/s 153D dated 21/12/2018 which is mechanically granted as can be seen from the above said additions made more than once & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.

Without prejudice to the above and alternatively,

2. In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs. 2,26,335/-u/s 69A r.w.s 115BBE by way of alleged unaccounted income even though the net profit @ 8% was already offered on this turnover u/s 44AD and thereby making double addition of the same and adding 108% of the receipt as income & the CIT[A] erred in confirming the same as business income fully without appreciating detailed submissions made from time to time.

3. In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs. 1,61,300/-u/s 69A r.w.s 115BBE by way of alleged unaccounted income even though the net profit (a) 8% was already offered on this turnover u/s 44AD and thereby making double addition of the same and adding 108% of the receipt as income & the CIT[A] erred in confirming the same as business income fully without appreciating detailed submissions made from time to time.

4. In the facts and circumstances of the case and in law, the assessing officer erred in adding Rs 23,00,000/- u/s 69 r.w.s 115BBE by way of unexplained investment even though the same was

purchased from the disclosed source of the Appellant & the CITJA] erred in dismissing this ground without appreciating detailed submissions made from time to time.

5. In the facts and circumstances of the case and in law, the assessing officer erred in adding Rs 23,00,000/- u/s 69 r.w.s 115BBE by way of unexplained investment even though the same was purchased from the disclosed source of the Appellant & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.

6. In the facts and circumstances of the case and in law, the assessing officer erred in adding Rs 27,67,200/- u/s 69A r.w.s 115BBE by way of unaccounted income even though the same was already offered u/s 44AD in the returned filed there by making multiple addition of same receipt & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.”

7. In the facts and circumstances of the case and in law, the CIT(A) erred in passing the appellate order by overlooking the order of Pune ITAT in which his order in the case of Shri Manoj Madanlal Chhajed Vs ACIT, Central Circle-1, Pune [1TA no (IT(SS)A Nos.91/PUN/2022] was completely overturned by holding that dumb document cannot be basis of addition.

8. In the facts and circumstances of the case and in law, the Assessing Officer erred in levying interest u/s 234A, 234B and 234C and also initiating penalty u/s 271(l)(c) even though no income is concealed & CIT(A) erred in confirming the same.

General: -

- *The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- *This appeal is filed in time and may please be allowed in full.*
- *A Detailed paper book along with case laws will be submitted at the time of hearing.*

2.2. Mrs. Sujata Pramod Dalvi, ITA No. 3380/Mum/2023 (AY 2011-12)

“1. The Assessing Officer has passed the order after obtaining approval u/s 153D dated 21/12/2018 which is mechanically granted as can be seen from the above said additions made more than once & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.

2. In the facts and circumstances of the case and in law. the Assessing Officer erred in holding that the documents found and seized from Shri. Pramod Dalvi during the search on him on 15/12/2016 as documents belonging to Appellant even though the said documents just pertained to the Appellant and did not belong to her & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.

3. In the facts and circumstances of the case and in law. the Assessing Officer erred in wrongly recording satisfaction u/s 153C even though no incriminating documents were found from the premises of Shri. Pramod Dalvi. which ought to have belonged to the Appellant. In the facts and circumstances of the case and in law. the Assessing Officer erred in passing order u/s 143(3) r.w.s 153C after obtaining approval u/s 153D which is mechanically granted as can be seen from

the additions made more than once as mentioned in ground no 4 to 5 below & the CIT [A] erred in dismissing this ground without appreciating detailed submissions made from time to time.

Without prejudice to the above and alternatively,

4. *In the facts and circumstances of the case and in law. the CIT [A] erred in confirming Rs 1.00,500/- being 30% out of addition made by the Assessing Officer amounting to Rs. 3,35,000/- by way of alleged unexplained income u/s 69A r.w.s 115BBE even though the net profit 'IT 8% was already offered on this turnover u/s 44AD and thereby making double addition of the same and adding 108% of the receipt as income.*

5. *In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs. 5,35,000 u/s 69 r.w.s 115BBE by way of unexplained investment even though the same was purchased from the disclosed source of the Appellant & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.*

6. *In the facts and circumstances of the case and in law. The CIT(A) erred in passing the appellate order by overlooking the order of Pune ITAT in which his order in the case of Shri Manoj Madanlal Chhajed Vs ACIT, Central Circle- 1. Pune [ITA no (IT(SS)A Nos. 91 /PUN/2022] was completely overturned by holding that dumb document cannot be basis of addition.*

7. *In the facts and circumstances of the case and in law. The Assessing Officer erred in levying interest n/s 234A. 234B and 234C and also initiating penalty u/s 271(1)(c) even though no income is concealed & C1T(A) erred in confirming the same."*

2.3.M/s Om Developers ITA No 3387/Mum/2023 (AY 2011-12)

"1. The Assessing Officer has passed the order after obtaining approval u/s 153D dated 21/12/2018 which is mechanically granted as can be seen from the above said additions made more than once & the C1T[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.

Without prejudice to the above and alternatively,

2. *In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs. 71,41,345 u/s 69 r.w.s 115BBE by way of unexplained investment without having any proof of payment made by the Appellant and even though the same was only a proposal which was never executed by payments & the CIT[A] erred in dismissing this ground without appreciating detailed submissions made from time to time.*

3. *In the facts and circumstances of the case and in law, the CIT(A) erred in passing the appellate order by overlooking the order of Pune 1TAT in which his order in the case of Shri Manoj MadanlalChhajed Vs ACIT, Central Circle-1, Pune [ITA no (IT(SS)A Nos.91/PUN/2022] was completely overturned by holding that dumb document cannot be basis of addition.*

4. *In the facts and circumstances of the case and in law, the Assessing Officer erred in levying interest u/s 234A, 234B and 234C and also initiating penalty u/s 271(l)(c) even though no income is concealed & CIT(A) erred in confirming the same."*

2.4. In addition to above grounds, the assessee also filed the following additional grounds of appeal: -

"Without prejudice to the grounds of appeals appended to the appeal memo the appellant seeks to raise the following additional legal ground of appeal: -

1. *On the facts and circumstance in the appellant's case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in passing the order u/s 144 r.w.s 153A r.w.s 153C of the Act which is bad in law, illegal and/or otherwise void for the want of jurisdiction and therefore the order passed by the Ld. AO is liable to be quashed.*
2. *The appellant prays your honour to admit the additional ground of appeal and adjudicate the same on merits as the issue involved is purely-legal in nature."*

3. The Revenue, in its appeal has taken the following grounds of appeal: -

ITA No: - 3521/Mum/2023, AY 2017-2018

- i. *"On the facts and in the circumstances of the ease and in law, the Ld, CIT(A) erred in restricting the addition 30% made on account of undisclosed sale consideration without appreciating the fact, that the assessee failed to submit corroborative, cogent, and reliable evidence to establish that she had incurred expenses out. of unaccounted sale consideration.;*
- ii. *On the facts and in the circumstances of (the case and in law)the Ld. CIT(A) erred in deleting the addition of Rs. 1,08,000/- on account d unexplained money U/s 69A holding that the cash deposits was made out of undisclosed cash receipts of Rs.94.95,000/- without appreciating the fact that the assessee failed to submit corroborative cogent and reliable evidences to establish that the said cash deposit was made out of said undisclosed cash receipts."*

4. Brief facts of the case are that a search and seizure operation U/s 132 of the Act was conducted on the assessee, Mr PramodMukundDalvidated 15.12.2016, wherein his residential premises was covered. Subsequently notices under section 153A of the Act is issued to assessee on dated 10-11-2017.In response to the notice U/s 153A the return of income on dated 30/12/2017 for AY 2011-12 to 2015-16 and on dated 30/03/2018 for AY 2016- 17 were filed. The assessment was completed after a complete hearing U/s 143(3)r.w.s. 153A of the Act. During the search incriminating documentswere found and seized related to wife of Mr. Pramod Dalvi,Mrs. Sujata Pramod Dalvi. Mr Pramod Dalvi admitted during the post search investigation that the documents belong to the proprietorship concern of his wifeandM/s Om Developers. Subsequently, after recording satisfaction proceeding under section 153Cof the Act were issued to the Mrs Sujata Dalvi and the returns were filed in persuasion of notice under section 153Cof the Act for AY 2011-12 to 2016-17. Both Mrs. Sujata Dalvi and Mr Pramod Dalvi in relation husband & wife and filed the return under provision of Section 44AD of the Act. The additions were made for Mr. Pramod Dalvi, Mrs. Sujata Dalvi and M/s Om Builders in different heads. The aggrieved assessee filed an appeal before that learned CIT(A). The learned CIT(A) partly allowed the appeal of the assessee. Being aggrieved on the appellate orders the assessee filed appeals before us and related to Mrs. Sujata Dalvi the revenue has filed appeal before us for assessment year 2017- 18.Here the yearwise turnover of Mrs. Sujata Dalvi and Mr Pramod Dalvi are reproduced as below: -

PRAMOD DALVI

A.Y.	Turnover as per 44 AD	Profit
2011-12	24,16,480	3,87,535
2012-13	57,52,095	4,81,979
2013-14	48,63,701	4,73,811
2014-15	57,98,630	4,71,763
2015-16	16,52,300	4,58,763
2016-17	28,74,500	4,87,695
2017-18	41,76,850	5,87,435
	2,75,34,556	33,48,980

SUJATA DALVI

A.Y.	Turnover as per 44 AD	Profit
2011-12	9,74,658	3,02,046
2012-13	25,09,976	4,01,691
2013-14	70,13,500	6,24,202
2014-15	39,74,563	4,15,263
2015-16	56,54,000	7,00,863
2016-17	32,74,500	4,97,963
2017-18	39,76,800	4,99,768
	2,73,77,997	34,41,796

MRS. SUJATA DALVI & M/S OM DEVELOPERS

5. The Ld.AR for the assessee submitted that the issue relates to validity of the assessment. The Ld.AR submitted that the date of issue of notice u/s 153C is 18.09.2018 and therefore, the assesment for AY 2011-12 and 2012-13 are without jurisdiction. The Ld.AR submitted that search action was conducted on Mr. Pramod Dalvi, Husband of the appellant on 15.12.2016. Based on the incriminating material found at his premises, a satisfaction note was recorded on 11.09.2018 and notice u/s 153C dated 18.09.2018 was issued in the case of the appellant. The said note is reproduced by CIT(A) on page nos. 31 of the appellate

order. The Ld.AR emphasized that as per settled position, assessment years for the purpose of 153C shall be considered from the date of satisfaction note/issue of notice u/s 153C and not from the date of search action in case where the AO is the same. This has been settled by decision of Hon'ble **Delhi High Court** in the case of **CIT-7 vsRRJ Securities Ltd. reported in 380 ITR 612 (DEL)**. Held as under.

"18. It, plainly, follows that the recording of a satisfaction that the assets/documents seized belong to a person other than the person searched is necessarily the first step towards initiation of proceedings under Section 153C of the Act. In the case where the AO of the searched person as well as the other person is one and the same, the date on which such satisfaction is recorded would be the date on which the AO assumes possession of the seized assets/documents in his capacity as an AO of the person other than the one searched.

19. *The Allahabad High Court in the case of CIT v. Gopi Apartments [2014] 365 ITR 411/46 taxmann.com 280 has expressed a similar view in the following words: —*

"25. A bare perusal of the provision contained in Section 153C of the I.T. Act leaves no doubt that, as is provided under Section 158BD, where the Assessing Officer, while proceeding under Section 153A against a person who has been subjected to search and seizure under Section 132(1) or has been proceeded under Section 132A, is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

Thus, there are two stages:

The first stage comprises of a search and seizure operation under Section 132 or proceeding under Section 132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' under Section 153A. At the time of

initiation of such proceedings against the 'searched person' or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

The second stage commences from the recording of such satisfaction by the Assessing Officer of the 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under Section 153C read with section 153A against such 'other person'.

The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' under Section 153C.

26. Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory."

20. *Mention may also be made to the decision of the Madhya Pradesh High Court in CITv. Mechmen 11-C [2015] 60 taxmann.com 484/233 Taxman 540. In that case, the Court had explained that the fact that incidentally the AO is common at both stages would not extricate him from recording satisfaction at the respective stages. It was explained that since the satisfaction of the AO of a searched person that assets/documents seized belong to some other person is sine qua non to commencing proceedings under Section 153C of the Act in respect of such other person, the AO could not assume jurisdiction and transmit the items to another file concerning the person (other than the one searched) pending before him, before being satisfied that the seized assets/documents belonged to the other person."*

The Id. AR argued that the date of satisfaction is 11.09.2018 and accordingly, the six years for the purpose of issue of notice u/s 153C shall be six assessment year preceding such year i.e. AY 2013-14 to 2018-19. Therefore, the notice issued for AY 2011-12 and AY 2012-13 are time barred and without jurisdiction.

6. We heard the submission of rival parties and considered the documents in record. The Id. AR in argument invited our attention in the appeal of Smt. Sujata Pramod Dalvi in ITA Nos 3380 to 3381/Mum/2023 for the assessment years 2011-12 & AY 12-13 and appeal of M/s Om Developers ITA No. 3387/Mum/2023 for AY 11-12. The Id. AR therefore, submitted that the impugned assessment orders for AY 11-12 & 12-13 of Smt. Sujata Pramod Dalvi & M/s Om Developers are without jurisdiction and deserves to be quashed. Following the order of **RRJ Securities Ltd** (supra) we direct that the impugned assessment order the AY 11-12 & 12-13 are held to be invalid. Therefore, the notice issued for AY 2011-12 and 2012-13 are time barred and without jurisdiction. Then the grounds on merit, become infructuous. The Id. DR argued but was unable place any contrary judgment against the submission of the Id. AR.

6.1. In the result, appeal of the assessee ITA No. **3380-3381/Mum/2023** and **3387/Mum/2023** are allowed.

7. In addition to the above, the Id. AR submitted that the assessment order passed u/s 143(3) for AY 2017-18 in the case of Sujata Dalvi is also without jurisdiction since as per section 153C r.w.s 153A, the normal assessment are to be abated and assessment shall be completed as per the provisions of section 153C. For this proposition, Id. AR derived support from the decision of the coordinate

bench of ITAT-Delhi in **BNB Investment & Properties vs DCIT CC-1 [2018] 68 ITR (Trib) 567 / 2018 (8) TMI 597 - ITAT DELHI**. The observation of the bench is as follows.

“8. It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013. The A.O. passed the assessment order under section 153B(1)(b) of the I.T. Act, considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which assessments or re-assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the 06 assessment years under section 153C of I.T. Act in the case of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the “other person” would be the same six assessment year immediately preceding the year of search is prospective in nature. The issue has been dealt in detail by the Hon’ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT,

C.C.32, New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of the assessee and at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.”

We respectfully follow the order of the coordinate bench of ITAT-Delhi in **BNB Investment & Properties**(supra). The Id. DR argued and fully relied on the impugned appeal order. Therefore, the notice issued for AY 2017-18 on abated assessment proceeding is without jurisdiction. The assessment U/s 143(3) of the Act is bad in law.

7.1. In the result, appeal of the assessee **ITA No. 3386/Mum/2023** are allowed.

8. Profit on money receipts

8.1. The Ld.AR argued that the assessee, Smt. Sujata Dalvi is engaged in the business of development of real estate. Materials containing the details of receipts of on-money in cash on sale of flats and expenditure incurred in cash on construction activity was found and seized during the course of search. The AO made 100% addition of the on-money receipts whereas the CIT(A) considered the expenditure incurred for the construction and confirmed profit @ 30% on the said on money receipts as assessee's income by making comparison with the profits shown by various listed companies. Before us, the Id.AR stated that the profit

estimated is too high, since the assessee is engaged in making low end project. Also, the assessee's offer @ 8% on the project receipt has been accepted by the AO. The Id.AR respectfully relies upon the decision of the coordinate bench of **ITAT-Mumbai in Rubberwala Housing & Infrastructure Ltd. Vs. DCIT, Centralin ITA No. 3448/Mum/2023** date of pronouncement **07.06.2024**.

"6.3 Similar view was expressed by Hon'ble Madras High Court in the case of CIT v. K. S. M Guruswamy Nadar and Sons, [1984] 149 ITR 127. In the decided case, it was held that when there are two separate additions viz., one on account of suppression of profit and another on account of cash credit, then it is open to the assessee to explain that, the suppressed profits had been brought in as cash credits and has to be telescoped into the other. 6.4 Gainful reference may also be made to the decision of the Hon'ble jurisdictional Bombay High Court in the case of CIT vs J.J. Gandhi (39 CTR 127). In this judgment also, the Hon'ble High Court had approved the theory of telescoping and held that it could be applied in cases where additions in relation to unexplained money/investment are sought to be made in the hands of the assessee. The Hon'ble Court explained that if an addition towards undisclosed income was made and the AO also seeks to make certain addition in relation to unexplained investment then, it can be treated by the assessee that the unexplained investment is sourced out of the undisclosed income already taxed. 6.5 Having regard to this settled legal position, we now revert to the facts of the case. It is not in dispute that, the assessee had declared additional income of Rs.20.79 crores by way of profits embedded in on-monies in the returns of income filed u/s 153A of the Act for AYs 2015-16 to 2021-22. Such additional income represented the intangible addition / secret profit, which applying the judicially approved principle of telescoping, could be set off against any unexplained money/investment found by the Revenue. According to us therefore, the Ld. CIT(A) had rightly observed that the profits from on-monies was inter alia represented by way of unexplained cash of Rs.4,54,13,432/- found in the course of search and therefore the latter sum cannot be considered again for the purposes of taxation as it would amount to double taxation. We thus uphold the Ld. CIT(A)'s action of allowing the telescoping benefit and set-off of the amount of intangible profits aggregating of Rs.20.79 crores

towards the cash found of Rs.4,54,13,432/-. Accordingly, this ground of the Revenue stands dismissed."

Respectfully following the order, herein @8% has been confirmed on on-money receipts. Further, the comparison made with the listed companies is not feasible and incorrect. The Id. AR prayed that profit @8% may kindly be confirmed.

The assessee filed the return U/s 44AD of the Act and declared NP @8% as per the provision. Considering the above submission and respectfully following the **Rubberwala Housing & Infrastructure Ltd.**(supra) the profit @8% is conformed on money transactions. The Id. DR argued and relied on the assessment order.

8.2. In the result, appeal of the assessee grounds no. 4-7 in **ITA No.3382/Mum/2023** for AY 2013-14 are partly allowed and the same order is *mutatis mutandis* applicable to **grounds no.4-7** in **ITA No. 3383 to 3385/Mum/2023** for AY 2014-15 to 2016-17 and follows accordingly.

9. Unexplained investment u/s 69 of Rs. 50,000/-

9.1. The Id. AO has added the amount of investment made in the vehicle which is not accounted in the books. In this regard, the Id. AR requested for telescoping of the above payment against the profit estimated on account of on money as discussed earlier. We considered the argument of the Id. DR. We follow the order of coordinate bench of Mumbai as stated above. We direct that the addition is confirmed @8% on Rs. 50,000/-.

9.2. In the result appeal of the assessee **ground no. 8** in **ITA No. 3382/Mum/2023** for AY 2013-14 are partly allowed

10. In assessee's Ground nos. 1,2,3 & 9 in **ITA No. 3382/Mum/2023** for AY 2013-14; ground nos. 1,2,3 & 8 in **ITA No. 3383/Mum/2023** for A.Y. 2014-15; ground nos. 1,2,3 & 5 in **ITA No. 3384/Mum/2023** for A.Y. 2015-16 and ground nos. 1,2,3 & 8 in **ITA No. 3385/Mum/2023** for A.Y. 2016-17 are not pressed before us and are dismissed.

Mr. PRAMOD DALVI

11. Addition on account of cash deposit

11.1. In argument the Id.AR submitted that the assessee is a Civil Contractor and has received certain income in the mode of cash. The said cash has been deposited in the bank account in various years involved and the said turnover has been included while offering the profit as per section 44AD of the Act. In the assessment order, the Ld.AO has contended that the assessee has not submitted the books of account to show that the cash deposit is part of the turnover adopted for section 44AD of the Act. The said action was confirmed by the Id. CIT(A). In this regard, it is submitted that the assessee has shown turnover for each of the year involved which is much higher than the cash deposits made in the bank account alleged to be unexplained.

The Id. AR further argued that as per the provisions of section 44AD, the assessee is not required to maintain the books of account and the explanation regarding the cash deposit requires to be accepted. It is not the case of the Id. AO that the cash deposit relates to any receipt of activity other than the business. Also, there are no findings of the search action that the assessee is having any other source of income. Therefore, the cash deposits cannot be treated as unexplained investment u/s 69A. In this regard, respectfully the reliance is placed on the decision of Hon'ble **High Court of Punjab and Haryana, Commissioner of Income-**

tax-IIv.Surinder Pal Anand, [2010] 192 Taxman 264 (Punjab & Haryana). The observation is as follows: -

“8. Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax at the rate of 8 per cent of the gross receipt itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had no nexus with the gross receipts. The stand of the assessee before the Commissioner of Income-tax (Appeals) and the ITAT that the said amount of Rs. 14,95,300 was on account of business receipts had been accepted. Learned counsel for the appellant with reference to any material on record, could not show that the cash deposits amounting to Rs. 14,95,300 were unexplained or undisclosed income of the assessee.

9. In view of the above position, we are unable to hold that any substantial question of law arises in this appeal.

10. The appeal is dismissed.”

The Ld.AR, thus pleaded that the addition made on account of unexplained cash deposit is incorrect and deserves to be deleted.

11.2. The Id. DR argued and relied on the assessment order. But unable to submit any contrary judgment against the submission of the Id. AR.

11.3. We respectfully follow the order of the **Surinder Pal Anand**(supra). The assessee filed the return as per provision of Section 44AD of the Act. The deposit is much lesser than the turnover declared by the assessee. We direct that the addition on account of the cash deposit amount of Rs. 4,47,000/- is quashed. So, the ground of the assessee is succeeded.

11.4. In the result, **ground no. 4** in **ITA No. 3388/Mum/2023** for AY 2011-12 is allowed and the same order is *mutatis mutandis* applicable to **ground no. 4** in **ITA Nos. 3389, 3391&3393/Mum/2023** AY 2012-13, 2014-15& 2016-17, **ground no. 6** in **ITA No. 3390/Mum/2023** for AY 2013-14, **Ground no. 2** in **ITA No.**

3392/Mum/2023 for AY 2015-16 and **Ground no. 5** in **ITA No. 3394/Mum/2023** for AY 2017-18 and follows accordingly.

12. Addition u/s 69 of Rs. 1,00,000/- on account of promissory deed.

12.1. the Ld.AR of the assessee submitted that during the search action, an unsigned promissory deed dated 03.12.2010 was found and seized containing details of purchase of property for a total consideration of Rs.20,00,000/- out of which Rs. 1,00,000/- was paid through cheque and remaining was unpaid. The copy of the said deed is placed at **APB page nos. 15-20** which contains the details of cheque number and Bank name. The Id. AO made addition of entire consideration holding the same as unexplained investment. The Id. CIT(A) restricted it to the actual amount paid i.e. Rs. 1,00,000/-. The Id.AR contended that the assessee has entered into a partnership firm in name and style 'M/s. Rama Developers'. In the capacity of partner, a promissory deed was entered into by the assessee and in the capacity of partner of M/s. Rama Developers and an amount of Rs.1,00,000/- was paid from the bank account of M/s. Rama Developers which is placed at **APB page nos. 27**. On perusal of the same, we found that bank details, cheque details and amount as per bank statement are matching with the details of payment mentioned in the promissory deed. Further, the assessee submitted the copy of the partnership deed of M/s. Rama Developers, placed at **APB page nos. 21-26** to substantiate the above fact.

12.2. The Id. DR argued and has not made any objection on the fact narrated by the Id. AR.

12.3. We considered the rival submission. The source of payment is duly established. The payment was not made from assessee's own account but from the account of firm. The addition Rs. 1,00,000/- is quashed. The ground of the assessee is allowed.

12.4. In the result, assessee's appeal **ground no-2** in **ITA No. 3388/Mum/2023** for AY 2011-12 is allowed.

13. Addition u/s 69C of Rs. 10,00,000/- on account of unexplained payments.

13.1. The Ld.AR argued that during the course of search, seized materials, a small chit containing details of cheque numbers and amounts were found. The said payments were added by the Id. AO as unexplained payment and confirmed by the Id. CIT(A). The copy of the said seized page is placed at **APB page no. 30**. The Ld.AR further submitted that first two noting in the seized material containing cheque no. 558139 of Rs.2,00,000/- and cheque no. 585175 of Rs. 3,00,000/- were never cleared from the bank account of the assessee. In this regard, the assessee has placed in the paper book the bank account for the entire period at **APB page nos. 35-36**. Further, with respect to the third payment noting containing cheque no. 869423 of Rs.4,00,000/-, it was submitted that the said cheque was cancelled, and the said noting is present in the cheque book folio details which is placed at **APB page no. 31**. Further, the last noting of BCCB bank, Vlrar branch of Rs. 1,00,000/-, it is submitted that again no such payment of cheque for Rs. 1,00,000/- is found to be noted as per the bank statement enclosed for the subsequent period as per **APB page nos. 35-36**. Therefore, the question of any addition doesn't arise. The Ld.AR further submitted that in any case the page contains details of certain cheque issued which cannot be treated as unexplained since the same are deemed to be through proper banking

channels. Further, as already discussed, the relevant credits in the bank account have been considered as part of turnover and profit has been offered u/s 44AD of the Act. No separate books of account are required to be maintained by the assessee and therefore, such payment cannot be treated as unexplained. Thus, it was prayed that the noting found in the seized material do not give rise to any unexplained payment and accordingly, the question of any addition doesn't arise.

13.2. The Id. DR argued and not able to place any contrary fact against submission of the Id. AR.

13.3. Considering the rival submission, the issue is entirely factual. We respectfully follow the order of **Surinder Pal Anand**(supra). The addition of the Id. AO is deleted.

13.4. In the result, assessee's appeal **ground no-3** in **ITA No. 3388/Mum/2023** for AY 2011-12 is allowed.

14. Addition u/s 69A of Rs. 1,41,282/- on account of car loan repayment being unexplained investment.

14.1. In the hearing before the bench, the Ld.AR submitted that during the search action, a letter from ICICI bank dated 27.02.2012 was found and seized which reflected outstanding loan instalment payment of a car loan of Rs.1,41,282/-, **APB page no. 43**. The Id. AO made the addition of the same stating that the source of the said payment has not been proved. CIT(A) confirmed the addition. The Ld.AR further submitted that the assessee has already sold the car on which loan was outstanding, way back in 10.06.2009 for which sale agreement was also seized during the search which is placed at **APB page nos. 45-46**. The English transaction of the said document is also placed at **APB page nos.144-145**. As per the said agreement, the remaining instalments were to be paid by the

buyer from the date of sale. Therefore, the instalment due on the car loan if paid, was to be made by the buyer and no such payment has been made by the assessee. Moreover, the letter of ICICI Bank relied upon by AO also shows outstanding balance and doesn't contain any details of payment made by the assessee. The Ld.AR submitted that in case the payment are considered to be made by the assessee through bank, the same is out of the turnover which has already been disclosed by the assessee and accepted by the Id. AO. Such turnover is much more than the alleged payment added by the AO as unexplained. Accordingly, the addition made by the AO needs to be deleted.

14.2. We considered the rival submissions. The payment is duly explained by the Id. AR. The addition itself unjustified. No objection was made by the Id. DR of fact narrated by the Id. DR. Accordingly. The addition amount to Rs. 141,282/- is quashed.

14.3. In the result, assessee's appeal **ground no-2** in **ITA No. 3389/Mum/2023** for AY 2012-13 is allowed.

15: Addition u/s 69 of Rs. 6,28,928/- on account of purchase of JCB machine being unexplained investment.

15.1. The Ld.AR argued that during the search action, an invoice with respect of purchase of JCB machine of Rs.22,28,928/- for the purpose of civil contractor business was found and seized. For the said machine, an amount of Rs. 16,00,000/- was sourced from the bank loan and remaining amount of Rs, 6,28,928/- was paid by the assessee from its internal accruals. AO made the addition of the same on the ground that the source of the payment of Rs. 6,28,928/- has not been proved. The Ld. CIT(A) confirmed the addition. The entire

payment of Rs. 6,28,928/- has been made through proper banking channels which is reflected in the bank statement placed at **APB page nos. 55**. The payment of Rs. 5,00,000/- on 18.10.2011 and Rs. 1,28,928/- on 02.11.2011 are related to the above transaction. The source of the above payments is business receipts credited in the bank statement which has been considered for the purpose of turnover u/s 44AD.

15.2. Considering the rival submission, the issue is entirely factual. We respectfully follow the order of **Surinder Pal Anand**(supra). The addition amount to Rs. 628,928/-is quashed.

15.3. In the result, assessee's appeal **ground no-3** in **ITA No. 3389/Mum/2023** for AY 2012-13 is allowed.

16: Addition u/s 69A.

16.1. In this connection, the Ld.AR submitted that during the search action, various noting containing receipts on account of civil contractor business was found and seized. The Id. AO made the addition of the same on the ground that the same is not accounted. The Id. CIT(A) though treated the same as business receipts; however, confirmed the addition holding that the same is not part of the turnover. It is submitted that the noting of contract receipts is already forming part of the turnover which is much more than what has been found noted in the seized material. There is no doubt that the same are business receipts which has been accepted by the Id. CIT(A). Once it is held to be business receipts, entire turnover cannot be treated as income and only profit on such receipts can be

taxed. In the assessee's case, profit @ 8% has been accepted by the AO. Accordingly, the Ld.AR pleaded that the same profit @8% may be taxed on the aforesaid receipts.

16.2. We consider the rival submission. The Id. CIT(A) had considered as business receipt. We direct the Id. AO to restricted addition subject to net profit ratio @8% only on amount to Rs. 387,665/- (Rs. 2,26,335/- + Rs. 1,61,300/-). Ld. DR argued and accepted the prayer of the Id. AR. The assessee's ground is partly allowed.

16.3. In the result, assessee's appeal **Ground no. 2 & 3** in **ITA No. 3390/Mum/2023** for AY 2013-14 & **ground no. 2** in **ITA No. 3391/Mum/2023** for AY 2014-15 are partly allowed.

17: Addition u/s 69 of Rs. 23,00,000- on account of unexplained payments made to Mr. Suhas Patil.

17.1. The Ld.AR for the assessee submitted that during the search action, certain payment vouchers containing noting of proposed payments to one Mr. Suhas Patil for the purchase of land was found and seized. The payment vouchers contained the noting of proposed payments in cheque amounting to Rs. 14 Lakhs and remaining Rs. 9 Lakhs was to be made in cash at **APB page Nos. 57-64**. In the assessment order, the Id. AO made the addition of the same on the ground that the source of the said payments is not explained. The Ld.CIT(A) confirmed the same. In this regard, the Ld.AR submitted that the above transactions were only proposed and under discussion and no such payments were ever made by the

assessee. The vouchers were prepared only for the purpose of discussion and land was never transferred to the assessee. In order to substantiate the same, the assessee submits that the cheque details mentioned in the vouchers never materialised. On perusal of the **APB page no. 58**, a payment voucher showing proposed payment of Rs, 1,00,000/- containing cheque no.100025 of Bassein Catholic Co-op bank ltd. dated 21.05.2012 is noted. The assessee enclosed the bank statement of proprietorship firm for the subsequent period, in the paper book, wherein no such cheque was ever cleared from the bank statement. Similarly, it is observed that at **APB page nos. 60**, a cheque payment of Rs, 10.50 Lakhs containing cheque no. 100003 of V.J.S. Bank dated 24.12.2012 is noted. In this regard, the assessee has enclosed the bank statement of proprietorship firm in V.J.S. Bank for the subsequent period at **APB page nos. 68** wherein the said cheque no. 100003, has been cleared for an amount of Rs. 5,00,000/- on 05.02.2013 in the name of one Mr. Rashmikant Vyas. This clearly shows that the noting on the voucher never materialised. Further, in the appellate order, CIT(A) has alleged that one of the cheques noted placed at **APB page nos. 64** amount of Rs. 2,50,000/- dated 27.07.2012 has been cleared in the bank statement on 27.09.2012. In this regard, it is submitted that the said payment has not been cleared in the name of Mr. Suhas Patil but has been made to one Mr. Pankaj Deshmukh. Therefore, the observation made by the CIT(A) is incorrect. This clearly shows that no cheque payment was ever made to Mr. Suhas Patil as noted in the seized material. The Ld.AR, therefore, submitted that once the cheque payments are found to be never made by the assessee, it can be safely assumed that the cash payment also was never made by the appellant to Mr. Suhas Patil. It is pertinent to note that the seized material must be read as a whole and

department cannot read the material to its own advantage. This contention is also supported by the fact that the land was never transferred to the appellant and is still standing in the name of the Mr. Suhas Patil and his family as per the latest 7/12 extract of the land records, a copy of which has been placed in the paper book.

17.2. The DR argued and not made any contrary submission against the fact of the case.

17.3. We heard rival submission & considered the documents available in record. The addition made by the Id. AO amount to Rs. 23,00,000/-is incorrect. The assessee claimed there is no transaction in cash or cheque. So, the addition is quashed.

17.4. In the result, the assessee's appeal **ground no. 4 &5** in **ITA No. 3390/Mum/2023** of AY 2013-14 is allowed.

18.Addition u/s 69 of Rs. 28,03,000/- on account of unexplained payments made to various persons.

18.1. The Ld.AR submitted that in ground there is typographical error Rs 23 lakh is read as Rs. 28,03.000/-. The Id. AR argued that during the search action, certain payment vouchers containing noting of actual/proposed payments to various persons on account of construction business of Mrs. Sujata Dalvi was found and seized. The said payment vouchers contained the noting of payments in cheque

amounting to Rs. 4.5 Lakhs and remaining Rs. 23.53 Lakhs was made in cash at **APB page nos. 69-79**. In the assessment order, the Ld.AO made the addition of the same on the ground that the source of the said payments is not explained. The Ld.CIT(A) confirmed the same. The Ld.AR in this regard submitted that the said vouchers relate to the construction activity in the proprietorship firm of wife of the assessee, who is the main partner of M/s. Om Developers. The Ld.AR explained the issue voucher wise as under: -

18.1.1. Voucher placed at page nos. 69 of Rs. 1,00,000/- contains proposed payment details to one Mr. Mahendra Sawant out of which Rs. 50,000/- is proposed in cheque and remaining in cash. It is submitted that no such cheque / cash was ever made to the said person which can be verified from the bank statement placed at **APB page no. 81-84**. The Id. AR submitted that without prejudice, if any, cash payment is confirmed, the same may be telescoped against the profit estimated on 'on money' in the case of Mrs. Sujata Dalvi.

18.1.2. Voucher placed at **APB page no. 71** contains noting of proposed payment of Rs.4 Lakhs to Mr. Ganesh Gordhole containing two cheque nos. 100015 and 100016 of Vasai Janta Bank. In this regard, it is submitted that the said payments were only proposed, and the cheques were never issued to the said person. This can be verified from the fact that the above cheque nos. have been debited to certain other person for different amounts in the bank statement of proprietorship firm of Mrs.SujataDalvi, M/s. Om Developers. The same is placed at **APB page no. 83 and 84**. Thus, it is submitted that no such payments were ever made. Moreover, the cheque series also prove that the payment vouchers belong to Mrs. Sujata Dalvi and not the appellant which was duly explained before the AO.

18.1.3. Voucher placed at **APB page nos. 73 -79** contains various noting of payment made in cash to various contractors for a project at Gauri Palace. It is submitted that the same have been incurred out of the on money received by the wife of the assessee Mrs. Sujata Dalvi and therefore, no separate addition is required.

18.2. The Id. DR argued and relied on the assessment order.

18.3. In perusal of fact the payments are not related to assessee but related to Mrs. Sujata Dalvi who is the different assessee. So, the addition in the hand's of assessee is uncalled for. The addition amount to Rs. 28,03,000/- is quashed.

18.4. In the result, the appeal of the assessee **ground no.5** in **ITA No. 3390/Mum/2023** in AY 2013-14 is allowed.

19: Addition u/s 69 of Rs. 52,50,000/- on account of unexplained payments made to D'Mello family.

19.1. The Id. AR argued that during the search action, certain payment vouchers containing noting of proposed payments in cheque to D'Mello Family members for the purpose of proposed purchase of a property were found and seized. In the assessment order, Id. AO made the addition of the same on the ground that the source of the said payments is not explained. The Id. CIT(A) confirmed the same.

19.2. In this regard, the Ld.AR submitted that they had issued 10 different cheques having cheque nos. 100031 to 100040 of Vasai Janata Sahakari Bank Ltd. to different members of the D'Mello Family for the proposed purchase of property on 12.03.2014. The seized vouchers containing the details of payment are placed at **APB page nos. 85-94**. It is submitted that all the payments were

proposed to be made through cheque and no cash was involved. On perusal of the voucher, it may be observed that it contains serial nos. from 1 to 10 and cheque numbers have been mentioned serially in the same order. However, in some of the vouchers, cheque number have remained to be mentioned though the same was issued to the party. However, due to disputes, the payment of the said cheques was stopped by issuing instructions to the bank and deal was cancelled. The stop cheque details can be found in the bank statement placed at **APB page nos. 95** wherein on dated 12.03.2014 to 14.03.2014, cheque return/stoppage details of 10 cheques are mentioned. This clearly shows that no payments were ever made for the above transaction. Also, the Id. AO has failed to show that the appellant has ownership of any such property. In view of the above, the Id.AR prayed that no addition is warranted on account of the above vouchers.

19.3. The Id. DR relied on orders of the revenue authority and has not made any objection on fact of the case.

19.3. We considered the rival submission. The addition was made without considering the fact of the case. Perusal of evidence it is clear that no payment was made by the assessee. The addition amount Rs. 52,50,000/- is quashed.

19.4. In the result, assessee's **ground no. 3** in **ITA No. 3391/Mum/2023** for AY 2014-15 is allowed.

20: Addition u/s 69A of Rs. 3,28,000/- on account of unexplained investment in Car.

20.1. As per the seized material, it is noted that the assessee has purchased car for which cash payment of Rs.3,28,000/- has been made. In the absence of source of such payment, the same was added as unexplained investment by Ld.AO. The same was confirmed by Ld.CIT(A). In this regard, the Ld.AR submits that telescoping of the said cash payment from the profit on on-money may be allowed to the assessee which would be confirmed in the case of the appellant's wife Mrs. Sujata Dalvi. The Id. DR argued and relied on assessment order.

20.2. We considered the submission of rival parties. The Id. AR was unable to submit any documentary evidence about the cash payment for investment in car. No bank transaction is pointed out. So, we are not interfering in appeal order in this issue. The addition amount of Rs. 3,28,000/- is confirmed.

20.3. In the result, the assessee's ground no.2 in ITA No. 3393/Mum/2023 for AY 2016-17 is dismissed.

21. Addition u/s 69A of Rs. 2,33,000/- (Rs.83,000/- for AY 2016-17 & Rs. 1,50,000/- for AY 2017-18) on account of gift received.

21.1. The Id. AR argued that during the search, the statement of the assessee was recorded wherein the assessee accepted that he has received certain gifts from one Mr. Dhananjay Gawade. In this regard, the Ld.AR submits that the addition has been made purely based on the basis of statement and no such asset was found at the time of search. Accordingly, no addition can be made merely based on the statement without any corroborative assets found.

21.2. The Id. DR argued and relied on the assessment order. But Id. DR was unable to place any contrary facts against the submission of the Id. AR.

21.3. We considered the rival submission. The addition was made on basis of the recorded statement. No corroborative evidence is found against the acceptance of the Gift. The addition total amount of Rs. 2,33,000/- is quashed.

21.4. In the result assessee's **ground no.3** in **ITA No. 3393/Mum/2023** for AY 2016-17 & **ground No. 4** in **ITA No. 3394/Mum/2023** for AY 2017-18 are allowed.

22. Grounds No. 1,5 & 6 for A.YS. 2011-12 & 2012-13; grounds 1,7 & 8 for A.Y. 2013-14; grounds 1,5 & 6 for A.Y. 2014-15; grounds 1,3 & 4 for A.Y. 2015-16; and grounds 1, 5, & 6 for A.Y. 2016-17; and grounds 1,2,3,6 & 7 for A.Y. 2017-18 are not pressed before us. Hence the said grounds are dismissed.

23. In the appeal of revenue, considering our above discussion, the grounds of the revenue are dismissed.

In the result, appeal of the revenue **ITA No. 3521/Mum/2023** for AY 2017-18 is dismissed.

24. In the result, the appeal of the revenue is dismissed & appeal of the assessee partly allowed.

Order pronounced in the open court on 22nd day of October 2024.

Sd/-

sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 22/10/2024
Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**