

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.3142, 3140 & 3141/Mum/2023  
Assessment Year: 2017-18, 2020-21 & 2021-22**

DCIT, Central Circle 4(3), Mumbai	vs.	Vardha Enterprises Private Limited  103, Shantivan 2A, Raheja Township Malad (E) Mumbai- 400097.  PAN: AACCV 6065 D
(Appellant)		(Respondent)

**ITA Nos.2435, 2436, 2439 & 2437/Mum/2023  
Assessment Year: 2017-18, 2020-21 & 2021-22**

Vardha Enterprises Private Limited  103, Shantivan 2A, Raheja Township Malad (E) Mumbai- 400097.  PAN: AACCV 6065 D	vs.	DCIT/ACIT, Central Circle 4(3), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rakesh Joshi  
Revenue by : Shri Ankush Kapoor, CIT/DR

Date of Hearing : 26.08.2024

Date of Pronouncement : 22.11.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

All these 7 appeals filed by the revenue and by the assessee are directed against different order of Id. CIT(A)-52, Mumbai. Since all these appeals are based on common issue and identical facts therefore, for the sake of convenience all these appeals are adjudicated together.

**ITA 3142/Mum/2023 (Revenue Appeal)**

2. Fact in brief is that a search and survey action u/s 132) of the Act was carried out on 13.07.2020 on the Triton Group including the assessee. The promoters and key persons of the Triton Group were Shri Shivshankar Sharma and Shri Ratankant Sharma (son) A notice u/s 153C of the Act was issued and served upon the assessee. In response, the assessee filed the return of income on 08.11.2021 declaring total income at Rs. Nil. The assessee was engaged in the business of hospitality segment. During the course of search operations, cash amounting to Rs. 12,35,30,000/- was found and seized. Also various incriminating documents in the form of note books/diaries have been seized vide Annexure A-38 to A-47 from the residence of Shri Jiten Pujari, who was one of the key employee of the Triton Group, drawing salary from the account of M/s. Noble India Construction Company (proprietary concern of Shri Shivshankar Sharma. The AO has reproduced the extract of some of the statements of Sh. Jitin Pujari in respect of cash transaction carried out on the instruction of Shivshankar sharma and Ratnakar Sharma. The assessment u/s 153C of the Act was finalized on 29.03.2022 after making various additions u/s 69C, 68 and u/s 37 of the Act. Further facts of the cases are discussed while adjudicating the various grounds of appeal filed by the revenue and by the assessee.

**3. Ground No. 1: Deleting addition of Rs. 3,00,000/- out of the addition of Rs. 6,00,000/- made u/s 69C of the Act:**

During the course of assessment a note book was seized vide Annexure A-42 containing the ledger account titled "Adsure" at page no. 59 of said note book. The AO stated that this ledger account was pertained to the payment made both in cash and cheque/RTGS to Shri Ravindra K

Adsurre, the legal advisor of the assessee-company. The assessing officer found that payment of Rs. 3,00,000/- reflected in the said ledger account was made by the assessee to Shri R.K. Adsurre on 29.08.2016 which was also reflected in the regular books of account. The AO opined that it has been clearly established that note books / diaries contained systematic date-wise record of unaccounted transactions carried out by the various Triton Group entities including the assessee. The extract of the ledger a/c has been reproduced by the AO at page 29 of the assessment order. The assessing officer concluded on the basis of said ledger account that payment had been made to Shri R.K. Adsurre on various dates and the assessee failed to offer the satisfactory explanation therefore the AO had added an amount of Rs. 12,50,000/- u/s 69C as unexplained expenditure.

4. In appeal, the ld. CIT(A) has sustained the addition to the extent of Rs. 6,50,000/- and the remaining amount of Rs. 6,00,000/- was deleted on the ground that there was a duplication of entry of Rs. 3,00,000/- bearing same cheque no. and detail in both the entries and the payment of Rs. 3,00,000/- was reflected in the books of account of the assessee as discussed.

5. Heard both the sides and perused the material on record. We find that out of four transactions reflected on the same page in the ledger account for the F.Y. 2016-17 i.e. Rs. 3,00,000/- on 20.05.2016, Rs. 3,00,000/- on 16.09.2016, Rs. 3,50,000/- on 27.10.2016 and Rs. 3,00,000/- on 29.08.2016, we find transactions recorded on 16.09.2016 and 29.08.2016 of Rs. 3,00,000/- each totaling to Rs. 6,00,000/- were repetitive entries bearing the same bank details and cheque details and the transactions of Rs.3,00,000/ was already recorded in the regular books of the assessee. In view of the above facts and evidences, we do

not find any infirmity in the decision of Id. CIT(A) in deleting the addition of Rs. 6,00,000/-. Accordingly, this ground of appeal of revenue is dismissed.

**6. Ground No. 2: Deleting addition of Rs. 55,00,000/- u/s 68 of the Act:**

During the course of assessment proceeding on perusal of the audited financial statement of the assessee for the year under consideration it was found that assessee had taken loan of Rs. 55,00,000/- from M/s. Malvika Herbo Pharma Pvt. Ltd. On query, the assessee submitted detail of unsecured loan along with address of the party, PAN, amount received, interest paid, bank account statement, confirmation of account, ITR Form etc. as required by the assessing officer. However, the AO has not agreed on the basis of the financial of the above mentioned lender and concluded that the assessee failed to establish the creditworthiness of the lender. Therefore, the loan amount was added to the total income of the assessee as unexplained cash credit u/s 68 of the Act.

7. The assessee filed appeal before the Id. CIT(A). The Id. CIT(A) deleted the impugned addition holding that assessee has submitted confirmation of ledger account, ITR, ROC particulars and also stated that said entity was having substantial long term borrowings as well as advances given and only on the basis of such financial statement it would be inappropriate to hold that loan amount was not genuine.

8. Heard both the sides and perused the material on record. It is undisputed fact that assessee has filed all the relevant supporting documents and material as required by the assessing officer to prove the genuineness and creditworthiness of the aforesaid transaction. The

AO has not brought any material on record to disprove the genuineness of the loan amount. Further, on the basis of submission of the Id. Counsel, we consider that the impugned addition was made in non-abated assessment year on the basis of financial statement of the assessee without demonstrating any incriminating document found and seized during the course of search. Therefore, such addition is not sustainable following the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell Private Limited (293 taxman 141). In the light of the above facts and circumstances, we do not find any reason to interfere in the decision of Id. CIT(A). Accordingly, this ground of appeal of revenue is dismissed.

**9. Ground No. 3: Deleting addition of Rs. 6,06,575/- (interest of Rs. 1,26,575/- paid to M/s. Malvika Herbo Pvt. Ltd. and Rs. 4,80,000/- paid to M/s. Niyati Ventures Pvt. Ltd.)**

Since we have sustained the action of Id. CIT(A) in deleting the impugned quantum addition of loan as per ground no. 2 of appeal as discussed supra in this order, therefore, disallowance of interest on loan amount is not sustainable. Accordingly, this ground of appeal of the revenue is also dismissed.

**10. Ground No. 4: Deleting addition of Rs. 2,87,22,539/- u/s 37(1) of the Act:**

The assessing officer has referred the assessment proceedings for the A.Y.2020-21 that the assessee had taken bogus purchase bills from the several entities and paid commission@2% for availing such accommodation entries. Since the said purchase amount has been debited to capital work in progress, therefore, 2% of such expenses

amounting to Rs. 2,87,22,539/- was treated as non-genuine and reduced from the capital work in progress.

11. The assessee filed appeal before the Id. CIT(A). The Id. CIT(A) deleted the addition on the ground that assessee has submitted the relevant supporting evidences like ledger account and sample invoices etc. before the assessing officer and however, the AO had neither controverted the supporting material produced by the assessee nor brought any material on record to show that such expenses were inflated.

12. Heard both the sides and perused the material on record. It is undisputed fact that AO had made disallowance of purchase expenses on estimation basis and the AO had not brought any relevant material on record to prove that in fact the expenditure claimed were non-genuine. Further, on the submission of the assessee, we find that the impugned assessment was non-abated assessment and no incriminating material was found and seized on the impugned issue of disallowance of expenditure. Therefore, the same is not sustainable as held by the Hon'ble Supreme Court in the case of Abhisar Buildwell Private Limited (293 taxman 141). Considering the aforesaid facts and finding, we do not find any error in the decision of Id. CIT(A) therefore this ground of appeal of revenue is dismissed.

**13. Ground No. 5: Deleting addition of Rs. 5,74,451/- u/s 69C of the Act:**

The assessing officer was of the view that assessee had also paid commission on the disallowed 2% of purchases as discussed above in ground no. 4 of appeal of the Revenue. Therefore, the AO has also estimated commission @ 2% to the amount of Rs. 5,74,451/- and added

u/s 69C of the Act to the total income of the assessee. The Id. CIT(A) has deleted the estimated addition of commission amount holding that purchases on the basis of which disallowance made were considered as genuine purchases. Since, we have already sustained the action of the Id. CIT(A) in deleting the addition of such purchases as discussed supra in this order and further found that addition was not based on any incriminating document found and seized pertaining to the year under consideration as the same was non-abated assessment year. In view of above facts and findings we do not find any infirmity in the decision of Id. CIT(A). Therefore, this ground of appeal of the revenue is dismissed.

In the result, the appeal of the Revenue is dismissed.

**ITA No. 3140/Mum/2023 (Revenue Appeal)**

**14. Ground No. 1: Deleting addition of Rs. 35,00,000/- made u/s 69C of the Act by treating the addition as duplicate addition:**

During course of assessment on perusal of the note book seized vide Annexure A-42, the AO noticed that it contained the ledger account titled as M/s. S.B. International in Annexure A-42 with corresponding entry recorded in the seized annexure A-39. However, the Id. CIT(A) deleted the addition holding that there was double addition of the same amount.

15. Heard both the sides and perused the material on record. The ledger account of S.B. International was reflected at page no.86 of annexure A-42 seized showing amount of Rs. 35,00,000/- transferd to the S.B. International account on 10.08.2019 of Rs. 10,00,000/-, on 07.11.2019 of Rs. 10,00,000/- and on 07.02.2020 of Rs. 15,00,000/- totaling to Rs. 35,00,000/-. The Annexure A-39 was the detail of journal entries of the transactions reported in the ledger a/c in the annexure A-

42 in the case of SB International and in the journal entries the same amount of Rs. 35,00,000/- was recorded with narration of three entries. These facts were also discussed by the ld. CIT(A) in his finding. The relevant extract of ld. CIT(A) is reproduced as under:

*“4.4 As regards the merit of the addition, I am convinced that the AO has rightfully made the same on the basis of incriminating material and seized evidences. Hence, this part of the claim of the appellant stands REJECTED.*

*4.5 At the same time, it is seen that the appellant has submitted as under;*

*Further and without prejudice to anything else mentioned herein, the ld. AO has failed to appreciate the submission made by the appellant wherein it was submitted that the said amount was repeated on page nos. 19, 27 of the Annexure 39 and diary page no. 8 of Annexure 41. Thus, the said entry was a repeated entry which was already taxed in the hands of the appellant in para 21 of the Assessment Year.*

*4.6 The appellant has also drawn my attention to the rectification application filed before the AO on 26.04.2022. On a perusal of the said pages, it is seen that these entries are repetitive in nature. They appear to be in the nature of ledger and journal type where one entry is posted from one annexure to another in some kind of double entry system. While I agree with the AO on the merits of these additions, they can be made only once and cannot result in double addition. For the reason that the said addition gets covered by the larger addition made by the AO in para 21 of assessment order, this addition stands deleted. Hence, this part of the claim of the appellant stand allowed.”*

16. After perusal of the material before us and on perusal of the finding of the ld. CIT(A), it is clear that the AO has made the double addition on the basis of similar entries appearing in the journal of entries and also appearing in the ledger account of the S.B. International. Considering the above facts and findings, we do not find any reason to interfere in the finding of ld. CIT(A). Therefore, this ground of appeal of the revenue stand dismissed.

**17. Ground No. 2: Deleting addition of Rs. 1,60,000/- made u/s 69C as duplicate addition:**

The assessing officer observed that the Annexure A-42 contained the ledger account titled 'Sanjeev Vyas Tandoor' showing the assessee has made transaction of Rs. 1,60,000/-. The assessing officer has treated the same as unexplained expenditure u/s 69C of the Act on the ground that assessee failed to establish the source of expenditure amounting to Rs. 1,60,000/-. The ld. CIT(A) has deleted the addition holding that the AO has made double addition of the same amount. After hearing both the sides and perusal of material on record, we find that the same amount has been mentioned on the diary page no. 10 (19<sup>th</sup> March, 2020 – Rs. 1,60,000/-) of Annexure – 41. It is established that double addition of the same amount was made by the AO, therefore the ld. CIT(A) has rightly deleted the said addition. Therefore, we do not find any merit in this ground of the revenue.

**18. Ground No. 3: Deleting addition of Rs. 20,00,000/- by treating the addition as duplicate addition:**

Similarly, on perusal of the ledger account titled 'Malkiyat Singh' in the seized Annexure A-42, the assessing officer noticed entries of Rs. 12,00,000/- and Rs. 20,00,000/- in the ledger account of the said party. On query, the assessee submitted that said diaries were maintained by Shri Jiten Pujari without their knowledge and they were not in a position to comment upon the contents of the same. It was also submitted that name of the M/s. Vardha Enterprises Pvt. Ltd. has not been mentioned anywhere in the page. The assessing officer has not agreed with the submission of the assessee and stated that assessee failed to establish the source of expenditure amounting to Rs. 32,00,000/-, therefore, the same was treated as unexplained

expenditure u/s 69C of the Act and added to the total income of the assessee.

19. The assessee filed appeal before the ld. CIT(A). However, the ld. CIT(A) has deleted the said addition on the ground that same were the double addition made in the ledger account and in the journal entries.

20. Heard both the sides and perused the annexure A-42 containing the ledger account of Malkiyat Singh. In the said ledger account there were two entries of Rs. 12,00,000/- and Rs. 20,00,000/- in respect of aforesaid party. The assessee has recorded the same entries with narration in the general ledger as found and seized vide annexure A-39. This fact shows that actually there was double addition made by the AO of the same amount therefore we do not find any mistake in the decision of ld. CIT(A). This ground of revenue is dismissed.

**21. Ground No. 4: Addition amounting to Rs. 112,04,750/- on the basis of titled 'Sameer/Orise/Ankit China' as found in Annexure A-42. However, the ld. CIT(A) has deleted the same as double addition:**

During the course of assessment on the basis of page no. 57 of Annexure A - 42, the assessing officer had added back the payment made to 'Sameer/Orise/Ankit China'. However, the ld. CIT(A) has deleted the same as double addition. On perusal of the material on record, we find that the similar amount was also mentioned in the journal entries of the transaction as per Annexure 41 wherein this amount was mentioned as Rs. 37,37,500/-, 37,50,000/-, 37,17,250 aggregating to Rs. 112,04,750/- therefore, we find that there is repetitive addition of the same transaction which were reported once in

ledger account and also in the journal entries. Accordingly, this ground of the revenue is dismissed.

**22. Ground No. 5: Erred in deleting addition of Rs. 1,80,00,000/- made u/s 69C of the Act:**

During the course of assessment on perusal of Annexure A-42 at page no. 51, the AO found entries of Rs. 30,00,000/- on 07.11.2019 Rs. 50,00,000/- on 14.11.2019 and Rs. 1,00,00,000/- on 06.01.2020 aggregating to Rs. 1,80,00,000/- in the ledger account named 'Kitchen Equipment Jaico'. The AO has treated the same as unexplained expenditure u/s 69C of the Act. However, the Id. CIT(A) deleted the same as repeated entries after referring Annexure 39 pertaining to details of journal entries in respect of transaction reported in ledger account in Annexure 42. We find that in the detail of journal entries of transactions reported in Annexure 39 and Annexure 41, there were transaction of Rs. 30,00,000/- mentioned on 07.11.2019, Rs. 50,00,000/- on 31.01.2019 and Rs. 1,00,00,000/- on 06.01.2020 along with narration of the entries / demonstrating that it pertained to the same addition which had already been made on the basis of ledger account reflected in Annexure A-42 as discussed. Therefore, we do not find any merit in this ground of appeal of the revenue and the same is dismissed.

**23. Ground No. 6: Addition of Rs. 40,66,000/:**

During the course of assessment at para 10 of the assessment order, the AO has made addition amounting to Rs. 51,66,000/- reflected in the ledger account titled as Udaipur-Fabric/Duvet etc. found in Annexure A-42. The Id. CIT(A) has deleted the addition treating the same as repeated entry of the same amount.

24. After hearing both the sides and perused the material on record, we find that the same amount has been mentioned in the journal entries of the aforesaid transaction reported in Annexure 39 wherein on 06.11.2019 Rs. 9,00,000/- on 11.11.2019 Rs. 30,00,000/- and on 22.01.2020 Rs. 11,00,000/- were mentioned in Annexure 41. As per the narration of the entries given it show that same were journal entries recorded in respect of the transaction of Rs. 51,66,000/- reported in the ledger account. Therefore, we do not find any infirmity in the decision of the ld. CIT(A) for treating the same as repeated entries. This ground of appeal of the revenue is dismissed.

25. **Ground No. 7: Addition of Rs. 30,00,000/-**:- On perusal of Annexure A-42 at page 82, the AO found that payment has been made to 'Jaipur Lights Mahima Ent' of Rs. 30,00,000/- on 11.11.2019, the ld. CIT(A) deleted the same as duplicate addition. In this regard, we find that same amount has been mentioned in the record of journal entries mentioned in Annexure A-39 wherein on 11.11.2019 amount of Rs. 30,00,000/- was posted with the narration of the transactions matching with the entry posted in the ledger account maintained in annexure A-42. Therefore, this ground of the revenue is dismissed because of repetitive additions.

26. **Ground No. 8: Addition of Rs. 1,10,00,000/-**:

During the course of assessment on perusal of Annexure A-42 page 73 the AO noticed that in the ledger account 'Udaipur Construction A/c' an amount of Rs. 50,00,000/- on 07.11.2019, Rs. 30,00,000/- on 07.02.2020 and Rs. 31,00,000/- on 03.03.2020 aggregating to Rs. 1,10,00,000/- were mentioned and the assessing officer treated the same as unexplained expenditure u/s 69C of the act. The ld. CIT(A) deleted the same as double addition as the same was also reflected in

the journal entries posted in the annexure 39 and annexure 41. We find similar to the transaction reflected in the ledger account were also recorded as journal entries in the Annexure 39 and Annexure 41 wherein on 07.11.2019 Rs. 50,00,000/- and on 07.02.2020 Rs. 30,00,000/- shown as journal in Annexure 39 and Rs. 31,00,000/- on 02.03.2020 shown in Annexure 41 along with narration of the entries. Therefore, we consider that it is evident from the journal entries and in the ledger account that repetitive additions were made by the assessing officer. Therefore, we do not find any infirmity in the decision of the Id. CIT(A). Accordingly, this ground of appeal of the revenue is dismissed.

**27. Ground No. 9: Erred in deleting addition of Rs. 5,00,00,000/- made u/s 69C of the Act:**

During the course of assessment, the assessing officer made addition of Rs. 7,11,40,000/- on the basis of ledger titled 'EVO (Furniture Udaipur)' as reflected in Annexure A-42. However, the Id. CIT(A) has deleted the same being double addition as the same amount was reflected in the journal entries of the transaction made by the assessee as found in Annexure 39 and 41. We find break up of Rs. 5,00,00,000/- mentioned in the form of entries of one crore each made on 08.11.2019, 12.11.2019, 16.12.2019, 17.12.2019 and 15.02.2020 respectively in the journal entries in respect of the amount reflected in the ledger account in the Annexure A-42. We find that entries to the extent of Rs. 5,00,00,000/- was repetitive entries and the amount of Rs. 2,11,40,000/- was not pertained to the year under consideration, therefore, the Id. CIT(A) has rightly deleted these double additions. Accordingly, this ground of appeal of the revenue stand dismissed.

**28. Ground No. 10: Addition of Rs. 15,27,400/- u/s 69C of the Act:**

During the course of assessment, the AO noticed that ledger account named 'Clive and Clive (RJ A/c)' found and seized as per Annexure A-42 and Annexure A-46 from the residential premises of Shri Jiten Pujari, employees of the director of the assessee-company and these were the payments made to Randolph Gray Design Company Ltd. through M/s. Warden Baker. The assessing officer alleged that payment by M/s. Warden Baker to various foreign entities have been made on or behalf of M/s. Vardha Enterprises Pvt. Ltd. Therefore, the assessing officer has added the same to the income of the assessee. The ld. CIT(A) has deleted the addition on the reason of absence of linking of such payment to the assessee in the form of unexplained expenditure. We find that assessing officer has not brought any material on record to substantiate that M/s. Warden Baker has made payment to Randolph Gray Design Company Ltd. on behalf of the assessee company and nowhere in the entries it is mentioned that such payment had been made on behalf of the assessee. Therefore, this ground of appeal of the Revenue is dismissed.

**29. Ground No. 11: Addition of Rs. 3,12,88,054/- u/s 69C of the Act:**

The assessing officer has made addition of Rs. 3,12,88,054/- on the basis of entries found in the annexure containing ledger account stating that M/s. Warden Baker has made payment to Shri Ashok Ummat on behalf of the assessee. However, the ld. CIT(A) has deleted the addition on the ground that transactions were pertained to two foreign entities and AO has failed to substantiate with any evidence that the said payment has been done on behalf of the assessee. We find that these were the transaction between two foreign entities and there was no linking of such transaction with the assessee-company. Even these

transactions were not connected with journals like other transactions as discussed in this order. The AO has not brought any material on record by conducting any enquiry to establish that such payment has been made on behalf of the assessee-company, therefore, this ground of appeal of revenue is dismissed.

**30. Ground No.12: Deleting addition of Rs. 87,82,550/made u/s 69C of the act**

The assessing officer observed that M/s Warden Banker had made payment to various foreign entities in USD on or behalf of M/s Vardha Enterprise Pvt. Ltd. and converted the payment made in USD to the Indian Rupees @ Rs.76.37 per USD to the amount of Rs.87,82550 and treated the same as unexplained expenditure u/s 69C of the act.

In appeal the Ld. CIT(A) deleted the addition in absence of any evidence.

After hearing both the sides and perusal of material on record we do not find any evidence which demonstrate that impugned transactions between the foreign parties were carried out on behalf of the assessee. The AO had also not brought any material on record to substantiate that such payment by the foreign party to the other foreign party was made on or behalf of the assessee. Therefore, we do not find any reason to interfere in the decision of Ld.CIT(A). Accordingly, this ground of appeal of the Revenue is dismissed.

**31. Ground No.13: Erred in deleting addition of Rs. 1,14,55,500/- made u/s 69C of the Act:**

The assessing officer has made addition of Rs. 114,55,500/- on the basis of back up taken of iphone of Ratnakant Sharma which led to the retrieval of document in the form of debit note, invoices raised by Curar

Gratis Ltd., Hong Kong of M/s. Warden Baker. The assessing officer was of the view that such payment was made by M/s. Warden Baker to various foreign entities on behalf of the assessee. The ld. CIT(A) has deleted the addition on the reason that AO could not link that such payment has been made on behalf of the assessee. We find that assessing officer has not brought any material on record to substantiate that such payment has been made by the foreign entities on behalf of the assessee. Therefore, we consider that assessing officer failed to establish that such payment has been made on or behalf of the assessee. Accordingly, this ground of revenue is dismissed.

**32. Ground No. 14: Erred in making addition amounting to Rs. 8,40,070/- u/s 69C of the Act:**

During the course of assessment on examination of the back-up of iphone – 11 of Ratankant Sharma the assessing officer retrieved document in the form of debit note issued by AI Garhoud General Trading LLC, UAE to M/s. Warden Baker. The AO was of the view that such payment has been made by M/s. Warden Baker to various entities on behalf of the assessee therefore same was added u/s 69C of the Act. The ld. CIT(A) deleted the addition holding that AO could not link the same as unexplained expenditure incurred by the assessee. Similar to the findings as discussed supra while adjudicating the identical issues we consider that AO has not brought on record any relevant evidence to demonstrate that actually such foreign payments have been made on behalf of the assessee. Therefore, this ground of revenue is dismissed.

**33. Ground No. 15: Deleting addition of Rs. 3,85,66,850/- made u/s 69C of the Act:**

During the course of assessment, the assessing officer made addition on the basis of debit note and invoice raised by M/s. Biosilk International Pte. Ltd. on M/s. Warden Baker as retrieved from the phone of Shri Ratankant Sharma. The AO was of the view that payment to Biosilk International Pte. Ltd. of Rs. 3,85,66,850/- in the form of \$135000 was made by M/s. Warden Baker to M/s. Biosilk International Pte. Ltd. on the behalf of the assessee. The ld. CIT(A) deleted the same on the ground that AO could not link that how the foreign party has made the payment to another foreign party on behalf of the assessee. Similar to the findings on identical issues as discussed in this order we find that AO has not brought on record any evidence to establish that such transaction between the foreign parties have been made on behalf of the assessee. Therefore, we do not find any reason to interfere in the finding of ld. CIT(A) and this ground of appeal of the revenue is dismissed.

**34. Ground No. 16: Error in deleting addition of Rs. 10,01,857/- by treating the interest paid on the bogus loan in the earlier years:**

During the course of assessment, the AO noticed that assessee has claimed interest expenditure on unsecured loan from certain entities. The assessing officer was of the view that in the earlier year, the assessee had taken accommodation entries from the aforesaid two parties to whom the interest payment was shown to have been made. Therefore, the AO has disallowed the interest treating the same has been paid for obtaining accommodation entries in respect of which addition have been made u/s 68 of the Act as unsecured loan obtained in A.Y. 2016-17 and 2017-18. The ld. CIT(A) deleted the impugned addition on the ground that such quantum addition has already been deleted for A.Y. 2016-17 and 2017-18 u/s 68 of the Act. We do not find any merit in the ground of appeal of revenue since the quantum addition on the basis of which the AO has made disallowance has

already been deleted, therefore, this ground of appeal of the revenue is dismissed.

**35. Ground No. 17: Deleting addition of Rs. 4,66,00,000/- that the cash generated in taking accommodation entries by inflating expenses is utilized in making payment towards unexplained expenditure.**

During the course of assessment, the assessing officer observed that assessee has inflated expenses in its books of account which resulted in increased of capital work in progress. Therefore, for the year under consideration, the assessing officer has reduced a sum of Rs. 4,66,00,000/- from the capital work in progress. The ld. CIT(A) has granted telescoping of Rs. 4,66,00,000/- out of the total inflated expenses of Rs. 10,52,30,750/- since the cash generated out of accommodation entries has been utilized towards unexplained expenditure. On perusal of material placed on record we find that there is clear entries of receipt appeared on the left side and entries of payment reflected on the right side of the journal in Annexure A-39. Therefore, we consider that ld. CIT(A) has rightly allowed the set off of Rs. 4,66,00,000/- after co-relating the transactions as discussed. Therefore, looking to the facts and material placed on record, we do not find any reason to interfere in the decision of ld. CIT(A). Accordingly, this ground of appeal of revenue is dismissed.

**ITA 3141/Mum/2023 (Revenue Appeal)**

**36. Ground No. 1: deleting addition of Rs. 8,00,000/- made u/s 69C of the Act by treating the addition as duplicate addition. Actually we find that the assessee has contested before CIT(A)**

**deleting of addition of Rs. 40,00,000/- not Rs. 8,00,000/- as per ground no. 1 of appeal filed before the ld. CIT(A).**

During the course of assessment, the assessing officer noticed in the ledger account titled 'Sameer/Orise/Ankit China' as per note book found/seized vide Annexure A-42 transaction of Rs. 37,50,000/- was found. In the whatsapp conversation between Shri Jiten Pujari and Ankit Pujari revealed that Shri Jiten Pujari has given Rs. 37,50,000/- to certain persons. On perusal of corresponding entry in seized Annexure A-41, the AO noticed that similar amount of Rs. 37,50,000/- was mentioned and it was referred to Udaipur. The assessee was asked to show cause as to why the amount of Rs. 40,00,000/- paid during the relevant year should not be considered to be in the nature of unexplained expenditure u/s 69C of the Act. The assessee submitted that the said diaries were being maintained by Shri Jiten Pujari without their knowledge and in the cross examination proceedings Shri Jiten Pujari had confirmed that said diaries were his personal diaries having nothing to do with the assessee. It was also submitted that in the diary name of M/s. Vardha Enterprises Pvt. Ltd. was not mentioned anywhere. The AO has not agreed with the submission of the assessee and stated that on the basis of detailed examination and co-relation of the seized note books/diaries and other incriminating material it has been established that this contained systematic date-wise record of unaccounted transaction carried out by the various Triton Group entities including the assessee. Therefore, the AO treated the amount of Rs. 40,00,000/- as unexplained expenditure and added to the total income of the assessee. In the appeal, the ld. CIT(A) has deleted the addition holding that there was double addition on the basis of repetitive nature of entries.

37. Heard both the sides and after considering the material on record, we find that the assessing officer has made addition on the basis of transactions reflected in the ledger account of the party and same addition was also made on the basis of journal entries passed for same payment. Therefore, we do not find any relevancy in the ground of appeal of the revenue that addition was not duplicate addition. After considering these facts and findings of repetitive addition we do not find any error in the decision of ld. CIT(A). Therefore, this ground of appeal of the revenue is dismissed.

**38. Ground No. 2: Deleting addition of Rs. 10,00,000/- made u/s 69C of the Act by treating the addition as duplicate addition:**

During the course of assessment on perusal of Annexure A-42 AO found that there was ledger account titled Udaipur-Fabric/Duvet etc. In the said ledger a/c there was detail of transaction of payment of Rs. 10,00,000/- made to the above referred parties therefore assessee was asked to explain why the same should not be considered as unexplained expenditure u/s 69C of the Act. The assessee submitted that the said diaries were maintained by Shri Jiten Pujari without their knowledge and they were not able to comment upon the contents of the same. It is also submitted that nowhere in the diary, the name of the assessee was mentioned. The AO has not agreed with the submission of the assessee and treated the amount of Rs. 10,00,000/- as unexplained expenditure u/s 69C of the Act.

39. In the appeal, the ld. CIT(A) has deleted the addition holding that there was repetitive addition therefore same was deleted. Similar to the finding given while adjudicating ground no. 1 of the appeal of the assessee as above in the order, we find that there was double addition of same amount made by the assessing officer on the basis of

transaction reported in the ledger account and the similar transaction mentioned in the journal entry. Therefore, this ground of appeal of revenue is dismissed.

**40. Ground No. 3: Erred in deleting addition of Rs. 1,42,589/- (interest of Rs. 85,289/- paid to M/s. Malvika Herbo Pharma Pvt. Ltd. and Rs. 57,300/- paid to M/s. Niyati Ventures Pvt. Ltd.)**

The assessing officer noticed that assessee has claimed the interest expenditure of Rs. 85,289/- and Rs. 57,300/- in respect of unsecured loan obtained from these parties. The AO found that the aforesaid two parties were involved in providing accommodation entries therefore interest expenditure pertaining to this year on the loan amount obtained from these parties was disallowed and added to the total income of the assessee.

41. In the appeal, the ld. CIT(A) has allowed the appeal of the assessee stating that quantum addition of unsecured loan made u/s 68 of the Act in respect of M/s. Niyati Ventures Pvt. Ltd. in A.Y. 2016-17 and in respect of M/s. Malvika Herbo Pharma Pvt. Ltd. in A.Y. 2017-18 have already been deleted. Considering the above facts and findings, we do not find any reason to interfere in the order of ld. CIT(A) that once the quantum addition of unsecured loan has been deleted the addition on account of interest expenditure would not be survived as discussed above. Therefore, this ground of appeal of the revenue is dismissed.

**42. Ground No. 4: Deleting addition of Rs. 5,61,47,010/- u/s 37(1) of the Act.**

During the course of assessment, the assessing officer observed that assessee has accepted the fact of taking bogus purchase bills from several entities over the years and has paid 2% commission for availing

such bogus and non-genuine accommodation entries. During the year the assessee had made following transactions with such entities:

<i>Sl. No</i>	<i>Party Name</i>	<i>Amount</i>
1	AAKAARS	2,68,040
2	AKAR MARBLE IND	13,99,031
3	AKAR MARBLE & GRANITE	30,35,241
4	ANKIT PAINTS	7,49,546
5	FALGUNI ENTERPRISES	3,54,170
6	GENESIS SYSTEMS & SOLUTION	1,69,98,708
7	J.L. SAFETY SYSTEMS	9,13,411
8	JACIO INDICIUS	14,04,089
9	M R PAYMENT	31,92,000
10	MECHANICAL SERVICES	47,77,014
11	NAKODA PAINT & DÉCOR	42,31,136
12	RAMA AIRCON ENGINEERS PVT LTD	76,13,715
13	S B INTERNATIONAL	1,23,095
14	SHREE GANESH PLYLAM AGENCIES	45,36,281
15	SUPREME ALUMINIUM	9,61,102
16	SURESH ELECTRIC BOARD WORKS	53,43,079
17	SURYA MARKETING	2,47,352
		<b>5,61,47,010</b>

43. On query the assessee submitted that all these transactions were genuine in nature and no disallowance be made in this regard. The assessee had also submitted sample copies of invoices and also submitted that aforesaid purchases have been debited to capital work in progress. The assessing officer has not agreed with the submission of the assessee and treated the impugned expenses amounting to Rs. 561,47,010/- as non-genuine and disallowed the same u/s 37(1) of the Act.

44. In the appeal, the ld. CIT(A) has deleted the impugned addition holding that assessing officer has neither made any examination nor made any independent enquiry to demonstrate that such expenditure was non-genuine expenditure.

45. Heard both the sides and also perused the material on record. We find that the assessing officer had not brought any material on record to

substantiate that in fact the aforesaid expenditure was non-genuine expenditure. Further, the AO has not carried out any enquiry with any of the party to controvert the submission of the assessee and to disprove the genuineness of the transactions. In view of the aforesaid material facts and circumstances we do not find any infirmity in the decision of Id. CIT(A) in deleting the impugned addition made on presumption basis.

**46. Ground No. 5: Deleting addition of Rs. 11,22,940/- u/s 69C of the Act.**

The assessing officer has also made addition @ 2% on the aforesaid expenses of Rs. 56,47,010/- on the ground that assessee has paid commission @ 2% for availing such non-genuine transaction from the aforesaid entities mentioned in this order. The Id. CIT(A) deleted the impugned estimated addition holding that since the purchases itself were considered as genuine therefore no such addition is warranted.

47. Heard both the sides and perused the material on record. We find that AO has not brought on record any relevant material to prove that assessee has actually paid any commission on the purchases made from the parties as mentioned above in this order. The AO has also not made any enquiry to substantiate that in fact the transaction of purchases were not genuine. Therefore, we do not find any error in the decision of Id. CIT(A) in deleting the impugned addition of commission amount made on estimated basis as discussed.

**ITA 2436/Mum/2023 (A.Y. 2016-17) (Assessee's Appeal)**

**48. Ground No. 1: The assessment u/s 143(3) r.w.s. 153C of the Act completed without any incriminating material found during the course of search.**

The Id. CIT(A) has deleted the addition on merit of this case and this ground of appeal was not discussed, therefore, the same stand dismissed.

**49. Ground No. 2: Addition of Rs. 30,00000/- u/s 69C of the Act in respect of payment made to Shri Rabindra Adsure as unexplained expenditure:**

During the course of assessment on perusal of Annexure A-42, the AO noticed that it contained the ledger account titled as 'Adsure'. On examination of the ledger account the AO found that payment in cash and cheques/RTGS were made to Shri Rabindra K Adsure, the legal advisor of the assessee company engaged by the assessee for handling its cases pertaining to Raffles Hotel Udaipur Project of the assessee. On perusal of the ledger account, the assessing officer observed that payments have been made to the above mentioned person on various dates and assessee has failed to furnish any detail or proof about the source of such expenditure. Therefore, the said expenditure of Rs. 30,00000/- was added back u/s 69C of the Act as unexplained expenditure. The Id. CIT(A) has sustained the addition. During the course of appellate proceedings before us, the Id. Counsel submitted that the AO has made this addition on the basis of ledger account of Mr. Adsure found in the diary of Mr. Jiten Pujari and there was no reference of assessee's name on these entries. Further Mr. Jiten Pujari nowhere stated that such expenses related to the assessee. After hearing both the sides and perusal of material on record we find that at page 28 to 29 of the assessment order the assessing officer had reproduced the ledger a/c in the name of "adsure" maintained at page no.87/59 of the ledger found and seized as per annexure A-42. The authenticity and correctness of the transactions made through banking channels were

not controverted. Therefore, we consider that it is evident that aforesaid party has been engaged for providing legal professional services to the assessee and only the amount which was reflected in the ledger account as paid in cash to the said party was added to the income of the assessee. Since the source of cash payment was not explained therefore we do not find any infirmity in the decision of ld. CIT(A). Accordingly, this ground of appeal of the assessee is dismissed.

**50. Ground No. 3: Addition of Rs. 3,00,000/- u/s 69C of the Act:**

During the course of assessment, the AO noticed that the ledger account titled 'Sandeep Putambekar' was found in the seized Annexure A-42. The said ledger account contained detail of cheque payment of Rs. 7,00,000/- made to Shri Sandeep Putambekar. The said payment was also reflected in the regular books of account for Financial Year 2016-17 and in the ledger account. The assessee was asked to explain why not the amount of Rs. 3,00,000/- paid during the year under consideration should be considered as unexplained expenditure u/s 69C of the Act. The assessee made similar submission that the extract of the diaries were found from the residential premises of Shri Jiten Pujari and the assessee had no knowledge about the contents of the ledger account. It was also submitted that the name of the assessee was not mentioned in the ledger account. The AO has not agreed with the submission of the assessee and stated that assessee has failed to establish the source of expenditure amounting to Rs. 3,00,000/- and treated the same as unexplained expenditure u/s 69C of the Act.

51. In the appeal, the ld. CIT(A) has sustained the addition holding that assessee failed to establish the source of payment of Rs. 3,00,000/- to the aforesaid party. During the course of appellate proceedings before us, the ld. Counsel submitted that there was no co-

relation of the aforesaid transaction in the seized material with the books of the assessee. Since the document were not seized from the premises of the assessee therefore presumption available u/s 292C of the Act was not applicable in the case of the assessee and the burden lies on the AO to substantiate the addition.

52. On the other hand, ld. DR supported the order of ld. CIT(A).

53. Heard both the sides and perused the material on record. The assessing officer has reproduced the extract of ledger a/c at page no.32 of the assessment order found from the seized annexure A-42. The ledger account reflect systematic date wise record of transactions made both through banking channels and by cash. We find that it is clearly evident from the copy of ledger account seized from Annexure A-42 from the premises of Shri Jiten Pujari who was working for the assessee group that there was part payment made in cash on the various dates falling on the different years. There is a transaction of Rs. 3,00,000/- of making cash payment to Shri Sandeep Putambekar for availing architectural services therefore we do not find any reason to interfere in the decision of ld. CIT(A). Therefore, this ground of appeal is dismissed.

54. **Ground No. 4: Action of the assessing officer in invoking the provisions of section 115BBE of the Act without considering the facts and circumstances of the case:**

This ground of appeal was not discussed before us therefore same stand dismissed.

55. **Ground No. 5: The ld. CIT(A) and assessing officer was erred in making addition on the basis of statement of Shri Jiten Pujari without appreciating that he himself has denied during cross-**

**examination before the assessing officer about authenticity of date in the seized diary:**

During the course of appellate proceedings before us, the assessee pointed out that all the third parties have retracted their statement after the search therefore the same have no evidential value unless based on seized document co-related with the assessee.

Heard both the sides on this issue and perused the material on record. We have discussed the nature of additions and the relevant seized documents showing systematic maintaining of ledger account along with journal entries recorded with narrations as per annexure A-39, A-41 and A-42 of the seized documents before arriving at the conclusion on the different issues therefore we do not find any merit in this ground of appeal of assessee since we have considered the sustainability of addition based on the seized document co-related with the assessee. Accordingly, this ground of appeal of assessee is dismissed.

**ITA 2439/Mum/2023 (Assessee's Appeal)**

**56. Ground No. 1: Assessment u/s 143(3) r.w.s. 153C of the Act was completed without any incriminating document being found during the course of search:**

During the course of appellate proceedings before us, the ld. Counsel submitted that addition of loan taken from M/s. Malvika Herbo Pharma Pvt. Ltd. was made u/s 68 of the Act. The ld. CIT(A) has deleted the addition on merit of the case. However, the addition otherwise was also not sustainable as the addition had been made without any incriminating material found during the course of search in respect of loan obtained. Therefore, the ld. Counsel submitted that as per the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell

Private Limited (293 taxman 141) no such addition can be made in an unabated assessment year without any seized document. The ld. Counsel also referred that similar addition was made by the assessing officer on account of inflation of expenses of Rs. 2,87,22,539/- which has been deleted by the ld. CIT(A) on merit. On this issue also, the ld. Counsel submitted that there was no incriminating document found and seized. Further, the ld. Counsel mentioned that the ld. CIT(A) has confirmed the addition u/s 68 in respect of loan taken from Krish Chemicals Private Limited. The said addition was also made without any incriminating document.

57. Heard both the sides and perused the material on record. We find that addition of loan taken from M/s. Malvika Herbo Pharma Pvt. Ltd. was made u/s 68 of the Act on the basis of information available in the assessment record and information filed by the assessee. It is evident that impugned addition was not based on any incriminating document. The AO has also not brought on record any incriminating document found during the courses of search in unabated assessment therefore, following the decision of Hon'ble Supreme Court as referred above no addition can be made. However, in respect of addition of loan taken from Krish Chemicals Private Limited, we find that AO has referred Annexure A-41 wherein transaction pertaining to Krish Chemicals Pvt. Ltd. was recorded of R.2,76018. The assessing officer treated the same as unexplained cash credit u/s 68 of the act. However, we find merit in the submission of the Ld. Counsel that the said transaction was carried out through banking channel as evident from the details mentioned at page 7A of annexure A-41 with relevant details of amount, cheque no. and submission made on the point that that same was duly recorded in the books of the assessee. Therefore, the action of the assessing officer in treating the same as cash credit is not justified we direct the

assessing officer to delete the addition of Rs. Rs. 2,76,018/- made u/s 68 pertaining to Krish Chemicals Pvt. Ltd. Accordingly the ground of appeal of the assessee is partly allowed.

**58. Ground No. 2: Addition to the extent of Rs. 6,50,000/- made u/s 69C of the Act in respect of payment made to Shri Rabindra Adsure unexplained expenditure:**

As discussed during the course of search action on the basis of seized document Annexure A-42 there was ledger account of the aforesaid party wherein the detail of payment made on different dates were reflected in respect of legal professional services availed by the assessee pertaining to Raffles Hotel Udaipur Project. For the same reason and finding as given above on this issue while adjudicating the ground of appeal vide ITA No.2436/M/2023 we do not find any merit in this ground of appeal of the assessee. Therefore, this ground of appeal of the assessee is dismissed.

**59. Ground No. 3: Confirming the action of assessing officer in making an addition of Rs.6,00000 u/s 69C of the Act in respect of payment made to Shri Sandeep Putambekar:**

During the course of search action, a ledger account of the above named party was found as per the seized Annexure A-42 wherein the detail of cash payment on different dates of different year were found to have been made to Shri Shri Sandeep Putambekar for taking architectural services in respect of Raffles Hotel Udaipur Project. The nature of addition has already been discussed above in this order. However, the Id. Counsel submitted that there was no co-relation of the transaction on the seized material with the books of the assessee and

Shri Jiten Pujari had nowhere in the statement recorded stated that this particular expenses was related to the assessee.

60. Heard both the sides and perused the material on record. As already discussed this addition was made on the basis of transaction recorded in the ledger account seized as per the Annexure A-42 while adjudicating the ground of appeal of the assessee vide ITA No. ITA No.2436/M/23 as supra in this order for the same reason and finding we do not find any merit in this ground of appeal of the assessee. Therefore, this ground of appeal stand dismissed.

**61. Ground No. 4: Addition of Rs. 2,76,018/- u/s 68 of the Act by treating the loan received from Krish Chemicals Pvt. Ltd. as unexplained cash credit:**

While adjudicating ground no.1 we have already allowed this ground of appeal of the assessee, therefore, this ground of appeal of the assessee is treated as allowed for the reason given while adjudicating ground no.1 of the appeal.

**62. Ground No. 5: Addition of Rs. 24,10,450/- u/s 69C of the Act by considering the alleged payment made to M/s. Belt Collings International (Singapore) Pte. Ltd. as unexplained expenditure:**

During the course of assessment on perusal of the whatsapp chat data retrieved from the phone of Shri Ratankant Sharma, the assessing officer observed that conversation in the whatsapp chat was pertained to pending designs/drawings from M/s. Belt Collings International (Singapore) Pte. Ltd., M/s. KLD Consulting Pte Ltd. and Randolph Gray Design Company Ltd. for Raffles Udaipur Project. Therefore, the AO opined that M/s. Belt Collings International (Singapore) Pte. Ltd. has been engaged by the assessee for its refers Udaipur Hotel Project. The

AO has also referred the contents of the e-mail from the g-mail backup account of Shri Jiten Pujari and Vardha Enterprises Pvt. Ltd. wherein mail from M/s. Belt Collings International (Singapore) Pte. Ltd. was found. The assessing officer further noticed from page 54 of the Annexure A-42 in the name of M/s. Belt Collings International (Singapore) Pte. Ltd. as reproduced at page no. 42 of the assessment order and observed that total amount of USD 165000 has to be paid to M/s. Belt Collings International (Singapore) Pte. Ltd. against which total payment of USD 100000 had been made to M/s. Belt Collings International (Singapore) Pte. Ltd. as per noting recorded on the above referred annexure seized. The AO has also mentioned the yearwise payment in USD made to M/s. Belt Collings International (Singapore) Pte. Ltd. as under:

<i>Assessment Year</i>	<i>Amount USD</i>	<i>Conversion Rate</i>	<i>Amount (Rs.)</i>
<i>AY 17-18</i>	<i>35,000</i>	<i>Rs. 68.87 per USD</i>	<i>24,10,450</i>
<i>AY 18-19</i>	<i>30,000</i>	<i>Rs. 65.715 per USD</i>	<i>19,71,450</i>
<i>AY 19-20</i>	<i>35,000</i>	<i>Rs. 74.34 per USD</i>	<i>26,01,900</i>
<i>AY 21-22</i>	<i>65,000</i>	<i>Rs. 76.95 per USD</i>	<i>50,01,750</i>

63. The assessing officer concluded that assessee has failed to furnish any detail about such expenditure therefore amount of Rs. 24,10,450/- was treated as unexplained expenditure and same was added u/s 69C to the total income of the assessee. In the appeal, the ld. CIT(A) has sustained the addition.

64. Before us, the ld. Counsel submitted that revenue authorities have relied upon the digital evidences without any certificate u/s 65B of the Indian Evidence Act, 1872. It is further submitted that Hon'ble Madras High Court in the case of Vetrival Minerals vs ACIT (129 taxmann.com 126) held that requirement u/s 65B is applicable to income tax proceeding also. It is also submitted that interior design,

drawing and design of the hotel was assigned to Accord Group of Singapore. It is submitted that email and other digital data relied upon also support this fact. Therefore, these transactions were carried out by the foreign entities and Mr. Ratan Kant Sharma was only a participant in the whatsapp group named as Udaipur Raffles. Before us, the ld. Counsel has also referred the cases of ITAT, Mumbai in the case of ACIT vs Anand Jaikumar Jain (2023) 147 taxmann.com 125 (Mumbai) wherein held that addition was unjustified as the assessing officer had not conducted any independent enquiry or made any efforts to corroborate unaccounted transactions with seized material. It is also submitted that there was no independent enquiry conducted by the assessing officer with the parties about the impugned transactions with the assessee. The ld. Counsel also submitted that no negative inference has been drawn in the assessment year from the outcome of any enquiry under FTNTR u/s 90A of the Act conducted with these parties. The ld. Counsel further submitted that even the transactions were recorded in \$ which was not possible from the end of the assessee without showing any source of such foreign currency receipt in the hands of the assessee.

On the other hand, ld. DR relied on the order of lower authorities. The ld. DR has also referred the case of Hon'ble Supreme Court in the case of Sumati Dayal vs CIT (1995) 80 taxman 89 (SC) and CIT vs Durga Prasad More (1971) 82 ITR 540 (SC).

Heard both the sides and perused the materials on record. The assessing officer opined that amount in USD mentioned at page no.54 of the annexure A-42 was the unexplained payment made to M/s Belt Collins International Singapore by the assessee. On perusal of material on record it is noticed that the assessing officer has not conducted any

enquiry and brought on record any material to substantiate that such amount has been paid by or on behalf of the assessee. Even the email referred by the assessing officer was related to making arrangements of the persons from the Accord Group. The ld. Counsel also submitted that in other cases of foreign payment the CIT(A) has deleted the additions. Nowhere in the referred documents mode of making payment was mentioned. We consider that the case laws referred by the ld. DR are not applicable to the facts and circumstances of the present case as the para material contained in these cases are different from the para material contained in the present case. Similar to the case law referred by the ld. Counsel as mentioned above in this case also the AO had not brought on record any clinching evidence by conducting enquiry to demonstrate that such payment has been made by the assessee or by any foreign party on behalf of the assessee to the other foreign party. Therefore, we consider that the ld. CIT(A) is not justified in sustaining the impugned addition without corroborating the adverse reference drawn in this case. Accordingly, this ground of appeal of the assessee is allowed.

**65. Ground No. 6: Addition of Rs. 20,95,714/- u/s 69C of the Act considering the alleged payment made to M/s. KLD Consultant Pte. Ltd. as unexplained expenditure:**

During the course of assessment, the AO referred the Whatsapp chats retrieve of i-phone II – Shri Ratnakant Sharma in the whatsapp group named “Udaipur”. The detail of such conversion and e-mail were reproduced at page 48 to 51 of the order and the assessing officer was of the view that payment to M/s. KLD Consultant Pte. Ltd. for design consultancy in various years from A.Y. 2017-18 to 2021-22 were made on behalf of the assessee in foreign currency USD. The AO has

converted the same to the Indian rupees for the A.Y. 2017-18 to the amount of Rs. 20,95,714/-. The assessee explained that the name of the assessee has not been mentioned anywhere in the ledger extract titled KLD reproduced in the order of the assessing officer. It was also submitted that assessee has called for various details such as fees proposal, drawing etc. to examine viability of their services, however, the assessee had not availed any services from the said party. The AO has not agreed with the submission of the assessee. After referring page no. 58 of Annexure A-52 seized from the residential premises of Shri Jiten Pujari the assessing officer stated that assessee has failed to establish the source of expenditure and the amount converted to Indian rupees to the amount of Rs. 20,95,714/- was treated as unexplained expenditure.

66. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

67. Heard both the sides and perused the material on record. The assessing officer on the basis of retrieval of details from the i-phone of Shri Ratnakant Sharma come to the conclusion that payment was made to M/s. KLD Consultant Pte. Ltd. by M/s. Warden Baker in USD on behalf of the assessee for providing lighting design etc. However, the assessee has denied making such payment to the aforesaid parties in USD.

68. On perusal of material on record, we find that the AO had not made any enquiry to ascertain the truth of the fact to prove that foreign parties had made payment to the other parties in USD on behalf of the assessee, therefore, we consider that ld. CIT(A) is not justified in sustaining the addition in contrary to his findings on the foreign payment issue in other cases as discussed supra in this order without

establishing the fact that payment has been made actually on behalf of the assessee by one foreign party to other foreign party. Accordingly, this ground of appeal of the assessee is allowed.

**69. Ground No. 7: Addition of Rs. 49,58,640/- u/s 69C of the Act by considering alleged payment made to Randolph Gray Design Company Ltd. as unexplained expenditure:**

During the course of assessment on perusal of page no. 52, 53 and 55 of the Annexure A-42 seized and page no. 7 of Annexure A-46 seized from the residential premises of Shri Jiten Pujari, the assessing officer noticed payment in the ledger in the name of 'Clive' made in USD. The AO further stated that Randolph Gray Design Company Ltd. (Prop. Mr. Clive Gray) was Bangkok based designing entity which has been engaged by the Triton Group for interior designing of various projects. The AO further stated that it is noticed from the perusal of whatsapp chat between Shri Jiten Pujari and Shri Ratankant Sharma retrieved from the i- phone that the ledger account in the name of Clive & Clive was shared by Shri Jiten Pujari with Shri Ratankant Sharma over whatsapp. The AO further stated that on examination of the document retrieved from the phone it is revealed certain payment recorded in the ledger account of Clive & Clive have been made to Randolph Gray Design Company Ltd. through foreign entity M/s. Warden Baker. The assessing officer was of the view that the ledger of Clive & Clive pertained to the unaccounted payments made to Randolph Gray Design Company Ltd. towards architectural services for Raffles Udaipur Hotel Project under M/s. Vardha Enterprises Pvt. Ltd. Therefore, the assessing officer has computed the payment after conversion of USD for different assessment year as under:

<i>Assessment Year</i>	<i>Amount USD</i>	<i>Conversion Rate</i>	<i>Amount (Rs.)</i>
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<i>AY 17-18</i>	<i>72,500</i>	<i>Rs. 68.87 per USD</i>	<i>49,58,640</i>
<i>AY 18-19</i>	<i>60,000</i>	<i>Rs. 65.715 per USD</i>	<i>39,42,900</i>
<i>AY 19-20</i>	<i>57,000</i>	<i>Rs. 74.34 per USD</i>	<i>42,74,550</i>
<i>AY 20-21</i>	<i>82,000</i>	<i>Rs. 76.37 per USD</i>	<i>62,62,340</i>
<i>AY 21-22</i>	<i>11,3000 (36300+76700)</i>	<i>Rs. 76.95 per USD</i>	<i>86,95,350</i>

70. In appeal, the ld. CIT(A) upheld the addition. Before us, the ld. Counsel submitted that lower authority has relied upon the digital evidences without any certificate u/s 65B of the Indian Evidence Act, 1872. He also referred the decision of Hon'ble Madras High Court as already discussed in this order for the applicability of section 65B of the Indian Evidence Act to the income tax proceedings. The assessee also submitted that it has constructed the Hotel Udaipur and handed over the same to Accord Group for maintenance and operation and the said agency was responsible for interior design/drawing etc. The ld. Counsel further submitted that the transaction mentioned by the assessee were completely carried out by the foreign entities without any participation by the assessee. The assessing officer has not carried out any enquiry with those parties therefore, the lower authority has drawn negative inference purely on presumption basis against the assessee company. He also submitted that even the transaction was recorded in USD which was not possible from the end of the assessee without showing any source of such foreign currency in the hands of the assessee. The ld. DR supported the order of lower authority.

71. Heard both the sides and perused the material on record. We find that aforesaid transaction was carried out in USD between the foreign based entities. The AO has made the impugned addition only on the basis of statement of Shri Ashok Ummat that M/s. Warden Baker was a foreign company known to the assessee. The AO had not examined its

veracity by making further inquiries to ascertain the relevant supporting material and evidences to substantiate that foreign party had actually made payment to the other foreign party on behalf of the assessee. Similar to the ground no.5 of the assessee as discussed supra the assessing officer has neither conducted any enquiry with the parties about the involvement of the assessee nor brought any material on record to demonstrate that assessee has actually made any payment in USD to the aforesaid parties. Therefore, applying the findings of ground no.5 of this appeal, this ground of appeal of the assessee is allowed.

**72. Ground No. 8: The ld. CIT(A) erred in confirming the action of the assessing officer in invoking the provisions of section 115BBE of the Act:**

This ground of appeal was not discussed before us therefore same stand dismissed.

**73. Ground No. 9: The assessing officer erred in making addition based on statement of Jiten Pujari without appreciating the fact that he himself has denied during cross examination before assessing officer about authenticity of date in seized diary:**

No discussion was made on this ground of appeal filed by the assessee therefore the same is dismissed as infructuous.

In the result the appeal of the assessee is partly allowed.

**ITA 2435/Mum/2023 (Assessee's Appeal)**

**74. Ground No. 1: The addition to the extent of Rs. 47,34,940/- made u/s 69C of the Act by considering the alleged payment made to M/s. Randolph Gray Design Company Ltd.:**

On Similar issue and identical fact we have adjudicated as per ground no. 7 of assessee's appeal vide ITA No. 2439/Mum/2023 for A.Y. 2017-18 and other similar grounds of appeal discussed as supra in this order. Since this ground of appeal filed by the assessee is based on similar facts and identical issue therefore applying the findings of ITA 2439/Mum/2023 as referred above mutatis mutandis this ground of appeal of the assessee is also allowed.

**75. Ground No. 2: Addition to the extent of Rs. 5,86,30,750/- u/s 69C of the Act:**

During the course of assessment, the assessing officer noticed that note book seized vide Annexure A-39 contained day to day record of unaccounted cash receipts and payments of the Triton Group. The AO further stated that said note book was written by Shri Jiten Pujari and contained the record of unaccounted receipt mentioned on the left hand side and the unaccounted payment was mentioned on the right hand side of the note book. The assessing officer further noticed that the payments recorded in the note book have been made to various parties engaged for construction of hotels at Udaipur/Jaipur under M/s. Vardha Enterprises Pvt. Ltd. / M/s. Triton Hotels and Resorts Pvt. Ltd. The break-up of the enteries recorded on payment side of A-39 and 41 were as under:

<i>FY</i>	<i>Particular</i>	<i>Amount</i>
<i>FY: 19-20</i>	<i>Payment towards construction of Hotel</i>	<i>10,11,20,500</i>
<i>FY: 20-21</i>	<i>Payment towards construction of Hotel</i>	<i>1,80,00,000</i>

76. Before the assessing officer, the assessee submitted that the said loose sheets were maintained by Shri Jiten Pujari without their knowledge and they were not in a position to comments upon the

contents of the same within short span of time. The assessee also submitted that during the cross examination proceeding dated 10.03.2022 Mr. Pujari has confirmed that the same were personal noting and repetitive entries. The AO has not agreed with the submission of the assessee and after detailed examination and correlation of the seized note book and other material concluded that these entries contained systematic record of unaccounted transaction carried out by the various Triton Group entities including the assessee. Therefore, the aforesaid payments of Rs. 10,11,20,500/- was considered as unexplained expenditure and added back u/s 69C of the Act. During the course of appellate proceedings, the ld. CIT(A) after considering the submission of the assessee found that there was repetitive entries appeared in Annexure 39 to 41 to the amount of Rs. 10,52,30,750/- as mentioned at page no. 31 of the ld. CIT(A) as under:

<i>Gr. No</i>	<i>Addition made by AO</i>	<i>Addition upheld in principle but deleted on account of being repetitive in nature or pertaining to other year</i>
1	35,00,000	35,00,000
2	1,60,000	1,60,000
3	32,00,000	32,00,000
4	1,12,04,750	1,12,04,750
5	7,11,40,000	5,00,00,000
6	1,80,00,000	1,80,00,000
7	51,66,000	51,66,000
8	30,00,000	30,00,000
9	1,10,00,000	1,10,00,000
<b>Total</b>	<b>12,63,70,750</b>	<b>10,52,30,750</b>

77. After referring the repeated entries, the ld. CIT(A) has sustained the addition to the extent of Rs. 10,52,30,750/-. The assessee has claimed benefit of telescoping of Rs. 4,66,00,000/- in respect of inflated expenditure against unexplained expenditure. On the request of the assessee after giving the benefit of telescoping, the ld. CIT(A) has upheld the addition of Rs. 5,86,30,750/- (Rs. 10,52,30,750/ - Rs.

4,66,00,000/-) and the appeal of the assessee was partly allowed by the ld. CIT(A).

78. During the course of appellate proceedings before us, the ld. Counsel submitted the same submission which was made before the lower authorities that seized material was found from the residence of Shri Jiten Pujari and there was no reference of the name of the assessee as also explained by Mr. Pujari. The ld. Counsel also submitted that the entire addition was made on assumption basis in absence of linking the transactions in the seized material with the assessee.

79. On the other hand, ld. DR supported the order of lower authorities.

80. Heard both the sides and perused the material on record. After hearing both the sides and considering the material placed on record, we find that note book seized vide Annexure A 39 and 41 reflected systematic maintaining of record of unaccounted transaction carried out by the various Triton Group entities including the assessee and Mr. Jiten Pujari was one of the employee of Tital Group, therefore, we do not find any reason to interfere in the decision of ld. CIT(A) and this ground of appeal of the assessee is dismissed.

**81. Ground No. 3: On the facts and circumstances of the case as well as in law, the ld. CIT(A) has erred in enhancing the addition without considering the facts and circumstances of the case:**

This ground of appeal filed by the assessee has already been discussed while adjudicating ground no. 2 of appeal filed by the assessee. Therefore, for the reason as discussed while adjudicating ground no. 2 of appeal this ground of appeal become infructuous and the same stand dismissed.

**82. Ground No. 4: The ld. CIT(A) has erred in confirming the action of assessing officer in invoking the provisions of section 115BBE of the Act without considering the facts and circumstances of the case.**

This ground of appeal was not discussed therefore, the same stand dismissed.

**83. Ground No. 5: Erred in restricting the benefit of telescoping to the extent of Rs. 4,66,00,000/- without telescoping appreciating the fact that addition sustained in earlier year is also available for the telescoping:**

This issue is discussed while adjudicating ground no. 2 of appeal filed by the assessee. Before us, the ld. Counsel submitted that as discussed in para 20 page 15 of the assessment order, assessee has inflated certain expenses debited to work in progress account in F.Y. 2017-18, 2018-19 and 2019-20 and received back cash. It is also submitted that ld. CIT(A) confirmed addition u/s 69C on various issues but granted telescoping benefit to the extent of cash received out of such inflated expenses during the year of Rs. 4.66 crore. The ld. Counsel further submitted that ld. CIT(A) should have considered such cash surplus of F.Y. 2017-18 and F.Y. 2018-19 of Rs. 55 lakh and Rs. 4.86 crore respectively also while granting such telescoping benefit.

After hearing both the sides and perusal of material on record we restore the issue of granting telescoping benefit as claimed by the assessee of cash surplus of F.Y. 2017-18 and F.Y. 2018-19 of Rs. 55 lakhs and Rs. 4.86 crore to the file of ld. CIT(A) for deciding on merit after examination of relevant material and assessment record after

proving opportunity to the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

**ITA 2437/Mum/2023 (Assessee's Appeal)**

**84. Ground No.1: Addition to the extent of Rs. 27,93,285/- u/s 69C of the Act by considering alleged payment made to M/s. Randolph Gray Design Company Ltd. as unexplained expenditure:**

We consider that the similar issue on identical fact has been adjudicated vide ITA No. 2439/Mum/2023 of assessee's appeal in ground no. 7 of the assessee and other similar grounds as discussed supra wherein the ground of appeal was allowed in favour of the assessee. Since the issue in this appeal is also based on same fact therefore applying the finding of the above referred ITA 2439/Mum/2023 mutatis mutandis this ground of appeal of the assessee is also allowed.

**85. Ground No. 2: Upholding the disallowance to the extent of Rs. 3,65,939/- u/s 37(1) of the Act on the plea that interest paid to alleged non-genuine loan taken from Krish Chemicals Pvt. Ltd. without considering the facts and circumstances of the case:**

We find that identical issue on similar act has been adjudicated vide ITA No. 2439/Mum/2023 for A.Y. 2017-18 vide ground no. 4 of appeal filed by the assessee as discussed supra in this order. Since the issue in this ground of appeal is also based on similar fact therefore applying the findings of ITA 2439/Mum/2023 mutatis mutandis this ground of appeal of the assessee is allowed.

**86. Ground No. 3: Addition of Rs. 1,80,00,000/- u/s 69C of the Act as alleged unexplained expenditure without considering the facts and circumstances of the case:**

Similar issue on identical fact has been adjudicated vide ITA No. 2435/Mum/2023 pertaining to A.Y. 2020-21 as per ground no. 2 of appeal. Since the issue in appeal is based on similar facts therefore applying the findings mutatis mutandis of ITA No. 2435/Mum/2023 this ground of appeal of the assessee is dismissed.

**87. Ground No. 4: The ld. CIT(A) has erred in confirming the action of assessing officer in invoking the provisions of section 115BB of the Act without considering the facts and circumstances of the case:**

On similar issue on identical fact we have adjudicated the ground of appeal of the assessee pertaining to ITA No. 2439/Mum/2023 for A.Y. 2017-18 as per ground no. 8 and 9 of that appeal. These two grounds of appeal of the assessee are also based on similar facts and identical issue therefore applying the finding of appeal mutatis mutandis these two grounds of appeal of the assessee are also dismissed.

**88. Ground No. 5: The assessing officer erred in making addition based on statement of Jiten Pujari without appreciating the fact that he himself has denied during cross examination before assessing officer about authenticity of data in seized diary.**

On similar issue and identical fact, we have adjudicated the ground of appeal of the assessee pertaining to ITA No. 2439/M/2023 for A.Y. 2017-18 as per ground no. 9 of the appeal. Since this ground of appeal is also based on similar fact and identical issue therefore, applying the

finding of the same mutatis and mutandis this ground of appeal of the assessee is dismissed

89. In the result, appeal of the revenue vide ITA Nos. 3142, 3140 & 3142/M/2023 are dismissed and the appeal filed by the assessee vide ITA Nos. 2435, 2436, 2439 & 2437/M/2023 are partly allowed.

Order pronounced in the open court on 22.11.2024.

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 22.11.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai