

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA. Nos. 404 & 421 to 423/JP/2024
निर्धारण वर्ष / Assessment Years : 2014-15 to 2017-18

Chandra Mohan Badaya 178, Surya Nagar, Taron Ki Koot, Jaipur	बनाम Vs.	DCIT, Central Circle-2, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEPPB 8451 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. Nos. 427, 462 to 464/JP/2024
निर्धारण वर्ष / Assessment Years : 2014-15 to 2017-18

ACIT, Central Circle-2, Jaipur	बनाम Vs.	Chandra Mohan Badaya 178, Surya Nagar, Taron Ki Koot, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEPPB 8451 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S. L. Gupta
राजस्व की ओर से / Revenue by : Shri Ajay Malik (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 22/10/2024
उदघोषणा की तारीख / Date of Pronouncement : 27/11/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These eight cross appeals are filed because revenue and assessee both were aggrieved with the finding so recorded in the order of the learned Commissioner of Income Tax (Appeals)- 4,

Jaipur [for short CIT(A)] dated 05.02.2024, 31.01.2024, 02.02.2024 & 05.02.2024 for the Assessment Years. 2014-15 to 2017-18. The said order of the Id. CIT(A) was passed because the assessee challenged the assessment order passed by DCIT, Central Circle-2, Jaipur passed u/s 143 (3) r.w.s 153A of the Income Tax Act, 1961 [for short "Act"] on 30.12.2018 before him in the case of the assessee for all these four assessment year.

2. Since the issues involved in these appeals are almost identical on facts and are almost common, except the difference in figure disputed in each year, therefore, these cross appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter in ITA No. 404/JPR/2024 is of the assessee's appeal and 427/JPR/2024 is the appeal of the revenue for the assessment year 2014-15 deals the issue which were common partly considered by the Id. CIT(A) and aggrieved with that finding both have filed separate appeals. Both the parties agreed to take this assessment year as lead case for discussions as the issues involved in the lead case with that of the other years are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other

assessment year are identical except the difference in the amount disputed. Therefore, for the purpose of the present discussions, appeal of the assessee in ITA No. 404/JP/2024, and appeal of the revenue in ITA No. 427/JPR/2024 is taken as a lead case.

4. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 404/JPR/2024 on the following grounds;

“1. The Ld. CIT Appeal has erred on fact and in law in upholding addition on by treating the various entries mentioned in the seized record as unaccounted cash credit without considering the fact that these transaction are both for loan taken as well as loan given and loan being capital receipt is not chargeable to tax and is source of loan given and therefore at worst only peak of such transaction can charged to tax.

1.1 The Ld. CIT Appeal has further erred on fact and in law in upholding the above addition by not considering the fact that part of the entries are verifiable from the books of accounts and part of the entries are duplicate entries as evident from the seized record itself.

2. The Ld. CIT Appeal has erred on fact and in law in disallowing peak credit theory by netting transaction in search record for cash loan taken and cash loan given and uphold the addition by own presumption method termed as incremental negative peak Rs 591812 and account of unexplained loan given u/s 69 Rs 2,76,00,000 without considering all facts in seized documents.

2.1 The Id CIT Appeal further erred in calculation of negative peak on data with wrong presumption himself without considering fact explained and verifiable from available seized records itself. In some cases various receipt either loan or repayment of loan as verifiable from seized record either excluded or has treated as loan given or vice versa as per his own convenience.

2.2 The Id CIT Appeal further erred in confirming repeated addition for alleged unexplained loan first in calculating negative peak and again as unexplained investment.

3. The appellant prays your honor's indulgence to add, amend or alter all or any of the ground of the appeal on or before the date of hearing.”

The assessee vide application dated 09.10.2024 raised the additional ground which reads as under:

That from the facts and circumstances of the case, the Id. CIT Appeal has erred in direct to as show the source of wrong figure Rs. 926992 taken by the AO against the addition u/s 44AD Rs 737495/- by AO mentioning that assessee has declared income from business u/s. 44AD at 9,26,992/- as against actual declared by assessee Rs. 16,64,487/-. As it is clearly verifiable from the record submitted for income disclosed in 44AD Rs. 16,64,487/- then how appellant to show the source of incorrect figure taken by AO hence issue of further verification does not arise and required to delete the addition which was on basis of incorrect figure of disclosed income u/s. 44AD taken by the AO.

4.1 Whereas the grounds of appeal raised by the revenue in ITA No. 427/JPR/2024 reads as under :

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in reducing the addition of Rs. 12,70,45,683/- to Rs. 2,89,29,307/- without appreciating the fact that assessee has failed to reconcile the amount of unaccounted loans given and taken by him during the course of assessment proceedings.

2. The appellant craves leave to add, amend or withdraw any of the ground of appeal during the course of appeal proceeding.”

ITA No. 404/JPR/2024 & 427/JPR/2024 A. Y. 2014-15

5. Succinctly, the fact as culled out from the records is that a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Chandra

Prakash Agarwal Group on 28-07-2016 of which the Assessee is one of the members covered u/s 132. The jurisdiction over the case was assigned to Central Circle - 2, Jaipur by the Commissioner of Income Tax, Jaipur-II, Jaipur vide an Order u/s 127 of the Act dated 14-10-2016.

Notice under section 153A of the Act dated 06-03-2017 was issued and served upon the Assessee by speed post on 09-03-2017 requiring assessee to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules, 1962 within 15 days of the service of the said notice. In response to the said notice(s), a return declaring an income of Rs. 10,51,970/- was filed by the Assessee on 04-11-2017. In the return of income originally filed by the Assessee u/s 139(1) of the Act on 26-03-2015 an income of Rs. 10,79,760/- was declared. However, in the return of income filed in response to notice u/s 153A of the Act no undisclosed income pertaining to the relevant assessment year has been declared by the Assessee. The Assessee primarily derives its income from Salary and Business. The proceedings of assessment of income were commenced by issue of notice u/s 143(2) of the Act on 09-05-2018, and notice u/s 142(1) dated 04-07-2018, and 20-07-2018 were also issued to the assessee and

information and details pertaining to the case relevant to assessment of his income were called by means of a questionnaire. Later queries were raised vide notices under section 142(1) and/or Order Sheet Entries wherever deemed fit by the Id. AO. The assessing officer has discussed all the proposed addition which we reiterate to the extent necessary herein below in the subsequent paras.

5.1 SCN Query no. 1 of Id. AO

Upon consideration of the seized records and the statement so recorded during the search on 30.07.2016, the Id. AO noted that the assessee in the search proceeding admitted having taken cash loans aggregating to Rs. 65,65,000/- from various parties and paid interest thereon. This fact of having given the loans were again reconfirmed vide statement dated 08.12.2016 wherein also the assessee categorically admitted in reply to question no. 21 & 24 that the loans received from aforementioned persons are not recorded in his regular books of accounts. The year wise total of this loan of Rs. 65,65,000/- were falling for A. Y. 2014-15 & 2016-17 for an amount Rs. 25,00,000/- & 40,65,000/- respectively.

Based on that set of fact the assessee vide show cause notice (SCN) dated 01.10.2018 was asked to produce such parties

for verification, it was also stated that in case assessee fails to produce such parties the same be considered as unexplained cash credit u/s. 68 of the Act. In response to that SCN the assessee vide submission dated 13.12.2018 replied that once the assessee has stated that he has raised cash loan and this fact is also accepted in the show cause notice, the loan raised being a capital receipt cannot be as such added as income of the assessee. However, since assessee was not in a position to obtain confirmation from these creditors at the best it could be considered in working peak credit of the loan taken / given whichever is higher.

The stated reply of the assessee was considered however the same was not found satisfactory by the AO because assessee neither furnished any confirmation nor did he furnish any details or whereabouts of such persons. Further, claim of the assessee to consider the same in peak was not considered because during the course of search and survey action no document, whatsoever was found suggesting nexus between the availability of cash funds and its subsequent utilization. The claim of the assessee was considered as flimsy and unsubstantiated, therefore, not accepted and thereby he proposed the addition of Rs. 65,65,000/- in two years.

Ld. AO also noted that the assessee has paid interest against these cash loans which was held as unexplained interest expenditure u/s. 69C of the Act for an amount of Rs. 20,61,000/- bifurcated to A. Y. 2015-16 to Rs. 4,50,000/-, A. Y. 2016-17 to 11,81,300/- and A. Y. 2017-18 to Rs. 4,30,600/-.

5.2 SCN Query no. 2 of Id. AO

Vide reply to question no 20 of the statement so recorded the assessee had admitted of having given cash loan of Rs. 49,00,000/- to Shri Surendra Sharma, Shri Sanjay Jain, Shri Surendra Singh Rajawat and Shri Chandra Bhanu Sharma. Here also the assessee admitted that these loan amounts were given to these persons not reflected in his regular books of accounts. The loans so given for A. Y.s 2015-16 amounts to Rs. 22,00,000/-, A. Y. 2016-17 Rs. 25,00,000/- and A. Y. 2017-18 Rs. 2,00,000/-.

Here also the assessee was asked to show cause vide notice dated 01.10.2018 and considering the reply of the assessee the Id. AO proposed that amount to be added u/s. 68 of the Act. The assessee has also earned interest for these years for an amount of Rs. 23,52,000/- which was also added to the income of the assessee.

5.3 SCN Query no. 3 of Id. AO

During the course of search action at residential premises of the assessee cash amounting to Rs. 11,45,900/- was found which was inventoried as Annexure -CF. On being asked to explain the source at the time of search, the assessee Shri Chandra Mohan Badaya vide Questions No. 36 & 37 of his statement recorded u/s 132 (4) of the I. T. Act, 1961 on 30.07.2016 had stated that the cash amounting to Rs. 11,45,900/- found from his residential premises was not recorded in the books and he could not explain the source of the same. He categorically offered the seized cash of Rs. 10,00,000/- for taxation as his undisclosed income in the year of search i.e. AY 2017-18. Accordingly, the assessee was asked to furnish the explanation on the cash of Rs. 11,45,000/- vide SCN dated 01.10.2018. In reply to which assessee submitted that out of total cash, found Rs. 3,74,261.70 belongs to assessee himself and Rs. 1,68,493/- belongs to Laxmi Kripa Real Estate Private Limited and the balance has been considered by him in peak calculated by him. The Id. AO noted that the contention put forward by the assessee being contrary to his own statement recorded on oath u/s 131 of the Act on 22.09.2016 wherein the assessee himself admitted the cash of Rs. 10,00,000/- as unexplained cash and surrendered the same as his undisclosed income for AY 2017-18.

Further, the assessee has claimed that cash of Rs. 11,45,900/- found from residential premises also includes cash of Rs. 1,68,493/- M/s Laxmi Kriypa Real Estate Pvt. Ltd. wherein the assessee is a one of the director however, neither during the course of search proceeding nor in post search enquiry the assessee stated that any cash related to the alleged company is lying at the residence of the assessee. Further, the assessee also could not explain why the cash of the company was lying at his residence. Therefore, Id. AO made addition of Rs. 10 lac in the year 2017-18.

5.4 SCN Query no. 4 of Id. AO

During the search action the assessee was asked vide Q no. 19 of the statement recorded u/s. 132(4) of the Act on 29.07.2016 to provide details of foreign visits made by the assessee and / or his family members. Vide Q no. 17 of the post search statement the assessee was asked to give details of expenses incurred on foreign tours made during the last 6 years. In reply he stated that the expenses were made through cheque but the same was not substantiated. Accordingly assessee was show caused on 01.10.2018 to furnish the source of expenditure. The assessee has furnished the details of foreign travel and also filed the details of

amount withdrawn to meet the travel expenditure. The Id. AO considered the reply of the assessee but did not find satisfactory due to the reason that the assessee has not furnished any evidence of cash withdrawal from the bank account prior to the foreign travel. Considering the details available on record Id AO noted that the amount of expenditure on foreign travel shown by the assessee during AY 2011-12, 2012-2013, 2013-2014, 2014-2015 & 2015-2016 were considered as per available cash with the assessee but amount of Rs. 5,12,867/- for A.Y. 2017-18 was considered as unreasonable and thus was added u/s 69C of the Act.

5.5 SCN Query no. 5 of Id. AO

A survey u/s.133A of the Act was conducted on 30.07.2016 at the business premises of Shri Ram Enterprise, a proprietary concern of the assessee. From that premises image of data of Dell laptop of the assessee was taken in a Hard Disk, which was impounded and inventoried as Exhibit-4 of Annexure – A. From the analysis of the data so extracted an excel file in the name of 123 Tally.xls of deleted data ledger of C M Badaya (Nikki) Loan for the period 01.04.2013 to 21.12.2013 was found. On perusal of the same it was found that the assessee found to have received the

cash loan of Rs. 1,98,58,188/- on 03.06.2013 and Rs. 12,00,000/- on 12.11.2013 were recorded. Thus, vide notice dated 01.10.2018 the assessee was asked to produce such parties for verification which the assessee could not and contended that the same be considered for calculating the peak. The Id. AO did not considered the claim of the assessee for considering the same for peak and added a sum of Rs. 2,10,58,188/- as unexplained cash credit as per provision of section 68 of the Act.

5.6 SCN Query no. 6 of Id. AO

Similarly from the said excel file name of Book1.xls of deleted data found wherein the assessee has found to have recorded cash loan. The summarized transaction of that excel sheet comes to Rs. 2,64,00,000/- for A. Y. 2014-15, Rs. 11,24,42,000/- for A. Y. 2015-16 and Rs. 73,00,000/- for A. Y. 2016-17, were found to have been recorded in that sheet. Thus, vide notice dated 01.10.2018 the assessee was asked to produce such parties for verification which the assessee could not and contended that the same be considered for calculating the peak. The Id. AO did not considered the claim of the assessee for considering the same for peak and he further noted the following reasons:

- (i) assessee failed to furnish any confirmation
- (ii) assessee did not furnished any details or whereabouts of such persons
- (iii) assessee without any basis claimed that these are not cash loans taken rather cash loans given by him
- (iv) The claim of assessee that transaction with Sanjay Jain though cheque of Rs. 20 Lacs is included in total loan amount of Rs. 50 lacs is unacceptable, because in the excel sheet it has been categorically mentioned in separate row and no wherein the sheet it has been stated that cash amount mentioned corresponding to Sanjay Jain is excluding the sum of Rs. 20 Lacs. Also had it been so then assessee would have mentioned only 30 lacs and 20 Lacs separately against the name of Sanjay Jain. Further, the story that assessee has advanced Rs. 20 Lacs to Sanjay Jain for two month and date of maturity is mentioned as 25.10.2014 is no where written on these pages.
- (v) As far as the case of Sanjay Natani is concerned there is nothing on the excel sheet which suggest the claim of the assessee is acceptable.
- (vi) Further, claim of the assessee to consider the same in peak is not acceptable because during the course of search and survey action no document, whatsoever was found suggesting nexus between availability of cash funds and its subsequent utilization.

Based on these observation a sum of Rs. 14,61,42,000/- was considered as unexplained cash credits.

5.7 & 5.8 SCN Query no. 7 & 8 of Id. AO

Similar to the fact as mentioned in query no. 6 in the same excel sheet cash account of Indra Devi (Rajubhai Shab) and Munnaji was found recorded wherein the transaction of cash loans for an amount of Rs. 1,86,00,000/- and 1,75,00,000/- found recorded. For

this Id. AO has given SCN on 01.10.2018 and after considering the reply of the assessee did not found accepted as the assessee failed to explain source of cash loan and thereby same was added u/s 68 of the Act for A.Y. 2015-16.

5.9 & 5.10 SCN Query no. 9 & 10 of Id. AO

As noted herein above the said excel sheet also contain a Sheet no. 3 wherein the cash account of Indra Kahndelwal has been found recorded for an amount of Rs. 1,00,00,000/-. The said money was given for two month @ 2.5 % per month total addition of Rs. 1,05,00,000/- was made based on the same line as made herein above. In the said excel sheet one sheet in the name of Kailash Bilwa was found with dated 21.04.2014. The said amount was also added as income for A. Y. 2015-16.

5.11 & 5.12 SCN Query no. 11 & 12 of Id. AO

The Id. AO on analysis of excel sheet in the name of Rajubhai Shab names of various persons with dates, amounts, name of parties, rate of interest, amount of commission etc. was found written. On this sheet total amount of Rs. 2,74,50,000/- was found to be recorded in coded form (dollar and silver). The said amount of Rs. 2,74,50,000/- was added on the same line as other cash

loans herein above and silver 7 kg found for an amount of Rs. 2,80,000/- was added as per provision of section 68 of the Act.

5.13 SCN Query no. 13 of Id. AO

The Id. AO also found from that excel sheet-9 Name A/c of Vinayak Sonkhiya was recorded. On this sheet the cash loan was recorded for an amount of Rs. 4,34,88,700/- plus interest of Rs. 23,04,066/- and the same was added for A. Y. 2015-16.

5.14 SCN Query no. 14 of Id. AO

From the same excel sheet file in the name of Tally.xls ledger account in the name of C M Badaya (Nikki) for the period of 01.04.2013 to 23.12.2013 was found recorded. These entries are prima facie cash loan given and taken by the assessee. The assessee was given SCN, reply was filed and after considering the reply of the assessee Id. AO made an addition of Rs. 4,87,50,000/- u/s. 68 of the Act.

5.15 SCN Query no. 15 of Id. AO

The Id. AO noted that the assessee is found indulged in purchase of immovable property in his proprietary concern namely M/s. A. R. Properties & Colonizers as well as sister concerns namely M/s. Fortune Real Estate and M/s. Laxmi Krupa Real Estate P. Ltd. Accordingly the assessee was show caused to explain the nature

and source of investment made by him. Considering the facts and submission made by the assessee Id. AO made an addition of Rs. 5,68,500/- u/s. 69 of the Act.

5.16 SCN Query no. 17 of Id. AO

During the search various incriminating documents were found and seized. Amongst those documents it was found that the assessee purchased 7 Bigha land at Nindarinspite of 10 Bigha as sated by him during search proceedings. Thereafter he stated that the remaining 3 Bighas of Land was purchased by Eminent Build Estate through his partner Shri Pradeep Dusad and was sold by Shri Pradeep Dusad to assessee. The Id. AO noted that if the cheque and on-money portion is quantified it will emerge that the assessee out of total consideration of Rs. 10 crore appox paid Rs. 5,14,03,715/- through normal banking channel and balance Rs. 4,85,96,285/- through cash being on-money. Considering the share of investment of the assessee for 7 bigha addition of Rs. 3,40,17,400/- was made u/s. 69 of the Act for A. Y. 2016-17.

5.17 SCN Query no. 18 of Id. AO

From the document seized Id. AO noted that the assessee there were three document for which the consideration was Rs. 5,14,03,715/-. The land was at Village – Nindar. Considering that

the total deal was for 10 crore the balance amount of cash part for an amount of Rs. 4.78 cr out of that for his share it comes to 3,34,60,000/- and the same was added in the hands of the assessee for A. Y. 2017-18.

5.18 SCN Query no. 19 of Id. AO

19(a) During the search a PEN drive was found wherein document containing details of loans provided by Shri Nikki (assessee) which is for the date 10.07.2015 to 26.08.2015. The interest was also calculated prior to one day on which the loans are payable. Since the assessee could not explained the source of advancing the cash loans to various persons remained unexplained the same was considered as undisclosed income of the assessee a sum of Rs. 1,85,50,000/- and interest thereon for 20,17,000/- was also added as income of the assessee for A.Y. 2016-17.

19(b) Similarly noting was found in the name of Shri Chawalwala wherein the interest and loan amount was found to be recorded for A. Y. 2015-16 for an amount of Rs. 25,14,249/- and Rs. 85,28,750/- for A. Y. 2016-17.

19(c) Another image wherein the name “na me” transaction for Rs. 3,87,00,000/- was found of cash loan the same was added for A. Y. 2017-18.

19(d) Yet an image no. 8036_IMG_6202 there also cash loans for an amount of Rs. 17,95,000/- were found and was added as income of the assessee for A. Y. 2017-18.

19(e) Similar image no. 8049_IMG_6111 found which relates to the land deal of third party and the assessee could not explain the transaction as to why the same found recorded with him. Hence it was considered that the assessee might have earned the commission and the same was estimated @ 3.5 % and Rs. 1,01,747/- was added as undisclosed commission income.

19 (f) On the similar Pen drive image of a per sheet found, wherein the details of money received and paid recorded in the name of Mr. Kailash Ji and Mr. Pawan. On these page transaction of Rs. 4,55,84,774/- was found to be recorded and the same was added as income of the assessee as the assessee failed to explain the source.

19(g) Another image of that pen drive reveals that loan details of four person written the total of these transaction comes to Rs. 2,08,20,000/- and same was added as loan transaction and

peak theory submission made by the assessee was not considered.

19(h) One Hisab Parchi found wherein the transaction were recorded which reveals cash loan and interest being involved on that page was added for Rs. 1,50,000 for A.Y. 2014-15 and Rs. 9,20,000/- for A. Y. 2016-17.

19(i) This page is also found from the PEN drive being the extract of the whatsapp chat. On that page cash loan advances were recorded and the amount recorded in that page comes to Rs. 97,00,000/- which was added as undisclosed income of the assessee.

Based on these the transaction noted on each of the number of show cause given to the assessee based on the material found and seized tabulated herein below :

(i) Undisclosed Investment in property u/s 69

SCN No.	Assessment Year							TOTAL
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	
15	-	-	568500	-	-	-	-	568500
17	-	-	-	-	-	34017400	-	34017400
Grand total	-	-	568500	-	-	34017400	-	34585900

(ii) Unaccounted cash credit (cash loan and interest and other receipt) u/s 68 of the I.T. Act

SCN No.	Assessment Year							TOTAL
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	
1	-	-	-	2500000	-	4065000	-	6565000
2	-	-	-	-	3784000	3220000	248000	7252000
3	-	-	-	-	-	-	1000000	1000000
5	-	-	-	21058188	-	-	-	21058188
6	-	-	-	26400000	112442000	7300000	-	146142000
7	-	-	-	-	18600000	-	-	18600000
8	-	-	-	-	17500000	-	-	17500000
9	-	-	-	-	10500000	-	-	10500000
10	-	-	-	-	10000000	-	-	10000000
11	-	-	-	27450000	280000	-	-	27730000
13	-	-	-	-	45792766	-	-	45792766
14	-	-	-	48750000	-	-	-	48750000
18	-	-	-	-	-	-	33460000	33460000
19.a	-	-	-	-	-	20567000	-	20567000
19.b	-	-	-	-	2514249	8528750	-	11042999
19.c	-	-	-	-	-	-	38700000	38700000
19.d	-	-	-	-	-	-	1795000	1795000
19.e	-	-	-	-	101747	-	-	101747
19.f	-	-	-	-	45584774	-	-	45584774
19.g	-	-	-	-	-	20820000	-	20820000
19.h	-	-	-	150000	-	920000	-	1070000
19.i	-	-	-	-	-	9756250	-	9756250
Grand total	0	0	0	126308188	267099536	75177000	75203000	543787724

(iii) Undisclosed expenditure on interest on cash loan u/s 69C.

SCN No.	Assessment Year							TOTAL
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	
1	-	-	-	-	450000	1181300	430600	2061900
4	-	-	-	-	-	-	512867	512867
Grand Total	-	-	-	-	450000	1181300	943467	2574767

Accordingly, for the year under consideration income of the assessee was computed at Rs. 12,63,08,188/-.

5.19 The Id. AO also found from the computation of income that the assessee has declared income u/s. 44AD of the act for an amount of Rs. 9,26,992/-. Whereas from the trading and profit and

loss account the profit is Rs. 16,64,487/- therefore, balance amount of Rs. 7,37,495/- was added as income from business short disclosed by the assessee.

6. Aggrieved from the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the various grounds so raised by the assessee, the relevant finding of the Id. CIT(A) is reiterated here in below:

“Decision

The appellant has claimed that the issue in this SCN 5 is covered with issue in SCN 14. However it is seen that on the two crucial dates of 3rd June 2011 and 12th November 2011 when the cash loan has been received by the appellant there are no matching entries in the details maintained in the tally in SCN 14. The amounts are different as well as there is no entry on the date of 12th November 2011. Neither the dates are matching nor the amounts are matching regarding the cash loans in the two SCN. Thus the appellant maintained two separate accounts in the name of CM BADAYA (Nikki) for noting separate cash transactions. Further underlying nature of the transaction is not stated in the documents seized and can be different for two different documents. In view of this discussion this argument of the appellant is hereby rejected.

There is no dispute on the issue regarding the taking of unaccounted cash loans by the appellant. Unaccounted cash interest payment is also disallowable u/s 69C of the Act.

The identity, genuineness and creditworthiness are not proved by the borrower appellant. In this regard reference is made to section 68 of the Act. The appellant has not even furnished the complete address and PAN numbers of these parties from whom the loan has been borrowed. Merely because in the present appeal the loan transactions of the appellant are in cash and have been kept undisclosed and have been detected only during the course of search and seizure action does not make the appellant eligible for some premium benefit or treatment regarding exemption from not complying with legal requirements and taxability under section 68, 69 and 69D etc. of the Act. It is a settled law that no premium can be awarded to the dishonesty.

Had the appellant provided the complete details of the lenders the assessments in those cases of the lenders could have been reopened and addition regarding unaccounted cash or unaccounted investment

could have been done in the hands of such lenders. However identity and other details of the parties have been deliberately withheld by the appellant.

In view of the above discussion, if the claim of the appellant is allowed that will also tantamount to giving reward and premium to the money laundering practices.

The legality and addition on this issue is further discussed in page 57 to 96 of this order.

(iii) SCN Query no. 6:

Finding of Assessing Officer:

Further, From the analysis of an excel file in the name of Book1.xls of 'deleted data' of working copy of hard disk (Party No. 14, Exhibit-4, Annexure-A), names of various persons with dates and amounts are found to be recorded on Sheet 1 & Sheet 2.

Therefore, appellant vide SCN dated 01.10.2018 was asked to produce sur parties for verification it was also stated herein that in case appellant fails to produce such parties the same be considered as unexplained cash credit u/s 68.

In response appellant vide submission dated 13.12.2018, submitted that, "From the hard disk, an excel file in the name of "book1.xls" of deleted was extracted containing Sheet 1 and Sheet 2. Copy of these sheets is enclosed. On the basis of these sheets, it is alleged that appellant has taken cash loan of Rs.14,61,42,000/ between AYs 2014-15 to 2016-17 which is proposed to be added u/s 68. In this connection, we may point out that on 'sheet 1' the name of the person along with the various dates and certain amounts thereunder are mentioned. This sheet is in respect of due date of the repayment of amount advanced to various parties. This is established from the fact that in the name of Sanjay Jain on 25.10.2014, Rs.20 lakhs is mentioned as cheque of Axis Bank. In fact, appellant has advanced Rs.20 lakhs by cheque of PNB Bank to Sanjay Jain on 26.08.2014 which was due for repayment after two months on 25.10.2014 and therefore, in the Sheet, the due date of repayment is mentioned as 25.10.2014. The amount was repaid by him between 05.11.2014 and 07.11.2014. Thus, the amount mentioned on this paper indicates the amounts advanced by the appellant to various persons and not the loan raised. Accordingly, it has been considered in the peak working as amount advanced two months before the date mentioned on this sheet. Similarly, in Sheet 2, the amount raised by the appellant from various persons along with the due date of repayment of loan and amount is mentioned. This is evident from the fact that in the name of Sanjay Natani on 23.11.2014, Rs.20 lakhs is mentioned by cheque which means that appellant has taken the loan from him on 23.09.2014 which

was due for repayment on 23.11.2014. In the ICICI Bank account of the appellant, the loan of Rs.20 lakhs received from Sanjay Natani is duly reflected. Thus, on this sheet, the due date of the repayment of loan raised by the appellant is noted and accordingly, the same has been considered in the statement of peak credit as loan raised. Therefore, the addition proposed by you is incorrect".

The reply of the appellant was considered however the same is not found satisfactory due to following reasons:-

- (i) appellant failed to furnish any confirmation
- (ii) appellant did not furnished any details of whereabouts of such persons
- (iii) appellant without any basis claimed that these are not cash loans taken rather cash loans given by him
- (iv) The claim of appellant that transaction with Sanjay Jain though cheque of Rs. 20 Lacs is included in total loan amount of Rs. 50 lacs is unacceptable, because in the excel sheet it has been categorically mentioned in separate row and no wherein the sheet it has been stated that cash amount mentioned corresponding to Sanjay Jain is excluding the sum of Rs. 20 Lacs. Also had it been so then appellant would have mentioned only 30 lacs and 20 Lacs separately against the name of Sanjay Jain. Further, the story that appellant has advanced Rs. 20 Laca to Sanjay Jain for two month and date of maturity is mentioned as 25.10.2014 is no where written on these pages.
- (v) As far as the case of Sanjay Natani is concerned there is nothing on the excel sheet which suggest the claim of the appellant is acceptable.
- (vi) Further, claim of the appellant to consider the same in peak is not acceptable because during the course of search and survey action no document, whatsoever was found suggesting nexus between availability of cash funds and its subsequent utilization.

In view of the above, the claim of the appellant is flimsy and unsubstantiated, therefore cannot be accepted. Since, the cash creditors remained unexplained and unverifiable therefore a sum of Rs. 14,61,42,000/- are treated as unexplained.cash credit u/s 68 of the 1.T. Act as mentioned in above mentioned table.

Appellant submission:

SCN 6 addition Rs. 14,61,42,000u/s 68 on account of alleged unexplained cash credit from the hard disk, an excel file in the name of "book1.xls" of deleted was extracted containing Sheet 1 and Sheet 2.

First of all the Id. A.O alleged that appellant has taken cash loan of Rs. 14,61,42,000/- between AYs 2014-15 to 2016-17 but it is pointed out that on 'sheet 1'(PB 38)the name of the person along with the various dates and certain amounts thereunder are mentioned are in respect of due date of the repayment of amount advanced to various parties. This is established from the fact that in the name of Sanjay Jain on 25.10.2014,

Rs.20 lakhs is mentioned as cheque of Axis Bank. In fact, appellant has advanced Rs.20 lakhs by cheque of PNB Bank to Sanjay Jain on 26.08.2014 which was due for repayment after two months on 25.10.2014 and therefore, in the Sheet, the due date repayment is mentioned as 25.10.2014. The amount was repaid by him between 05.11.2014 and 07.11.2014. Thus, the amount mentioned on this paper indicates the amounts advanced by the appellant to various persons and not the loan raised. Accordingly, it has been considered in the peak working as amount advanced two months before the date mentioned on this sheet.

Similarly, in Sheet 2,(PB 39) the amount raised by the appellant from various persons along with the due date of repayment of loan and amount is mentioned. This is evident from the fact that in the name of Sanjay Natani on 23.11.2014 Rs.20 lakhs is mentioned by cheque which means that appellant has taken the loan from him on 23.09.2014 which was due for repayment on 23.11.2014. In the ICICI Bank account of the appellant, the loan of Rs.20 lakhs received from Sanjay Natani is duly reflected.

Thus, on this sheet, the due date of the repayment of loan raised by the appellant is noted and accordingly, the same has been considered in the statement of peak credit as loan raised. The Id A.O disregarded the facts even all facts itself verifiable from seized documents itself. Hence addition made are wrong and bad in law.

Decision

The appellant has raised three disputes:-

- (a) The transactions mentioned are not cash loan received but cash loan given by the appellant
- (b) Appellant has claimed the peak calculation
- (c) Appellant has made specific submissions regarding two parties namely Sanjay Jain and Sanjay Natani

Sanjay Jain:

I agree with the finding of the Id. AO that the claim of appellant that transaction with Sanjay Jain through cheque of Rs. 20 Lacs is included in total loan amount of Rs. 50 lacs is unacceptable, because in the excel sheet it has been categorically mentioned in separate row and no wherein the sheet it has been stated that cash amount mentioned corresponding to Sanjay Jain is excluding the sum of Rs. 20 Lacs. Also had it been so then appellant would have mentioned only 30 lacs and 20 Lacs separately against the name of Sanjay Jain.

Further, the story that appellant has advanced Rs. 20 Lacs to Sanjay Jain for two month and date of maturity is mentioned as 25.10.2014 is nowhere written on these pages.

Sanjay Natani:

The appellant has claimed that since there was one transaction with Sanjay Natani on 23 of September 2011 hence the date of 23 November is the date of repayment however there is no evidence in this regard and further the appellant has not produced the confirmation or the affidavit of Sri Sanjay Natani. I agree with the view of the Id. AO that as far as the case of Sanjay Natani is concerned there is nothing on the excel sheet which suggest the claim of the appellant is acceptable. It is not the case of the appellant that on both the dates 23 September 2011 and 23rd November 2011 the two bank entries of rupees 20 lakhs each are appearing in the account of Sanjay Natani.

In view of the above discussion there is no merit in the claim of the appellant that the cash entries reflect the entries of cash loan advanced by the appellant and not the entries of cash loan taken.

Further in this order only one side of the cash loan taken and cash loan given are being added and along with the difference in terms of own funds invested by the appellant and thus even by upholding the view of the Id. AO in the larger overall calculations there will not be much difference overall.

Further, the addition made by the learned assessing officer u/s 69C of the Act regarding the unaccounted cash interest payment is hereby upheld as discussed in SCN No. 1 also.

Regarding the argument that the loan raised per-se is not be treated as income however the same can be treated as income when the identity, genuineness and creditworthiness are not proved by the borrower appellant. In this regard reference is made to section 68 of the Act. The appellant has not even furnished the complete address and PAN numbers of these parties from whom the loan has been borrowed. Merely because in the present appeal the loan transactions of the appellant are in cash and have been kept undisclosed and have been detected only during the course of search and seizure action does not make the appellant eligible for some premium benefit or treatment regarding exemption from not complying with legal requirements and taxability under section 68, 69 and 69D etc. of the Act. It is a settled law that no premium can be awarded to the dishonesty.

Had the appellant provided the complete details of the lenders the assessments in those cases of the lenders could have been reopened and addition regarding unaccounted cash or unaccounted investment could have been done in the hands of such lenders. However identity

and other details of the parties have been deliberately withheld by the appellant.

In view of the above discussion, if the claim of the appellant is allowed that will also tantamount to giving reward and premium to the money laundering practices.

The legality and addition on this issue is further discussed in page 57 to 96 of this order.

SCN no Query no. 11:

Finding of the Assessing Officer

On the analysis of excel file in the name of RAJU BHAI SHAB 13092014.xls of 'deleted data' of working copy of hard disk (Party No. 14, Exhibit-4, Annexure- A), names of various persons with dates, amounts, name of parties, rate of interest, amount of interest, amount of commission etc. are found recorded on Sheet 7 in the name of SUMER JAIN JI.

These entries appear to be loan given by appellant, M/s Shree Ram Enterprises and M/s AR Properties & Colonizers through Mr. Sumer Jain to various parties in cheques.

On this excel sheet entry of 'CASH ACCOUNT' is also found recorded. Screen shots of the relevant portions of worksheet of excel file is reproduced herewith for ready reference.

These entries prima facie appear to be loans given by the appellant to various parties in cash and kind (dollar and silver). Cash amount of loans on these sheets are written in code world i.e. lakhs of rupees. For example, 15.00 has been coded as Rs. 15 lakhs. Total amount of cash loans entered on above sheets comes to Rs. 2,74,50,000/-.

Therefore, appellant vide SCN dated 01.10.2018 was asked to produce such parties for verification it was also stated herein that in case appellant fails to produce such parties the same be considered as given out of your income from undisclosed sources.

In response appellant vide submission dated 13.12.2018, submitted that these are not loans given rather these transaction represents loan taken he however, expressed his inability to furnish confirmation of such parties.

The reply of the appellant was considered however the same is not found satisfactory due to the reason that, appellant neither furnished any confirmation nor did he furnish any details or whereabouts of such persons. Further, claim of the appellant to consider the same in peak is not acceptable because during the course of search and survey action no

document, whatsoever was found suggesting nexus between availability of cash funds and its subsequent utilization. The claim of the appellant is flimsy and unsubstantiated, therefore cannot be accepted. Since, the source of advancing cash loans to various person remained unexplained therefore the same is considered as given out of undisclosed income of the appellant and a sum of Rs. 2,74,50,000 is held unexplained cash credit u/s 68 of the I.T. Act for AY 2014- 15.

Further the appellant has not furnished any explanation in respect of silver weighing 2 kg and 5 kg aggregating to 7 kg. Therefore, same remains unexplained and Rs. 280000/- (7kg 40000/-) is held unexplained income of the appellant u/s 68 of the I.T. Act for AY 2015-16.

Appellant submission

Ref SCN No. 11 Addition Rs 2,77,30,000 on basis an excel file in the name of "Raju Bhai Shab 13092014.xls" of deleted data containing sheet 7 in the name of Sumer Jain. On the basis of this sheet, it is alleged that appellant has given cash loan of Rs.2,74,50,000/-. In this connection, we have pointed out that other entries recorded in same sheet (PB 43) containing the name, date of cheque, amount, rate of interest, no. of months, and interest amount are verifiable from books of account and bank statement of the appellant which indicates that this sheet is with reference to the amount received and not the amount given. Accordingly, the cash entries noted on this paper is considered in the peak working. Hence, the addition made on basis of these sheets as undisclosed income of the appellant is not justified.

Decision

The Id. AO has made the addition treating it as loan given on the basis of the apparent finding that the banking entries also reflect loan given. The appellant has claimed that the banking entries in these sheets reflect amount received and note amount given. However the appellant has not shown evidence in this regard during the appeal proceedings and no paper book in this regard has been filed regarding the submissions made before the assessing authority. At the same time the assessing officer has not discussed the bank entries and has only gone by the prime facie finding and thus the verification has not been done completely. At the same time since the assessing authority has also gone by the nature of the banking entries and adopted the same nature (loan given or loan taken) with respect to the cash entries therefore the appellant is also claiming the same and only dispute here is the nature of the banking entry. Therefore it is hereby held that the nature of the cash entries will be same as cash loan given or cash taken on the basis of the nature of the bank entries whether funds are taken or funds are given.

Regarding the argument that the loan raised per-se is not be treated as income however the same can be treated as income when the identity,

genuineness and creditworthiness are not proved by the borrower appellant. In this regard reference is made to section 68 of the Act. The appellant has not even furnished the complete address and PAN numbers of these parties from whom the loan has been borrowed. Merely because in the present appeal the loan transactions of the appellant are in cash and have been kept undisclosed and have been detected only during the course of search and seizure action does not make the appellant eligible for some premium benefit or treatment regarding exemption from not complying with legal requirements and taxability under section 68, 69 and 69D etc. of the Act. It is a settled law that no premium can be awarded to the dishonesty.

Had the appellant provided the complete details of the lenders the assessments in those cases of the lenders could have been reopened and addition regarding unaccounted cash or unaccounted investment could have been done in the hands of such lenders. However identity and other details of the parties have been deliberately withheld by the appellant.

In view of the above discussion, if the claim of the appellant is allowed that will also tantamount to giving reward and premium to the money laundering practices.

The legality and addition on this issue is further discussed in page 57 to 96 of this order.

(iv) SCN no Query no. 14:
Finding of Assessing Officer

An excel file in the name of TALLY.xls of 'deleted data' of working copy of hard disk (Party No. 14, Exhibit-4, Annexure-A), ledger account in the name of C M BADAYA (Nikki) for the period of 01.04.2013 to 23.12.2013 is found recorded. The entries recorded on this sheet prima facie appear to be cash loans/cash credits of Shri Chandra Mohan Badaya and cash loans given by Shri Chandra Moahn Badaya in cash and through bank.

The entries recorded are loans given and taken by Shri Chandra Moahn Badaya in cash and through bank. Therefore, appellant vide SCN dated 01.10.2018 was asked to produce such parties for verification it was also stated herein that in case appellant fails to produce such parties the suitable addition shall be made in the hands of the appellant.

In response appellant vide submission dated 13.12.2018, submitted that, this has been explained in Point no. (v) which is reproduced as under:

(v) "From the hard disk you have extracted excel file in name of "123Tally.xls" of deleted data is a ledger of CM Badaya (Nikki) loan for the period 01.04.2013 to 21.12.2013. As per this ledger account, there is certain credit in the account of the appellant from 01.04.2013 to

21.12.2013. The total of these credit entries which include both cash and cheque transactions is Rs.2,90,58,188/-, However, this appears to be a consolidated entry of various amounts of which it is proposed to add the cash amount of Rs 2,10,58,188/Sinther day-to-day Selger account from the handsk for the period 01.04.2013 to 23.12.2013 atse extracted as mentioned in point na 14 of the shour mise notice. As per this ledger account, there is a credit of Rs.3.30.50,000/ and debit of Rs.2,07,00,000/- in the account of the appellat during the aforesaid period leaving a balance of Rs. 1,23,50,000/- Is this lediger account, there are two entries of Rs. 20 lakhs each dated 28.08.2013 and 30.08.2013 against Asis Bank which is verifiable from the hooks of accounts of the appellat acconfing to which appellat has given this amount to M/s Khushi Sananur Pvt. Laf Thus, in fact it is a ledger account of the appellat in relation to Khushi Sansaar Pvt. Ltd. to whom he has provided the cash amount and also received the cash amount. Accordingly, these cash amounts given / received in considered in the peak statement. Therefore, on the basis of this paper the addition of Rs. 2,10,58,188/- proposed by you should be excluded as it is covered by the transaction specified at Point No. 14 of the show cause notice."

The reply of the appellat was considered however the same is not found acceptable due to the reason that in the excel file in the name of TALLY xis of 'deleted data' of working copy of hard disk (Party No. 14, Exhibit-4, Annexure A), ledger account in the name of C M BADAYA (Nikki) for the period of 01.04.2013 to 23.12.2013, the transaction noted are totally difference and there was no reference of any cheque(s) dated 12.09.2013 of Rs. 40,00,000 dated 12.09.2013 of Rs. 33,00,000 and dated 12.11.2013 of Rs. 7,00,000/-, also the when the all the cash figures appearing in both the excel sheet were totaled they were not matching. Thus it appears that the appellat maintained two separate accounts in the name of C M BADAYA (Nikki) for noting separate transactions and there was no nexus between them at all. In view of the facts as discussed the contention of the appellat is misplaced and cannot be accepted.

Further appellat neither furnished any confirmation nor did he furnish any details or whereabouts of such persons. Further, claim of the appellat to consider the same in peak is not acceptable because during the course of search and survey action no document, whatsoever was found suggesting nexus between availability of cash funds and its subsequent utilization. The claim of the appellat is flimsy and unsubstantiated, therefore cannot be accepted. Since, the source of advancing cash loans to various person remained unexplained therefore the same is considered as given out of undisclosed income of the appellat and a sum of Rs. 2,80,50,000/- is held unexplained cash credit u/s 68 of the I.T. Act for AY 2014-15. Further, as appellat has not furnished any detail in respect of the person from whom the cash amount of Rs. 20700000/- has been received therefore same remain unexplained and held unexplained cash credit u/s 68 of the 1.T. Act for AY 2014-15.

In view of the above a sum of Rs. 48750000/- (Rs. 2,80,50,000/- plus Ra on of held unexplained cash credit u/s 68 of the 1.T. Act for Ay 2014-15.

Appellant Submission

Ref SCN no. 14 of the show cause notice, addition Rs 4,87,50,000 made on basis of an excel file in the name of "Tally.xls" of deleted data containing ledger account in the name of CM Badaya for the period 01.04.2013 to 23.12.2013. This has been explained in Point no. (v) above and therefore, no separate addition is required on the basis of this ledger account.

Decision

The appellant has made the same contention which was made in the assessment proceedings however it is noticed that the appellant is completely silent on the observations and the factual findings of the assessment order in this regard and thus the claim of the appellant is only baseless and devoid of merits. At the same time Id. AO has not effectively rejected the claim of the appellant that cash entries pertain to Khushi Sansar Pvt. Ltd. considering the cheque entries. Hence claim of the appellant is accepted to this extent.

Further, the cash entries are not matching with entries in SCN No 5. Appellant has not contested and proved wrong the findings of the Id. assessing officer in this regard. The issue has also been discussed by the undersigned in SCN Query No. 5 in paragraphs above. In view of this discussion the ground raised by the appellant in this regard is hereby rejected and dismissed and the addition is upheld. The legality and addition on this issue is further discussed in page 57 to 96 of this order.

(VI) SCN no Query no.19:

Finding of Assessing Officer

During the search action u/s 132 of the I. T. Act, 1961 conducted on 29.07.2016 at residential premises of the appellant at A-178, Surya Nagar, Taroo Ki Koot, Tonk Road, Jaipur, back up of data available in appellant's mobile phone were taken by the computer specialist in the PEN Drive and the same was seized as Exhibit-4 of Annexure AS as mentioned in the Punchnama. A working copy of the said PEN Drive was also prepared during the search operation and soft copy of the same was also provided to the appellant on 05-11-2018. The PEN Drive is critically examined and issue arise after examination is discussed in following para.

Finding of Assessing Officer:

(h) A image was extracted from the appellant mobile during post search proceedings. The image is of Hisab Parchi which is hand written and has systematic working of financial transactions.

Accordingly, the appellant vide SCN dated 01.10.2018 was asked to produce such parties for verification it was also stated herein in case appellant fails to produce such parties the same be considered as given out of his income from undisclosed sources and also show cause as why the interest earned on such Asana could not be considered as undisclosed income of the appellant.

In response appellant vide submission dated 13.12.2018, submitted same reply that certain WhatsApp messages have been extracted from the mobile of the appellant. These messages relate to the transaction of funds received / given However, the message at Page 34 of the show cause notice does not relate to the appellant. Further, message at Pages 30 and 37 of the show cause notice relates to the same transaction. Some of the transactions in these messages are by cheques which are duly verifiable from the books of accounts. The remaining transactions have been considered in the peak working and therefore, ne addition on the basis of these WhatsApp messages can be made to the income of the appellant ignoring the peak working"

The reply of the appellant was considered wherein the appellant has contended that the transaction mentioned on this page is are repetitive and already have been considered in forgoing para at (g) however the same is found partly correct as principal amount of Rs. 8,00,000/- and interest thereon of Rs. 1,20,000/- has not been found in above para. As the appellant not furnished any explanation on these transaction. Therefore, the same is treated as undisclosed income u/s 68 of the 1.T. Act aggregating to Rs. 9,20,000/-(Rs. 8,00,000/- plus Rs. 1,20,000/-) of the appellant taxable in AV 2016-17.

Further, in this page transaction of Rs. 150000/- has been found which is cash loan of Rs. 150000/- advanced on 19-03-2013. Since the appellant has not furnished any explanation on this transaction and himself has taken this transaction for the computation of the peak. Therefore, the same also considered as unexplained income of the appellant u/s 68 of the 1.T. Act for AY 2014-15. In view of the above year wise backup of undisclosed income u/s 68.

Appellant submission

Ref SCN 19 various addition made u/s 68 Rs
149437770(20567000+11042299+38700000+1795000+101747+455847
74+
208

20000+1070000+9756250) on basis of WhatsApp messages have been extracted from the mobile of the appellant. These messages relate to the funds received/given.

However it has been explained during course of assessment proceeding that the message at Page 34 of the show cause notice does not relate to the appellant.

Further, message at Pages 36 and 37 of the show cause notice relates to the same transaction.

Some of the transactions in these messages are by cheques which are duly verifiable from the books of accounts.

The remaining transactions have been considered in the peak working and therefore, no addition on the basis of these WhatsApp messages can be made to the income of the appellant ignoring the peak working. However the Id A.O. ignored the fact and added all figures as unexplained income of assessee u/s 68 of the I.T. Act in various years.

Decision:

There is no dispute regarding the fact that the transactions pertain to funds/loan. The appellant has mainly contended that some of the transactions do not pertain to him and some of the transactions are duplicate transactions and some of the transactions are through banking channel. Regarding the contention of the appellant that some of the transactions do not pertain to him, in this regard it is seen that the appellant has not proved the same. Complete onus in this regard is on the appellant. As per section 132(4A) of the Act there is a presumption provided under the law against the appellant that document, found in the possession or control of the assessee, belongs to the assessee. Further regarding the fact of the argument that some of the transactions are duplicated or transactions the appellant has not proved the same and has not shown how the same are duplicate as the appellant has not even identified and mentioned the specific duplicate transactions in his reply. The appellant has also made another vague argument that some of the transactions are through banking channel however such transactions have not been identified and supporting banking documents have not been produced for the verification and the appellant has not shown that these are not the different transactions and are the very same transactions. Further the appellant has not produced the parties and has not further filed the confirmations.

In view of this discussion the arguments of the appellant on this part of the ground is hereby rejected.

The legality and addition on this issue is further discussed in page 57 to 96 of this order.

(VII) Unexplained credits received and unexplained cash advances given by appellant-

As per the seized document the appellant has received undisclosed cash advances from certain parties on his own accord and further the appellant on his own accord has further given cash advances to certain parties. The names of the parties are mentioned in both the cases of advances received and advances given and in number of cases the dates are also mentioned and further in few number of cases some references to the purpose is also mentioned. There is no dispute regarding the seized documents that the appellant has induced into undisclosed activities of taking and giving cash advances like a finance company or a loan company. In there is no dispute regarding anything and only in few cases there's dispute regarding whether such entries pertain to receipt of cash advance by the appellant or the giving of cash advance by the appellant. In further fewer cases there is dispute regarding the amount of the transaction. As such the contents of the seized documents are not in dispute largely and the dispute is mainly regarding the quantification of the amount of addition in the income in the hands of the appellant.

As stated in the assessment order w.r.t. one of the issues, vide SCN dated 01.10.2018 the appellant was asked to produce such parties for verification it was also stated herein that in case assessee fails to produce such parties the same be considered as unexplained cash credit u/s 68.

In response the appellant vide submission dated 13.12.2018, submitted that, "in this connection we would like to submit that once the assessee has stated that he has raised cash loan and this fact is also accepted in the show cause notice, the loan raised being a capital receipt cannot be as such added to income. However, since assessee is not in a position to obtain confirmation from these creditors, at the best it could be considered in working peak credit of the loan taken / give. Accordingly, same along with the interest paid there considered in the working of the peak calculation"

The reply of the appellant was rejected in the assessment order due to the reason that, appellant neither furnished any confirmation nor did he furnish any details or whereabouts of such persons. Further, claim of the assessee to consider the same in peak is not acceptable because during the course of search and survey action no document, whatsoever was found suggesting nexus between availability of cash funds and its subsequent utilization. It is further noticed in the assessment order that the claim of the assessee is flimsy and unsubstantiated, therefore cannot be accepted. Since, the cash creditors remained unexplained and unverifiable therefore the same was held unexplained cash credit u/s 68 of the I.T. Act, in respective years. Similarly the cash loans given by the appellant have been added to the income of the appellant being unexplained as the source of advancing cash loans to various person remained unexplained, the same was considered as given out of

undisclosed income of the assessee and was held unexplained cash credit u/s 68.

In this regard the settled law is that where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source (CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC)/A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC)).

Referring to the above judgements of Hon'ble Supreme Court, it is held by the Hon'ble ITAT in the case of Navin Shantilal Mehta v. Income-tax Officer, Ward- 32 (2) (4), Mumbai [2018] 90 taxmann.com 16 (Mumbai - Trib.) as under:-

"3.2 As per section 68 of the Act, onus is upon the assessee to discharge the burden so cast upon. First burden is upon the assessee to satisfactorily explain the credit entry contained in his books of accounts. The burden has to be discharged with positive material (Oceania Products Exporting Co. v. CIT [2000] 241 ITR 497 (Ker.). The legislature had laid down that in the absence of satisfactory explanation, the unexplained cash credit may be charged u/s 68 of the Act. Our view is fortified by the ratio laid down in Hon'ble Apex Court in CII v. P. Mohankala [2007] 291 ITR 278/161 Taxman 169. A close reading of section 68 and 69 of the Act makes it clear that in the case of section 68, there should be credit entry in the books of account whereas in the case of 69 there may not be an entry in such books of account. The law is wellsettled, the onus of proving the source of a sum, found to be received/transacted by the assessee, is on him and where it is not satisfactorily explained, it is open to the Revenue to hold that it is income of the assessee and no further burden lies on the Revenue to show that income is from any other particular source. Where the assessee failed to prove satisfactorily the source and nature of such credit, the Revenue is free to make the addition. The principle laid down in CTT v. M. Ganapati Mudaliar [1964] 53 ITR 623 (SC)A. Govinda Rajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC) and also CIT v. Durga Prasad More [1969] 72 ITR 807 (SC) are the landmark decisions. The ratio laid down therein are that if the explanation of the assessee is unsatisfactory, the amount can be treated as income of the assessee. The ratio laid down in CII v. Daulat Ram Rawatmal [1973] 87 ITR 349 (SC) further throws light on the issue. In the case of a cash entry, it is necessary for the assessee to prove not only the identity of the creditor but also the capacity of the creditor and genuineness of the transactions. The onus lies on the assessee, under the facts available on record. A harmonious construction of section 106 of the evidence Act and section 68 of the Income Tax Act will be that apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of the creditors. In CIT v. Korlay Trading Co. Ltd. [1998] 232 ITR 820 (Cal), it was held that mere mention of file number of

creditor will not suffice and each entry has to be explained separately by the assessee. CIT v. R.S. Rathaore [1995] 212 ITR 390/86 Taxman 20 (Raj.). The Hon'ble Guwahati High Court in Nemi Chandra Kothari v. CIT [2003] 264 ITR 254/[2004] 136 Taxman 213 held that transaction by cheques may not be always sacrosanct.....”

In case of Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR SC)[08-03-1977] it is held by the Hon'ble Supreme Court as under:-

"Now, the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the revenue is entitled to treat it as taxable income. This was laid down as far back as 1958 when this court pointed out in A. Govindarajulu Mudaliar v. Commissioner of Income-tax [1958] 34 ITR 807, 810 (SC) that:

“There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature.”

In the case of Kale Khan Mohammad Hanif v. Commissioner of Income-tax (1963) 30 ITR 1 (SC)[08-02-1963] it is held by the Hon'ble Supreme Court as under:-

"It seems to us that the answer to this question must be in the affirmative and that is how it was answered by the High Court. It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income: see A. Govindarajulu Mudaliar v. Commissioner of Income-tax [1958] 34 ITR 807 (SC)".

The appellant in Ground of Appeal no. 2 (A.Y. 2014-15) has stated that the Ld. AO has erred on fact and in law in making the addition of Rs. 12,63,08,188/- u/s 68 by treating the various entries mentioned in the seized record as unaccounted cash credit with seized record as unaccounted cash credit without considering the fact that these transactions are both for loan taken as well as loan given and loan being capital receipt is not chargeable to tax and is source of loan given and therefore at worst only peak of such transaction can be charged to tax. The appellant has primarily raised two arguments:-

- (i) receipt of loan is the source of loan given.
- (ii) at worst only peak of such transaction can be charged to tax.

Hon'ble High Court in the case of Sind Medical Stores, Kota vs The Commissioner of Income-tax, Jaipur, DB Income Tax Reference No.24/1992. (Judgment pronounced on :: 12th November, 2014) has held as under:-

"12. This court in the case of Commissioner of Income Tax Vs. Tyaryamal Balchand (supra), after relying on several judgments, also upheld the finding about peak credit theory. This Court in CIT Vs. Ishwardas Mutha (2004) 270 ITR 597 (Raj.) also accepted the contention to take into account, the peak credit. When any amount is paid, later withdrawn from the books, would be available for recycling and rotation, unless otherwise established as invested elsewhere by the Revenue. We hold the assessee was entitled to the benefit of peak credit which ought to have been allowed instead of making separate addition of entire amount. However, we may observe that the Assessing Officer has to come to a definite finding that the amount withdrawn was used by the assessee in any other expenditure or investment. If the Assessing Officer comes to a finding that withdrawn amount was used or spent by the assessee for any other investment or expenditure than the benefit of peak of such credit, in such circumstances, may not be available".

The appellant has received cash loans and also has given cash loans to different parties. There is no evidence on records or any specific finding is not on record regarding the utilization of the cash loan received somewhere else and not in advancing of further cash loans by the appellant.

In case the cash loan received is taxed as unexplained in that case subsequent cash loans given by the appellant are to be treated out of such taxed cash loan received and such cash loan given cannot be treated as the income of the appellant being out of the taxed source of funds in the form of cash loan. Alternatively in case the unexplained investment in the form of cash loan given by the appellant is taxed in that case there is no need to also tax the source of the same being the unexplained cash loan received as the investment itself has been taxed. Accordingly, broadly, the addition can be done only on one side either on account of the unexplained cash loan received or on account of unexplained investment in the form of cash loan given.

In the present case the loan has been given and loan has been taken in unaccounted cash and the appellant has not disclosed the details of the person's involved. Conversely, even when the loans are received through banking channel and the transactions are even recorded in the formal audited books of accounts even then the credit entries and the investments are liable to be explained by the assessee depending upon the facts and circumstances of the case. Even in such a scenario the investments if made out of unexplained received will be liable to be taxed under section 69 despite of the acceptance the fact loans have been received by such assessee. Alternatively such credits (loans received)

will be liable to be taxed under section 68. Whereas in the present case the transactions have been done in unaccounted cash and the onus is much greater on the appellant.

It is a settled law that there is no requirement under law with respect to section 68 of the Act that the AO is required to prove that the funds originally belonged to the assessee in whose hands the addition is being done. Onus is on the assessee to provide the identity, genuineness and creditworthiness w.r.t. the credits. The credits received may have been money of someone else that is immaterial. The AO is not to identify the source. where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source (CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC)/A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC)). Further source can also not be presumed (Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC))

In the assessment order both cash loan received and cash loan given by the appellant have been added to the income of the appellant. In the present appeal order, in principle, the taxation is upheld on account of unexplained cash loan given as unexplained investment and accordingly the source cash loan is not required to be added/taxed (even though the identity, genuineness and creditworthiness etc. remains unexplained) till the time the unexplained cash loans given are taxed as both cash loan received and cash loan given are two sides of the same coin and taxing the one leads to non-taxing the other, to the extent of matching amounts, to avoid double taxation. (In case the cash loan given is not taxed, the money in the form of cash loan received is taxable being unexplained credits u/s 68/ unexplained money u/s 69A).

Accordingly, the appellant gets partial relief in these above terms.

(VIII) Rotation of the Funds: Subsequent advances from the loan repayment received back:-

The appellant has inter-alia relied upon the judgement of Hon'ble Rajasthan High Court in the case of Commissioner of Income-tax v. Ishwardass Mutha [2004] 141 Taxman 555 (Rajasthan)/[2004] 270 ITR 597 (Rajasthan)/[2004] 186 CTR 759 (Rajasthan)[17-04-2002] wherein it is held as under:-

"Both the reference applications under section 256(2) of the Income-tax Act, are at the instance of the Revenue from the order of the Tribunal, dated 3rd Sept., 1997. The IT Ref. No. 43 of 1998 pertains to assessment year 1981-82 and the IT Ref. No. 1/1998 pertains to assessment year 1982-83 and the same assessee namely, Ishwardass Mutha.

2. In D.B. IT Ref No. 43/1998 it appears that the assessee Ishwardass Mutha filed a return in the year 1983 showing the total income of Rs. 13,410 representing share from M/s. Chogalal Bhimraj, a firm. This return was accepted under section 143(1) on 19th March, 1983, in a routine manner. On the basis of certain incriminating documents seized in the course of search, the assessing authority opined that there was an escapement of income. Accordingly, he issued a notice under section 148 and found that there was unexplained investment in the money-lending business during the period 24th May, 1980, to 1st Nov., 1980, aggregating to Rs. 78,000. Thus, an addition was made of Rs. 78,000 on account of alleged unexplained investment in the money-lending business. This was confirmed by the CIT(A). Before the Tribunal, it was contended that the Assessing Officer has committed error in taking the debit side only, he could take into account the peak credit. This contention was accepted and worked out the peak credit of Rs. 48,000 out of the addition of Rs. 78,000 made by the Assessing Officer. Thus, the Tribunal sustained the addition only to the extent of peak credit of Rs. 48,000.

3. In DB IT Ref. No. 1/1998 the Assessing Officer added a sum of Rs. 50,000 as income from undisclosed sources as interest income. It was found that a sum of Rs. 50,000 was advanced to one M/s. Ramrakh Poonamchand on 9th March, 1980, and 17th March, 1980, by the assessee. The addition was confirmed by the CIT(A). It is significant to notice at this stage that Dy. CIT(A) by order, dated 4th Nov., 1992, deleted the addition of Rs. 50,000 for the assessment year 1980-81. In this fact, the Tribunal deleted the addition of Rs. 6,720, the same being consequential to the main addition of Rs. 50,000.

4. Having considered the facts of both the cases, we are satisfied that no referable question arises from the order of the Tribunal. Both the reference applications being DB IT Ref. No. 43/1998 and DB IT Ref. No. 1/1998 are rejected."

In the above judgement, the limited facts as available are that the Assessing Officer made an addition to income of assessee on account of unexplained investment in money lending business and the said addition was made by Assessing Officer by taking into account debit side only. The appellant has not placed on record the corresponding order of the Hon'ble ITAT. From the judgement it appears that the benefit of repayment received by the assessee which was further used to give loans was not reduced and as per judgement it was directed to tax the same to the extent of peak credit only i.e. the benefit of repayment received in calculating peak outstanding loans (assets) was to be given. The judgement in the case of Commissioner of Income-tax v. Ishwardass Mutha (supra) was also referred by the Hon'ble ITAT (Jaipur Bench) in the case of Shankar Jhalani, vs Income Tax Officer in order in ITA No. 1053/JP/2016 wherein it is held as under:-

"19. The Bench have heard both the sides on this issue. It is undisputed fact that the assessee has deposited Rs. 17,24,150/- on various dates in Allahabad Bank The Id. CIT(A) has held that the assessee has filed copy of bank account and relevant pages of cash book where this account was incorporated as additional evidence which were not admitted in. He also held that in the case of Sind Medical Stores vs. CIT, the Hon'ble jurisdictional High Court held that this court in CIT vs. Ishwardas Mutha (2004) 270 ITR 597 (Raj.) also accepted the contention to take into account, the peak credit theory. When any amount is paid, later withdrawn from the bank, would be available for recycling and rotation, unless otherwise established as invested elsewhere by the Revenue. It was held that the assessee was entitled to the benefit of peak credit which ought to have been allowed instead of making separate addition of entire amount. However, it was observed that if the Assessing Officer comes to a finding that withdrawn amount was used or spent by the assessee for any other investment or expenditure than the benefit of peak of such credit, in such circumstances, may not be available. No specific reason was recorded regarding the utilization of cash withdrawal by the assessee from its bank accounts in some investment or expenditure. In view of the above and considering the totality of the facts and circumstances of the case, the Bench find no any contrary material in the order of the Id. CIT(A), therefore, we uphold the same. Hence, this ground of appeal of assessee stands dismissed."

In the seized documents there are some instances when the date, amount and name of the person making the repayment are mentioned specifically w.r.t. the repayment of the advances/loans received back by the appellant. In this regard, the credit/ appropriate deduction of the same is allowable to the appellant while calculating the peak credit as well as while calculating the source of advances given and it is held accordingly.

Accordingly, the appellant gets partial relief in these above terms.

However the Id. AR in the arguments has also claimed the deduction of some other notional repayments as well. The appellant has referred to the due date mentioned in some of the documents to claim that the cash loan/advance was received back on the stated dates. The due date mentioned in the document is not the conclusive evidence that the loan was actually repaid on such due date. The actual repayment may or may not take place on such date. Even if there is repayment, that may be in full or part. Further this due date more likely may also mean the due date of payment of the interest by the borrower. In this regard reference is also made for example to SCN 13 wherein against each cash loan entry multiple due dates columns are stated which fortifies the view that due date is not for the repayment of loan but for the recurring payment of interest.

At the same time, when the transactions of repayment are specifically noted in the seized documents, then it cannot be presumed that the transactions which are not written are in existence. In such a scenario the natural corollary and the human probability is that the entries which are not written in the seized documents are not in existence. In case the appellant claims more than of different than what is written in the seized documents then the onus is completely on the appellant to prove the same as there is a statutory presumption with respect to the seized documents as per section 132(4A) of the Act. This argument is a mere afterthought as is seen from the assessment order and the submissions of the appellant during the appeal proceedings. The appellant was required to disclose the identity and other details of the persons giving cash advances/loans to the appellant and taking cash advances/loans from the appellant however the same has not been disclosed by the appellant not even for the major parties with whom the appellant was having regular dealings otherwise the verification could have been done from the third parties. Further the appellant has not disclosed the acknowledgment/receipts evidences maintained w.r.t. transactions with such parties of giving advances and receipt of repayments etc. which could bind such parties. In such a scenario the presumptuous claim of the appellant is a mere self-serving statement and does not merit any further consideration and is rejected.

Accordingly, the appellant fails on the above contention.

Peak credit: calculation methodology

(i) As discussed in detail earlier part of this order, in the present appeal order, in principle, the taxation is upheld on account of unexplained cash loan given as unexplained investment and not on the other side of the same coin (being the unexplained cash loans received).

(ii) Further as discussed in the earlier part of the order the benefit of the peak credit is being allowed to the appellant with respect to the repayment of loan received by the appellant and utilization of the same for advancing further cash loans. As also discussed in the earlier part of this order, such benefit is not being allowed with respect to the claim of the appellant w.r.t. notional repayment of loan claimed to have been received by the appellant as held to be a self-serving statement.

(iii) Netting of cash loan received with cash loan given in calculation of peak: The appellant has also claimed that in the calculation of peak there should be netting of cash loan received with the cash loan given and only the net of the two should be taxed in the hands of the appellant. This argument is found to be completely devoid of merit and has been discussed separately in the order and this claim of the appellant has been rejected. Benefit of the repayment has already been allowed to the appellant in the calculation of the peak. Netting of cash loan received

with cash loan given is not calculation of peak. The same is discussed in detail in subsequent paragraphs.

Claim of Netting of cash loan received with cash loan given in calculation of peak

Peak credit theory can be applied as per the facts of each case and the theory is not readily available in every case as this is not the propositions of the law (in Income Tax Act). The basic principle behind the theory is that there should not be overlapping additions on account of the rotation of the same money. For example, if the assessee tries to explain cash deposits made by him in his bank account are out of earlier withdrawals made from his same bank account and lays the factual foundation and properly shows to explain source of such deposits out of such withdrawals. Then highest of unexplained deposits (credits in account) is treated as an undisclosed income u/s. 68.

The appellant in his submissions has also claimed that in the calculation of peak there should be netting of cash loan received with the cash loan given and only the net of the two should be taxed in the hands of the appellant.

This can be understood with the help of following example:-

If the claim of the appellant is understood in simplified terms what the appellant is trying to claim is that in case one taxpayer receives an unsecured loan of rupees 1,00,000 on a daily basis during the year on 365 days from different persons and such funds are further used by the taxpayer in his money lending business in giving loans or advances to some other parties daily, in that case the peak in the hands of the taxpayer will be only rupees 1 lakh whereas actually during the year the such taxpayers has already received loans of rupees 365 lakhs and as per the law he is required to show the identity genuineness and credit worthiness with respect to rupees 365 lakhs. At the year end, the balance sheet of the assessee will show the components of loan taken and loan given as under:-

Liabilities	Amount (Rs.)	Assets	Amount (Rs.)
Unsecured Loans	365 Lakhs	Loans & Advances	365 Lakhs

In the above example even if the transactions were done through banking route the assessee would be liable to explain the genuineness identity and creditworthiness with respect to the entire amount of 365 lakhs and in the absence of the same the credits received by the assessee will be taxable in his hands under section 68 of the Act, as unexplained credits received.

Further in the above example if it is found that the assessee has given loans of 390 lakhs whereas he has received loans of only rupees 365 lakhs in such a scenario, additionally the assessee is liable to explain the extra Rs. 35 lakhs also and if it is found that the same is out of the undisclosed cash of such assessee in that case the same will also be taxable as unexplained money.

In the above simplified scenario the total investment in the form of loan given of Rs. 390 lakhs can also be taxed u/s 69 instead of the two components of unexplained credits received and unexplained money

At the same time in the above example if the assessee receives repayment of the unexplained money given by him (Rs. 35 lakhs and the assessor further gives loan out of such repayment received and this may take place number of times in the year. In such a scenario an argument will arise regarding adding each such instance of unexplained investment. However in such a scenario to avoid overlapping and as the money belongs to the assessee and subject to other factors, the assessee can be allowed benefit of the peak calculation and only rupees 35,00,000 can be taxed.

Merely because in the present appeal the loan transactions of the appellant are in cash and have been kept undisclosed and have been detected only during the course of search and seizure action does not make the appellant eligible for some premium benefit or treatment regarding exemption from not complying with requirements of section 68 and 69 of the Act. It is a settled law that no premium can be awarded to the dishonesty. Even if the transactions were through banking channel and/or even if the transaction were recorded in the disclosed books of accounts even then the taxpayers are required to satisfy the conditions laid down in section 68 and 69 of the Act.

Further, prima-facie this claim is not as per the principles of the peak calculation theory as in the calculation of peak what is to be calculated is the peak of the credit in the hands of the appellant received after reducing the effect of the repayment and further utilization of such repayment received by the appellant in depositing in bank/giving cash loan etc. Rotation of the same money is the crucial factor in the peak calculation and benefit of set-off is allowed in peak theory only regarding the rotation of the same money. Therefore, when the same money is rotated, addition can only be made of peak amount after arranging all the transactions in chronological order.

The principle of peak credit proceeds on the fundamental premise that the money deposited and withdrawn belongs to the assessee, or in respect of which ownership vests in the assessee. In other words, ownership of the funds is the sine qua non for invoking the principle of peak credit. [refer Bhagdev Roy v. Asstt. CIT (IT Appeal No. 832 (Kol.) of 2013, dated 31-3-2017)]. The assessee has to category admit, for getting

the benefit of peak, that borrowings made by the assessee from cash creditors are fictitious and the payments or outgo was only to himself in the form of withdrawals and the payees were also bogus. However, in the present appeal, the appellant received cash loans and advances from third parties and further gave cash loans and advances to different parties. Thus the peak calculation is not applicable on such transactions

Peak calculation is not applicable unless the assessee shows that the withdrawal is intended for reasons of re-introduction of withdrawn money. In the present case the appellant received cash loans from third parties whose names etc. have been mentioned along with dates and rate of interest etc. in documents found in search and some instances provided by the appellant in his statement recorded during search. In some instances even the overall transaction in connection with cash advance has been given by the appellant can be seen. There is no dispute from the appellant regarding the fact that the cash loans entries in the seized documents are actually of cash loan. Further there is also no dispute from the appellant that such cash was withdrawn by him from his cash pool for giving further cash loans (and not for connected re- introduction to his own pool as cash or through other mode etc.). As discussed in pre-paragraphs peak calculation is available when withdrawal is intended for reasons of re-introduction of withdrawn money and peak calculation is not available/is not applicable when withdrawal is not intended for reasons of re- introduction. Thus the peak theory is not applicable on such transactions.

The peak credit theory is used for fraudulent and fictitious entries rather than actual ones. Where the assessee claims that all the deposits are infact loans, the benefit of peak will not be available (ratio of judgement in *Bhaiyalal Shyam Behari v. CIT* [2005] 276 ITR 38 (All.)).

In the present appeal, the appellant received cash loans and advances from third parties and further gave cash loans and advances to different parties. Exact details are mentioned on the documents seized. In the present case, the transactions as claimed are loan received and loan given and thus the peak theory is not applicable on such transactions.

The use of peak credit theory is not possible when both depositors and beneficiaries are different, other than the assessee (ratio of judgement in *Bhaiyalal Shyam Behari v. CIT* [2005] 276 ITR 38 (All.)).

Similar view was taken by the Hon'ble Punjab & Haryana High Court in *Sudhir Kumar Sharma (HUF) v. CIT* [2014] 46 taxmann.com 340/224 Taxman 178, where cash was deposited in the bank account and thereafter cheques were issued to different parties, the assessee was unable to explain the source of cash deposited in his bank account, i.e., by issuing the cheques to different parties, it could not be said that same was available for redeposit in his bank account.

This peak theory is can be applied in cases when the unexplained credit and debit entries are standing in the same account of a person. However the peak credit theory may also be extended to the cases where the credits appear not in the same account but in the accounts of different persons when such persons are found to be shell entities of the assessee himself and when all the credits appearing in the different accounts are found to be assessee's own moneys-i.e. in substance the same principle applies that "in substance" entries are standing in the account of same person. These are only the inferences which can be displaced any other findings. Peak credit theory is not arising from any express provision in the Act and is to be applied carefully.

Further, in the present case depositors (loan givers) and beneficiaries (loan borrowers) are different - other than the assessee and there is no dispute in this regard. Thus the peak theory is not applicable on such transactions.

In the case of *Bhaiyalal Shyam Behari v. Commissioner of Income-tax* [2005] 276 ITR 38 (Allahabad)/[2006] 202 CTR 515 (Allahabad)[19-01-2005] it is held by the Hon'ble Allahabad High Court as under:-

"During the assessment year in question certain amount of cash credits standing in the names of various persons were added in the income of the applicant by invoking the provision of section 68 of the Act. Before the Tribunal the alternative plea was taken by the applicant that in the event deposit/cash credits are treated to be unexplained then only peak credit is to be added. The submission has been negated by the Tribunal in the following words:

"13. Let us suppose that in the account of 'A', there was shown a deposit of Rs. 10,000 on April 1, 1978, and in the account of 'B' there was a deposit of Rs. 10,000 on December 1, 1978. The assessee has not established the genuineness of these two deposits. Now according to the assessee in case there was a withdrawal of Rs. 10,000 in the account of 'A' prior to the deposit of Rs. 10,000 in the account of 'B' then no separate addition should be resorted to on account of unexplained deposit in the account of 'B'. According to the assessee, it should be presumed that the deposit in the account of 'B' was made out of the funds which were available to the assessee after the withdrawal of the amount from the account of 'A'. We cannot subscribe to this point of view. According to us, if the assessee is not able to prove the genuineness of the deposit in the account of 'B', a separate addition in respect of that will be required to be made. As per the provisions of section 68, where any sum is found credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory, the sum so credited is to be charged to income-tax as the income of the assessee. Hence, it is for the assessee to establish the source of the deposit in the account of 'B'. If the assessee admits that the alleged deposit in the account of 'A' was

not genuine and, in fact, it was the assessee's own money which had been introduced in the books in the garb of a loan from 'A' and hence when this amount was available to the assessee for being introduced as a fresh deposit in the account of 'B' then it may be possible to accept the contention of the assessee. But in case the assessee all along maintains that the various loans are genuine then we fail to understand as to how the assessee can put forward the claim that separate additions for the unexplained cash credit in different accounts should not be made. When the assessee himself does not contend that the deposit made in the account of 'B' is out of prior withdrawal made in the account of 'A', how does the assessee expect the Department to subscribe to this point of view. We hence reject this contention of the assessee."

Heard Sri Krishna Agrawal, learned counsel for the applicant and Sri Shambhu Chopra learned standing counsel for the Revenue.

The applicant submitted that as the amount of cash credit has been treated to tax by invoking the provisions of section 68 of the Act and the said amount have been treated as income from the unexplained source, the applicant was entitled to take up a plea of addition of the aforesaid peak credit as the entire deposits have been treated to be income of the applicant. The contention is wholly misconceived. For adjudicating upon the plea of peak credit the factual foundation has to be laid by the assessee. He has to own all cash credit entries in the books of account and only thereafter the question of peak credit can be raised. As in the present case the amount of cash credits were standing in the names of different persons which all along the applicant had been claiming to be genuine deposit, withdrawal/payment of the amount to different set of persons during the previous years would not at all entitle the applicant to claim benefit of peak credit.

In this view of the matter we do not find any legal infirmity in the order of the Tribunal. We answer the aforesaid questions referred to us in the negative, ie. in favour of the Revenue and against the assessee. There will be however, no order as to costs."

As per the ratio of the above judgement, first of all the factual foundation has to be laid by the assessee before adjudicating upon the plea of peak credit. The use of peak credit theory is not possible when both depositors and beneficiaries are different, other than the assessee. Where the assessee claims that all the deposits are in fact loans, the benefit of peak will not be available. The ownership of the funds is the sine qua non for invoking the principle of peak credit. Rotation of the same money is the crucial factor in the peak calculation and benefit of off is allowed in peak theory only regarding the rotation of the same money.

Further. 'Principle of peak credit is not applicable in case where deposits remain unexplained under section 68; it cannot apply in a case of different depositors where there has been no transaction of deposits and

its repayment between a particular depositor and assessee (Assessment year 1979-80] as per the judgement of Hon'ble Allahabad High Court in the case of Commissioner of Income-tax v. Vijay Agricultural Industries [2007] 294 ITR 610 (Allahabad) [21-02-2005]

It is held by the Hon'ble Delhi High Court in the case of Commissioner of Income Tax v. D.K. Garg [2017] 84 taxmann.com 257 (Delhi)/[2017] 250 Taxman 104 (Delhi)/[2018] 404 ITR 757 (Delhi)/[2018] 300 CTR 510 (Delhi)[04- 08-2017) as under:-

"17. The premise underlying the concept of peak credit is the squaring up of the deposits in the account with the corresponding payments out of the account to the same person. In Bhaiyalal Shyam Bihari case (supra), the Allahabad High Court explained that benefit of peak can be given only when the assessee owns up all the cash credits in the books of accounts. It was further held: "For adjudicating upon the plea of peak credit the factual foundation has to be laid by the assessee. He has to own all cash credit entries in the books of account and only thereafter can the question of peak credit be raised."

18. In that case, it was held that as the amount of cash credits stood in the names of different persons which the Assessee had all along been claiming to be genuine deposits, withdrawals/payments to different persons during the previous years, the Assessee was, therefore, not entitled to claim the benefit of peak credit. Later in Vijay Agricultural Industries case (supra), it was reiterated that: "The principle of peak credit is not applicable in case where the deposits remained unexplained under Section 68 of the Act. It cannot apply in a case of different depositors where there has been no transaction of deposits and repayment between a particular depositor and the assessee." On the facts of that case it was held that peak credit could be applied only in the case of squared up accounts. In other words, where an Assessee was unable to explain the sources of deposits and the corresponding payments then he would not get the benefit of peak credit.

19. The legal position in respect of an accommodation entry provider seeking the benefit of 'peak credit appears to have been totally overlooked by the ITAT in the present case. Indeed, if the Assessee as a self-confessed accommodation entry provider wanted to avail the benefit of the 'peak credit, he had to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding, destination of all payments from the accounts. The Assessee should be able to show that money has been transferred through banking channels from the bank account of creditors to the bank account of the Assessee, the identity of the creditors and that the money paid from the accounts of the Assessee has returned to the bank accounts of the creditors. The Assessee has to discharge the primary onus of disclosure in this regard

20. While the AO in the present case did not question the working, out of the peak credit by the Assessee, he, at the same time, insisted that the additions made by him to the returned income of the Assessee should be sustained. The peak credit worked out by the Assessee was on the basis that the principle of peak credit would apply, notwithstanding, the failure of the Assessee to explain each of the sources of the deposits and the corresponding, destination of the payment without squaring them off. That is not permissible in law as explained by the Allahabad High Court in the aforementioned decisions which, this Court concurs with

Conclusion

21. As already noted, the ITAT went merely on the basis of accountancy, overlooking the settled legal position that peak credit is not applicable where deposits remain unexplained under Section 68 of the Act. The question of law framed by this Court, is accordingly, answered in the negative, in favour of the Revenue and against the Assessee. The impugned order of ITAT is, accordingly, set aside and the order of the AO is restored to file."

The above judgement in the case of Commissioner of Income Tax v. D.K. Garg (supra) is in the case of an self-confessed accommodation entry provider. Whereas in the present case the grounds for denial of the peak calculation are even stronger. Undisputedly, in the present case depositors (loan givers) and beneficiaries (loan borrowers) are different other than the assessee and there is no dispute in this regard. Thus, in the present appeal, the peak theory is not applicable on such transactions to do netting between cash loan taken and cash loan given. Further, as per the ratio in the judgement in the case of Hon'ble Delhi High Court in the case of Commissioner of Income Tax v. D.K. Garg (supra), the appellant has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding destination of all payments from the accounts. The Assessee should be able to show that money has been transferred through banking channels from the bank account of creditors to the bank account of the Assessee, the identity of the creditors and that the money paid from the accounts of the Assessee has returned to the bank accounts of the creditors. The Assessee has to discharge the primary onus of disclosure in this regard.

Peak calculation cannot be used to as a tax-evasion convenience to escape the tax liability arising due to application of section 68/69 etc. and come at a much smaller amount of income by artificial setting off of various debits and credits. It cannot be used to escape from proving and showing the triple test of genuineness, creditworthiness and identity u/s 68 of the Act to arrive at lower income (due to peak calculation) by artificially claiming the entries to be bogus and self funds of assessee. In a scenario where the assessee is seeking relief by claiming peak calculation the onus is on the assessee to show with sufficient

supportings that it was own funds of assessee, the same funds are getting rotated, the borrowing and lending parties are not different from assessee and are representatives/shell entities of assessee, transactions are not loan transactions but fictitious entries recorded of self funds, etc.

Undisputedly, in the present case the cash loans have been received by appellant and cash loans have been given by the appellant. The depositors (loan givers) and beneficiaries (loan borrowers) are different other than the assessee and there is no dispute in this regard. Another important aspect of the case is that it is not a case where the entries or transactions recorded in the disclosed books of accounts are subsequently claimed by the appellant in the peak calculation but it is a case of evidences regarding the undisclosed transactions of cash loans being found during the search and seizure action meaning thereby that the nature of transaction cannot be disputed. The same is also as per the presumption under section 132(4A) of the Act. Same is explained as loan transactions by the appellant in the statement recorded during the search.

The appellant has inter-alia relied upon the judgement of Hon'ble ITAT in the case of Om Prakash Agarwal Vs ACIT in ITA 721 to 726/JP/2014 in this regard the facts of the case and legal position presented before the Hon'ble ITAT are completely different than in the present case. In this judgement the Hon'ble ITAT inter-alia noted as under:-

(Pg. 10-11)

"It can be seen that the Ld. AO has denied the benefit of peak credit theory to assessee merely by distinguishing the case where transactions are related to cash creditors/debtors with the case where the transactions occur in the bank account of an assessee and has held that the peak credit theory can be applied only in the latter case and not the prior one. The said observation of the Ld. AO has been upheld by the Ld. CIT(A) in a mechanical manner and without application of mind to the submissions made before him.

(Pg. 12)

".....However, the Ld. AO without discharging the onus lying upon him, has cryptically observed that the peak credit theory cannot be applied to the case of assessee by drawing a hypothetical and imaginative distinction between the cases of cash deposit / withdrawal in bank account and the cases of entries of cash advances and receipt back, which action of Ld. AO is completely baseless, against law and thus deserves to be struck down."

(Pg. 18)

"In respect of applicability of peak theory, it is noted that there is nothing on record which can help determine the real income which has accrued

to the assessee in respect of his money lending business in terms of agreements, contracts etc. with the borrowers and lenders which can throw light on the rate of interest charged /paid by the assessee, duration of loans /advances, repayment, etc."

With respect to the above, respectfully considering the above judgement, it is stated that in this order the seized material has been considered in its entirety. The loan entries of loan taken and loan given both have been treated as loan taken and loan given respectively. Both the types of entries have been treated as existing. None of the entries/transactions as reflected in seized material are treated as fictitious or non-existent. It is also submitted that the judgements of Hon'ble Supreme Court and Hon'ble High Courts as referred in this order were not placed before the Hon'ble Tribunal. In this regard the facts of the case as well as the legal position as presented before the Hon'ble ITAT are completely different.

- The Hon'ble Kerala High Court in the case of CIT v. The Settlement Commission (IT & WT) W.P.(C). No. 34690 of 2007

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12. The manner in which additions have been refused to be made, is without any reasoning especially when the Commissioner of Income Tax had specifically, in his report, stated that the details of the creditors were not furnished and there was no manner in which the credit-worthiness of the said persons could be verified. The loans if not proved have to be computed as total income and additions made in a normal assessment, which principle regulates the Settlement Commission too.

13. On the above reasoning, it has to be held that the Settlement Commission had not properly considered the issue of addition or the genuineness of claim of advances from others. To that extent, Exhibit P1 order would stand set aside to the extent noticed above and the matter is remanded to the Settlement Commission for consideration of the particular aspect which this Court has interfered with.

The writ petition would stand allowed. No costs....."

- Hon'ble Rajasthan High Court in the case of Prakash Chand Dhadda v. Income Tax Settlement Commission, Addl. Bench-II, New Delhi [2017] 83 taxmann.com 214 (Rajasthan)/[2017] 249 Taxman 131 (Rajasthan)/[2017] 298 CTR 467 (Rajasthan)[09.06.2017]

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In view of the above detailed discussion, there cannot be any netting of the cash loan received by the appellant from third parties and cash loan given by the appellant to different parties, in the calculation of peak credit.

In view of the above, discussion the income of the appellant on account of cash loan given and cash loan taken in this order is being worked out on two accounts namely

(i) the own unaccounted cash invested by the appellant in giving loans, and the appellant is eligible for peak calculation w.r.t. these funds as discussed in subsequent paragraphs, and

(ii) unexplained loans investment other than those sourced out of the own unaccounted cash of the appellant as referred in (i), as discussed further in subsequent paragraphs.

In view of the above, discussion a cash flow statement/ cashbook is to be prepared having sources of cash received including cash loan, interest income etc. (both explained and unexplained) on one side and the creation of asset from application of cash including cash loan given, interest paid etc. (both explained and unexplained) on the other side.

In case the sources of the cash are less than the application and them investments created by using cash in such a case the excess of the application shows hidden and undisclosed sources of cash of the appellant.

Further the sources of the cash received and the investment are to be examined from the perspectives of section 68/69/69A/69C Etc.

Funds utilized and invested (in giving cash loans) by appellant over and above the cash loans received by him [REAL INCOME]:-

It is seen from the seized documents that the cumulative amount of advances given by the appellant are more than cumulative amount of advances received by the appellant on number of dates even after allowing relief of repayments/considering the repayments received back as source of future advances given by appellant.

This shows that the cash advances have been given by the appellant not only out of the funds received (cash loan taken) as mentioned in the seized documents but also from some other sources which are undisclosed.

In this regard the appellant had provided a chart which is made as an annexure to this order. Such chart has been rejected as the approach adopted by the appellant has been rejected in this order and further the chart has been found to be having some inaccuracies in terms of excess entries as well as missing entries.

Addition on account of unexplained cash advances given by appella [DEEMED INCOME U/S 69]:-

The appellant has taken cash loans and has given cash loans during the period. The appellant has not disclosed the identity genuineness etc of the lenders a borrowers. It is not the case of the appellant that the entries are fictitious a bogus. There is no dispute regarding the fact that the loans have been tak- and loans have been given and such parties are different than the appellant Also it is not the case of the rotation of self / own money by the appellant. Ha the appellant provided the complete details of the lenders the assessments those cases of the lenders could have been reopened and addition regarding unaccounted cash or unaccounted investment could have been enquired into the hands of such lenders. However identity and other details of the parties have been deliberately withheld by the appellant.

In this order the seized material has been considered in its entirety. The loa entries of loan taken and loan given both have been treated as loan taken an loan given respectively. Both the types of entries have been treated as existing None of the entries/transactions as reflected in seized material are treated a fictitious or non-existent.

Benefit of peak calculation has been allowed to the appellant as per law. The peak calculation has been allowed w.r.t. the cash repayments received by appellant and further invested by him and w.r.t. the cash interest income received by appellant which is further used by him in giving cash loans/paying interest expense by the appellant.

Netting of cash loan received with cash loan given is not peak calculation as per law and is different than that. The claim of the appellant regarding netting of cash loan received with cash loan given has been disallowed in the detailed discussion in the earlier paragraphs of this order.

Further the sources of the cash received and the investment are to be examined from the perspectives of section 68/69/69A/69C Etc.

Even when the loans are received through banking channel and the transactions are even recorded in the formal audited books of accounts even then the credit entries and the investments are liable to be explained by the assessee in terms of section 68/69 etc. depending upon the facts and circumstances of the case. Even in such a scenario the investments if made out of unexplained loans received will be liable to be taxed under section 69 despite of the acceptance of the fact loans have been received by such assessee. Alternatively such credits (loans received / credits) will be liable to be taxed under section 68. Whereas in the present case the transactions have been done in unaccounted cash and the onus is much greater on the appellant.

Merely because in the present appeal the loan transactions of the appellant are in cash and have been kept undisclosed and have been detected only during the course of search and seizure action does not make the appellant eligible for some premium benefit or treatment

regarding exemption from not complying with legal requirements and taxability under section 68, 69 and 69D etc. of the Act. It is a settled law that no premium can be awarded to the dishonesty.

It is a settled law that there is no requirement under law with respect to 68 of the Act that the AO is required to prove that the funds originally belong to the assessee in whose hands the addition is being done. Onus is on the assessee to provide the identity, genuineness and creditworthiness w.r.t. the credits. The credits received may have been money of someone else that is immaterial. The AO is not to identify the source. Where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source (CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC)/A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC)). Further source can also not be presumed (Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC)) section

As discussed in earlier part of this order, in case the cash loan received is taxed as unexplained in that case subsequent cash loans given by the appellant are to be treated out of such taxed cash loan received and such cash loan given cannot be treated as the income of the appellant being out of the taxed source of funds in the form of cash loan.

Alternatively in case the unexplained investment in the form of cash loan given by the appellant is taxed in that case there is no need to also tax the source of the same being the unexplained cash loan received as the investment itself has been taxed.

In this order, the addition is being sustained on account of unexplained loans given by appellant under section 69 of the Act.

The detailed working of the above summarized addition during each year is in following paragraphs.

From the perusal of the cash flow statement it has been noticed that only in very few parties the assessee has done transactions of both taking cash and giving of cash (loan / advances / repayments) other than receipt/payment on account of interest.

Receipt of interest has been taxed as unaccounted income similarly the payment of interest expenditure has been considered under section 69C of the Act and therefore these two are not considered here to avoid duplicate addition.

With respect to the parties with whom the principal amounts have been given taken or repaid it is seen that such a scenario has arisen in case of Rajesh Natani and Khushi Sansar Pvt Ltd.

In case of Rajesh Natani firstly the loan / advance was given. The loan / advance was received from him after several months thereafter and as such the loan advance given to him in the first place is unexplained and is not sourced from the cash loan received from the same person.

In case of Khushi Sansar a cash flow statement has been prepared to see how much of the cash loan advance given to Khushi Sansar cannot be considered even remotely as having come out of the funds received from them itself in the earlier period and a peak statement has been prepared as below:-

Peak of the Investment /Loans advanced by the appellant to Khushi Sansar which is not from the funds sourced from the same party i.e. Khushi Sansar- Rs. 5,91,812/-.

The above peak calculation exercise has been done to avoid duplicate addition within transactions with same party.

Further the loans/ advances given by the appellant have been summarized year wise excluding the loans taken by the appellant to arrive at the net incremental investment made by the appellant during the year. This though as per the appellant is sourced from the cash loans taken by the appellant but since the cash loans taken by the appellant are unexplained in terms of genuineness, identity and credit worthiness and as discussed above in this order the addition is being made on the investment side and not on the credit side, hence the net incremental investment made during the year are taken as below:-

In this ground of appeal following additions has been confirmed /sustained along with specific confirmation in respective SCN issues:-

- (i) Interest earned by the appellant.
- (ii) Interest paid by the appellant (page 27 of this order)
- (iii) Peak credit (Hidden/undisclosed funds used by appellant) (as per yearwise tabulated summary on page 82)
- (iv) Unexplained investment made out of unexplained cash loan received by appellant (as per yearwise tabulated summary on page 92 of this order)

In view of the above discussion, this ground of appeal is partly allowed in above terms.

6. Ground of Appeal No. 3 relates to an addition of Rs. 7,37,495/- made by the AO on account of undisclosed income u/s 44AD.

6.1 The submissions of the appellant as per the statement of facts enclosed with Form No. 35 and reiterated during the appellate proceedings are summarized as under:

Vide dt. 10/06/2019

GOA.3: Addition u/s 44AD Rs. 737495/- by wrongly mentioning that assessee has declared income from business u/s 44AD at Rs.9.26.992/- is factually wrong. As per return filed, the income u/s 44AD is declared Rs 1664487 and nat Rs 926992 as evidence from copy of full return in ITR 4S submitted(PB 188- 190) hence request to delete the addition made wrongly.

6.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The appellant has claimed that the Ld. AO has erred on fact law in I making addition of Rs. 7,37,495 by wrongly mentioning that assessee declared income from business u/s 44AD at Rs. 9,26,992 whereas the income u/s 44AD is declared in return Rs. 16,64,487. The appellant has filed the documents in this regard and the contention appears to be correct. However the appellant has not been able to show the source of figure of Rs. 9,26,992 referred by the Id. AO. Accordingly, since the issue is factual one, the learned assessing officer is directed to verify the records and recompute the income u/s 44AD as part of the appeal effect of this order.

7. The last ground of appeal is that indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.

7.1 The appellant has not added and altered any of the above mentioned ground of appeal. Accordingly such mention by the appellant in its ground is treated as general in nature, not needing any specific adjudication and is accordingly treated as disposed off

3. In the result, the appeal of the appellant is partly allowed.”

7. Since, the appeal of the assessee was considered in part the revenue and the assessee both challenges the findings of the Id. CIT(A) and have preferred separate appeal. Before us both the

parties supported the finding recorded in the orders of the lower authority to the extent favorable to them.

8. So far as the appeal filed by the assessee, Id AR of the assessee in support the grounds of appeal so raised has filed a detailed written submission which is reproduced herein below:

“Facts:

The assessee is engaged in the business of jewelry, property dealings, and financing in the name and style of the following concerns:

- i) M/s Sriram Enterprises – Proprietary concern engaged in jewellery and financing business
- ii) M/s AR Properties – Proprietary concern engaged in property and financing business
- iii) M/s Laxmikripa Real Estate Pvt Ltd – Company engaged in property dealings
- iv) M/s Fortune Real Estate – Partnership Firm engaged in property dealings

A search and seizer action u/s 132 of Income Tax Act 1961 and/or survey action 133A of the Act was carried out by Income Tax Department on 28-07-2016 to Chandraprakash Agrawal Group where consequential search also carried out at premises of appellant. During assessment proceeding, a detailed quarry letter dated 01-10-2018 issued on basis of documents found in such action for complete block period relevant to AY 2011-12 to 2017-18. The query mainly related to loans and advances entries found in deleted data of Laptop with assessee, and saved whatsapp messages, property purchased and sold by assessee, cash and jewelry found in possession of assessee and show cause to various addition. Appellant replied all the quarries vide letter dated 13-12-2018 and 14-12-2018 with facts and supporting documents. The addition made by AO u/s 68 and 69 and 69C with related transaction as discussed in assessment order for A.Y 2014-15 to 2017-18 are tabulated as under:

(i) Undisclosed investment in property u/s 69

SCN NO	ASSESSN YEAR				TOTAL
	2014-15	2015-16	2016-17	2017-18	
17			34017400		34017400

GRAND TOTAL			34017400		34017400
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(ii) Undisclosed Cash credit u/s 68

SCN NO	ASSESSMENT YEAR				TOTAL
	2014-15	2015-16	2016-17	2017-18	
1	2500000		4065000		6565000
2		3784000	3220000	248000	7252000
3				1000000	1000000
5	21058188				
6	26400000	112442000	7300000		
7		18600000			
8		17500000			
9		10500000			
10		10000000			
11	274500000	280000			
13		45792766			
14	48750000				
18				33460000	
19.a			20567000		
19.b		2514249	8528750		
19.c				38700000	
19.d				1795000	
19.e		101747			
19.f		45584774			
19.g			20820000		
19.h	150000		920000		
19.i			9756250		
GRAND TOTAL	126308188	267099536	75177000	75203000	543787724

(i) Undisclosed expenditure u/s 69C

SCN NO	ASSESS YEAR					TOTAL
	2013-14	2014-15	2015-16	2016-17	2017-18	
15			4500000	1181300	430600	2061900
17					512867	512867
GRAND TOTAL			4500000	1181300	943467	2574767

It may be noted that assessee has been regularly raising funds from the market and advancing funds to various persons in the market on which he has earned interest income. Such interest income has been duly declared in the books of accounts. However, assessee has also raised cash loan from the market and advanced cash loan to various parties in the market. These transactions are not disclosed in the books of accounts. This fact is also admitted by the assessee in his statement recorded u/s 132(4) of the Act. In the various seized papers, the evidences of loan raised from various persons and amount advanced to various persons along with the interest paid / received is found in search. There is no evidence to exist such loans and advances on date of search. However, on such advances there is hardly any income earned by the assessee. The appellant also submitted peak of such transaction including cash transaction in property which also not considered by the Id AO while framing the assessment order. The Ld A.O also made some other addition where no incriminating document was found.

On appeal before CIT Appeal, the order of Id CIT Appeal dealt as under:

1. Upheld the addition related to loans and advances entries found in deleted data of Laptop with assessee, and saved whatsapp messages.
2. In upholding addition related to loans and advances entries found in deleted data of Laptop with assessee, and saved whatsapp messages, CIT Appeal further not considered the facts relating to part of the entries are verifiable from the books of accounts and part of the entries are duplicate entries or considering receipt as payment or vice versa as evident from the seized record itself.
3. Rejected the claim of peak to taxation for rotation of fund in advance given and advance or repayment of such advances as per seized documents.
4. Further uphold the addition by own presumption method termed as incremental negative peak and account of unexplained loan given u/s 69 even after considering the same in peak calculation which effected repeated addition for alleged unexplained loan first in calculating negative peak and again as unexplained investment.
5. Uphold other additions as per ground of appeal without considering the facts.

Against the order of CIT appeal, our appeal for to Hon ITAT and also department is in appeal for reducing addition due to applying different principle of taxation of advances and other payment.

Our Submission:

Addition for loans and advances in search record :

1. The Ld. CIT Appeal has erred on fact and in law in upholding addition in various year including this year by treating the various entries mentioned in the seized record as unaccounted cash credit or undisclosed investments without considering the fact that these transaction are both for loan taken as well as loan given and loan being capital receipt is not chargeable to tax and is source of loan given. The various type of transaction added to income of assessee u/s 68,69 and 69C as discussed in order for cash loans or advances or other cash transaction gathered from documents found in search record, deleted data retrieved from hard disk of laptop and images from mobile found in possession of assessee during search. The fact as submitted above is that assessee has been regularly raising funds from the market and advancing funds to various persons in the market on which he has earned interest income. Such interest income has been duly declared in the books of accounts. However, assessee has also raised cash loan from the market and advanced cash loan to various parties in the market or use in property. These transactions are not disclosed in the books of accounts. This fact is also admitted by the assessee in his statement recorded u/s 132(4) of the Act. In the various seized papers, the evidences of loan raised from various persons and amount advanced to various persons along with the interest paid / received is found in search. However, on such advances there is hardly any income earned by the assessee. Section 292C of the Act provides that where any books of accounts or other documents etc. are found in possession or control of any person in search u/s 132, it is presumed that the contents of such books of accounts and other documents are true. Therefore, the loans raised by the assessee as found noted on various papers and documents found in search has to be considered as true and therefore, no addition should be made on account of loan raised. Alternatively in case the same is not accepted, then the amount raised cannot be considered as income but only the peak of such amount should be considered as income.
- 1.1 The Id CIT Appeal further erred in upholding addition related to loans and advances entries found in deleted data of Laptop with assessee, and saved WhatsApp messages, CIT Appeal further not considered the facts relating to part of the entries are verifiable from the books of accounts and part of the entries are duplicate entries and also considering of receipt or payment entry reverse as evident from the seized record itself. Our explanation to various facts which are not considered while taking data for loans and advances found in deleted

data of Laptop with assessee, and saved WhatsApp messages as under:

- i) SCN 5 addition Rs 21058188 on account of alleged unexplained cash credit from the hard disk you have extracted excel file in name of "123Tally.xls" of deleted data is a ledger of CM Badaya (Nikki) loan for the period 01.04.2013 to 21.12.2013 (PB 40 & 72). The appellant has already replied during course of hearing that as per this ledger account, there is certain credit in the account of the assessee from 01.04.2013 to 21.12.2013. The total of these credit entries which include both cash and cheque transactions is Rs.2,90,58,188/-. However, this appears to be a consolidated entry of one person named Khushi Sanshar of various amounts of which the Id A.O added the cash amount of Rs.2,10,58,188/- though for similar name day-to-day ledger account from the hard disk for the period 01.04.2013 to 23.12.2013 is also extracted as mentioned in SCN. 14 found in searched record (PB 54 and 73). As per this ledger account, there is a credit of Rs.3,30,50,000/- and debit of Rs.2,07,00,000/- in the account of the assessee during the aforesaid period leaving a balance of Rs.1,23,50,000/-. In this ledger account, there are two credit entries of Rs. 20 lakhs each dated 21.08.2013 (from ICICI Bank-SRE, PB-380) and 30.08.2013 (PB-360) against Axis Bank which is verifiable from the books of accounts of the assessee in the name of Khushi Sansar Pvt Ltd. Accordingly the assessee has given this amount to M/s Khushi Sansaar Pvt. Ltd. Thus, in fact both the statement provided by Khushi Sansar to whom the assessee has made transaction but the difference between two is that one as given in SCN 5 is a summary of only receipt transaction prepared by person without correlating from records from period 1-4-13 to 21-12-13 and the other in SCN 14 after two days prepared by different person for all transaction from records for period 1-4-13 to 23-12-13. Therefore, the addition of Rs.2,10,58,188/- made should be excluded as it is covered by the transaction specified at Point No. SCN 14 as discussed in order. The Id CIT has not accepted the submission stating not matching date and amount in two statement and treated two different document. In this regards it is further submitted that these two paper are for same transaction prepared on different way. One is consolidated rough paper prepared without confirming actual date and amount of transaction but the other as specified in SCN 14 is after confirming actual day to day transaction which is final account among them. This fact can be understood with both the statement mentioned for same name where period start date is same but the correct statement period end two days later and cheque amount is also matched though there is date difference which is due to fact mentioned above.

Thus from the fact of seized document, when the other statement found with all correct transaction detailed, it has to be dealt with

that statement as per SCN 14 and no repeated addition required here for same transaction.

- ii) SCN 6 addition Rs146142000 u/s 68 on account of alleged unexplained cash credit from the hard disk, an excel file in the name of "book1.xls" of deleted was extracted containing Sheet 1 and Sheet 2. First of all the A.O alleged that assessee has taken cash loan of Rs.14,61,42,000/- between AYs 2014-15 to 2016-17 but it is pointed out that on in Sheet 2,(PB 75) the amount raised by the assessee from various persons along with the due date of repayment of loan and amount is mentioned. This is evident from the fact that in the name of Sanjay Natani on 23.11.2014, Rs.20 lakhs is mentioned by cheque which means that assessee has taken the loan from him on 23.09.2014 which was due for repayment on 23.11.2014. In the ICICI Bank account of the assessee, the loan of Rs.20 lakhs received from Sanjay Natani is duly reflected(ICICI SRE PB 451) . This loan has been repaid also as per ledger account produced(PB 651) Thus, on this sheet, the due date of the repayment of loan raised by the assessee is noted and accordingly, the same has to be considered in the statement of peak credit as loan raised. Similarly on 'sheet 1'(PB-74) the name of the person along with the various dates and certain amounts thereunder are mentioned are in respect of due date of the repayment of amount advanced to various parties. This is established from the fact that in the name of Sanjay Jain on 25.10.2014, Rs.20 lakhs is mentioned as cheque of Axis Bank. In fact, assessee has advanced Rs.20 lakhs for which cheque of PNB Bank for payment to Sanjay Jain issued on 26.08.2014(PB 408 PNBARP) which was due for repayment after two months on 25.10.2014 and therefore, in the Sheet, the due date of repayment is mentioned as 25.10.2014. The amount was repaid by him as per ledger account produced(PB 650). Thus, the amount mentioned on this paper indicates the amounts advanced by the assessee to various persons and not the loan raised. Accordingly, it has been considered in the peak working as amount advanced two months before the date mentioned on this sheet. The Id A.O disregarded the facts which has upheld by Id CIT Appeal for want of various clarification which is not possible with limited records available from search documents. Though the facts are verifiable from available seized documents where any entry can be co-related from the bank record and the other on same sheet should be treated as such. Hence addition made are wrong and bad in law. The Id CIT Appeal appeal upheld the addition and for calculation of addition the following mistake arisen:
- (i) Entries verifiable from bank should not be considered in peak calculation Rs 6100000(Sanjay Jain 2000000+Virendra Haldia 900000+1200000+Sanjay Natani 2000000)
- (ii) Repeated one entry Rs 500000/-

- (iii) Payment entry Rs 88042000 in sheet considered loan raised. The Loan receipt and payment should be treated as per nature of bank entries in that sheet.
- iii) SCN 7 to 9 Addition u/s 68 Rs 18600000,17500000 and 10500000 on account of alleged cash credit from the hard disk, an excel file in the name of "Raju Bhai Shab 13092014.xls" of deleted data was extracted containing sheets 1 to 3 as referred in Point Nos. 7, 8 & 9 of the show cause notice. The complete copy of these sheets is enclosed (PB 76-79). In the show cause notice only that part of the sheet is extracted which reflects the cash transactions and on the that basis, it is alleged that assessee has given cash loan of Rs.1,86,00,000/-, Rs.1,75,00,000/- and Rs.1,00,00,000/- which is added as undisclosed income of the assessee. In this connection, we have pointed out firstly that these sheets do not indicate the transaction of loan given rather these sheets are in respect of the amount taken from various parties through "RajuBhaisaab". This is evident from the fact that on first part of this sheet, cheque transactions are noted and on the second part, cash transaction is noted. Some of instances as under:
- | | | | |
|------------|-------------------|--------|-------------------|
| 21-02-2014 | Renu Goyal | 300000 | SBBJ CMB –PB 384 |
| 23-11-2013 | Rishabh Goyal | 200000 | SBBJ SRE- PB 397 |
| 28-11-2013 | Omprakash Agarwal | 350000 | SBBJ SRE – PB 397 |

All the cheque transactions are of the amount raised by the assessee and his family members / concerns which is verified from the regular books of accounts / bank accounts of the concerned person. Therefore, the details noted in the bottom part of these pages are also of the amount taken and not amount given. Second there is one entry in name of Indra Devi on Sheet 1 and Sheet 3, both. In Sheet 3(SCN9), an amount of Rs.1,00,00,000/- at interest rate of 2.50% with due date of 01.06.2014 is mentioned in the name of 'Indira Khandelwal'. Thereafter, on sheet 1, Rs. 1.25 crores is mentioned in the name of 'Indira Devi' with the date of receipt as 01.06.2014 and due date of repayment as 01.10.2014. This indicates that assessee raised Rs.1,00,00,000/- in 01-08-2013 which was due for repayment with interest of Rs. 25 lakhs (For 10 month @ 2.5% PM) on 01.06.2014 but since the amount was not paid, it was rescheduled on 01.06.2014 for Rs.1.25 crores with due date of repayment as 01.10.2014 as mentioned in sheet 1(SCN 7). There is no transaction on 01-06-2014 as mentioned on sheet 3 SCN 9. Hence Rs 100000 loan raised on 01-08-2013 as explained above from sheet1 as given in scn 9 only to be

included and re-scheduled with interest on due date Rs 1.25 crores in sheet 1(SCN 7) should exclude.

- iv) Ref SCN No. 11 Addition Rs 27730000 on basis an excel file in the name of "Raju Bhai Shab 13092014.xls" of deleted data containing sheet 7 in the name of Sumer Jain. On the basis of this sheet, it is alleged that assessee has given cash loan of Rs.2,74,50,000/- and in form of silver weighing 2kg and 5 kg aggregating 7kg giving amount Rs280000. In this connection, we have pointed out that other entries recorded in same sheet(PB 80) containing the name, date of cheque, amount, rate of interest, no. of months, and interest amount are verifiable from books of account and bank statement of the assessee which indicates that this sheet is with reference to the amount received and not the amount given. The Id A.O. has no dispute for nature of bank entries on same page which are of fund taken. The Id CIT Appeal has also accepted that nature of the cash entries will be same on basis of nature of the bank entries whether fund take or fund given. As such as per nature of bank entries, these are of fund taken but still Id CIT Appeal has erred in taking the same as payment while calculation addition in his statement.
- v) Ref SCN No. 13 Addition Rs 45792766 on basis of an excel file in the name of "Raju Bhai Shab 13092014.xls" of deleted data containing sheet 9 in the name of 'VinayakSonkia' in the last part of this sheet, certain transaction under the title 'Others' is mentioned. In this connection, we have pointed out that other entries recorded in same sheet(PB 82) containing the name, date of cheque, amount, rate of interest, no. of months, and interest amount are verifiable from books of account and bank statement of the assessee which indicates that this sheet is with reference to the amount received and not the amount given. The Id A.O. has no dispute for nature of bank entries on same page which are of fund taken Further in the sheet the silver fine reflects the quantity of silver received by the assessee which was to be given back on due date with the interest as mentioned in the sheet to considered these transaction in working of peak for prevailing rate of silver at Rs.40,000/- per kg as considered in SCN 11. However Id CIT appeal upheld addition without considering due date and nature of the cash entries on basis of nature of the bank entries on same sheet whether fund take or fund given.
- vi) Ref SCN 19 (a. to j.) various addition made u/s 68 Rs 149437770(20567000+11042299+38700000+1795000+101747+45584774+20820000+1070000+9756250) on basis of WhatsApp messages have been extracted from the mobile of the assessee. These messages relate to the transaction of funds received / given but in some cases Id A.O dealt the transaction different than facts

appearing from seized records. The following are the transaction the Id A.O treated different than from searched reord:

- (a) In document extracted from mobile as mentioned in para (a) of SCN 19 shows thae amount payable by assessee and interest due on date mentioned in the sheet but Id A.O treated all these as advance given by assessee and LD CIT appeal upheld the action of A.O and treated as advance given in calculation of addition. Further in the sheet following amount are bank transaction verifiable from books and bank account but has not excluded by the Id CIT while calculating additions.
- 14-07-2015 Rs 4200000 cheque deposited at branch goner, Goner (PNB ARP-PB 494)
- 23-07-2015 Rs 1700000cheque deposited at branch goner, Goner (PNB ARP-PB 492)

These bank account transaction recorded in books of accounts in name of Ramkalyan Sharma verified by Id AO during course of assessment proceeding. Copy of ledger account as per books of account produced before AO during course of assessment proceeding attached.

- (b) In document extracted from mobile as mentioned in para (b) of SCN 19 shows the account of chawalwala it appear receipt of amount on various date Rs 1100000 and repayment of same at various dates and also interest payment at various dates on same sheet. The Id CIT appeal upheld addition considering payment entry. As the sheet appear the account of receipt and payment to same party hence both side to consider for computing peak for taxation.
- (c) In document extracted from mobile as mentioned in para (c) of SCN 19 shows the account credit and debit entries separately given by lekhranj credit shows payment to lekhranj includes two entry Rs 6500000 on 30-05-2016 (20 PNB –PB 516 and 45 ICICI-ARP)and 5000000 on 01-06-2016(ICICI ARP) are in bank from Lekhranj verifiable from bank and Rs 25 lacs in cash. Similarly in debit shows receipt from Lekhranj where total given Rs 38700000 out of which Rs 14000000 from cheque specially mentioned in document itself. Cheque entries includes Rs 100000000 on 13-11-15(PB498),Rs 2500000 on 6-10-15(PB 499), 1500000 on 16-7-15 and 27-7-15(PB 492) which are verifiable form books and bank statement. The Id CIT appeal upheld addition considering all debit entris Rs 38700000 in sheet though it appears to be receipt by assessee without excluding bank transaction and also and ignored the receipt of loan on same sheet in calculation of peak.

These bank account transaction recorded in books of accounts and verified by Id AO during course of assessment proceeding. Copy of ledger account in name of Lekhraj as per books of account produced before AO during course of assessment proceeding attached.

- (d) In document extracted from mobile as mentioned in para (d) of SCN 19 shows the account credit and debit entries separately given by unknown name but identified by assessee from Lekhraj. The debit side appears amount paid to assessee (Receipt by assessee) and credit side appears to be amount receipt from assessee (Paid by the assessee). The Id CIT appeal uphold addition to debit side Rs 1795000 considering payment by the assessee though its nature as per document is receipt by the assessee. However this is account of same person to be taken both side for calculation of peak for taxation.
- (e) In document extracted from mobile as mentioned in para (f) of SCN 19 shows the account given Rs 39624000 and received Rs 2830069 separately mentioned in name Kailashji and Pavan. The Id CIT appeal uphold addition to payment amount and included in peak calculation and ignored the receipt by assessee shown on same sheet. Both receipt and payment should consider to calculate peak.
- (f) In document extracted from mobile as mentioned in para (h) of SCN 19 shows the various entries of loan transaction same as already considered in clause (g). The assessing officer however stated Rs 800000 and interest 120000 not found which has been upheld by the Id CIT appeal which is against the facts. In fact the document in clause (g) is of later period where total amount from same person Raju La shown Rs 3776000 and interest 944000 which includes this figures also. Hence this amount taken repeated for addition. Further there is one Rs 150000 cash received shown in document but Id CIT appeal considered it as payment for addition.

From the perusal of the fact above, it is evident that in the above cases Id CIT Appeal uphold the action of AO who has taken inference adopting pick and choose method as per his sweet will even without taking the pain of considering the fact of actual transaction evident from seized documents itself. The Id A.O even not considered credit verifiable from available records and seized records, considered repetitive addition for same transaction, and also from seized record document some cases assessee taken inference as loan taken or given but as per nature of transaction on same record, it is transaction reverse from inference taken by the assessee i.e loan taken is actually

loan given and loan given is actually loan taken as explained during course of assessment proceeding.

2. Peak Credit Theory:

The Ld. CIT Appeal has erred on fact and in law in disallowing peak credit theory by netting transaction in search record for cash loan taken and cash loan given and uphold defining the legality of the addition by own presumption method termed as incremental negative peak and account of unexplained loan given u/s 69 without considering all facts in seized documents. In case of loans and advances., the Ld. AO has observed that the amount received or paid in cash from/to various person remained unverified and unexplained as the assessee has failed to provide confirmation and having observed so, he held the entire amount of receipt and payment as undisclosed income or investment of the assessee without considering the cash flow of whole transaction. The Id CIT Appeal uphold the view of Id AO and work out the addition of loans and advances in two different way:

- (1) Fund utilized and invested (in giving cash loan) by appellant by over and above the cash loan received by him(Real Income)-For this he calculated peak negative balance.
- (2) Addition on account of unexplained cash advances given by the appellant (Deemed income)- For which he taken all alleged cash advances reduced by peak of negative as (1) above.

In this regard, we submit as under:

- (i) That it is not in dispute that the assessee is engaged in the business of money lending. It is also not in dispute that the entries/transactions in various annexures of the seized documents found during the course of search pertains to money lending transactions of the appellant and which were not disclosed earlier in the books of accounts and offered to tax. These entries/transactions relates to money advanced to various persons by the assessee and the amount returned back by the said borrowers or amount borrowed by the assessee for further lending to its borrowers. These seized documents contain the name of various debtors and creditors to whom the money has been advanced and taken on credit by the assessee. The assessee has prepared a cash flow statement considering the entries relating to the debtors and creditors and offered the maximum peak amount as worked out for respective years for taxation during course of assessment proceeding u/s 153A. However the Ld. AO has clearly taken a double stand in as much as he has treated the credit found mentioned on the seized papers and made out of undisclosed income of assessee

while on the other hand he does not accept the debit found mentioned on the same papers claimed as source by assessee being working as money lender but again added to that as undisclosed money, meaning thereby that the Ld. AO has capriciously and without any basis made addition of all the credits and debits on the seized papers and he has rejected the part of the entries appearing on the same papers which constituted source of funds for assessee. In this regard, it is humbly submitted that the Ld. AO has committed a gross error in relying upon the seized documents partially without any basis in view of the well established law that a seized document has to be read as a whole and cannot be broken into parts as per the convenience or sweet will of the Assessing Officer. In this regard, reliance is placed on the following case laws:

- Glass Lines Equipments Co. Ltd. V/s CIT 253 ITR 454 (Guj.): Interpretation of documents - Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore the rest of the document.
- 22 TW 684 Hissaria Brothers V/s ACIT (Jpr.):Held that the seized document has to be read in its entirety and the parties are not allowed to read only that part which is suitable to it.
- 21 Tax World 213 Lal Chand Agarwal V/s ACIT:In no case AO can be allowed to consider a part of a particular document as true being favourable revenue and other part of the very document as false since that is favourable to assessee - Duality of the approach of AO is not fair -

- (ii) That the Ld. CIT appeal disallowed the benefit of peak credit theory as claimed by assessee alleging that during course of search and survey action no document, whatever was found suggesting nexus between availability of cash fund and its subsequent utilisation. In this regard it is submitted that the purpose of peak credit theory has been completely ignored by the Ld. CIT Appeal which is to avoid double taxation of the same income, inasmuch as the same goes beyond the charging section of the Act itself. Therefore, before arriving at the taxable income, necessary adjustments have to be made so as to arrive at the correct taxable income and to avoid considering same income twice for taxation. Further, the application of peak credit theory has been upheld in various judicial pronouncements. Accordingly the assessee has prepared the cash flow statement of the credit and debit entries found in search records and calculate maximum peak amount in a particular year offered for taxation. It is well established law in this regard that where the debit and credit both are unexplained the credit and debit entries have to be set off against each other to the extent possible and only the peak of credit(negative or

positive) can be considered as undisclosed. Peak credit is applicable where complete records of unaccounted transaction was not found and it is not possible to work out the exact quantum of undisclosed income. Thus, if the Ld. AO alleges that the benefit of peak credit theory cannot be allowed to assessee, then he had the burden to prove that the inflow of cash through various credit entries was applied elsewhere and was not utilized for the purpose of re-introduction. However, the Ld. AO without discharging the onus lying upon him, has cryptically observed that the peak credit theory cannot be applied to the case of assessee by drawing a hypothetical and imaginative distinction between the debit and credit entries of cash advances and receipt back, which action of Ld. AO is completely baseless, against law and thus deserves to be struck down. In the similar facts the peak credit theory has been allowed in various judicial pronouncements as under:

- Hon ITAT Jaipur allowed peak credit theory in case of Om Prakash Agarwal Vs ACIT in ITA 721 to 726/JP/2014 (PB 652-666) observed that " It is not in dispute that the assessee is engaged in the business of money lending. It is also not in dispute that the entries/transactions in Ex.1 - 3 of Annexure AS-1 of the seized documents found during the course of search pertains to money lending transactions of the appellant and which were not disclosed earlier in the books of accounts and offered to tax. These entries/transactions relates to money advanced to various persons by the assessee and the amount returned back by the said borrowers or amount borrowed by the assessee for further lending to its borrowers. These seized documents 17 ITA 721 to 726/JP/2014 Om Prakash Agarwal Vs ACIT contain the name of various debtors and creditors to whom the money has been advanced and taken on credit by the assessee. The assessee has prepared a cash flow statement considering the entries relating to the debtors and creditors and offered the maximum peak amount as worked out for respective years in its return of income filed subsequent to issuance of notice u/s 153A of the Act. The AO has considered the entire amount of outstanding debtors at the year-end as assessee's undisclosed investment in the form of debtors. The AO has not given credit for entries pertaining to the creditors and also disregarded the peak amount offered to tax by the assessee for the respective assessment years. The reason for not giving appropriate credit for the entries relating to the creditors as stated by the AO was that the assessee has not proved the identity of the creditors. The AO therefore accepted the debtors details as mentioned

in the seized documents but at the same time, has not accepted the creditors details also found mentioned in the same set of seized documents. The Hon'ble Gujarat High Court in the case of Glass Lines Equipment Co. Ltd. vs. CIT (253 ITR 454) has held that "it is a well settled canon of interpretation of documents that a document has to be read as a whole and it is not permissible to accept a part and ignore the rest of the document." In 18 ITA 721 to 726/JP/2014 Om PrakashAgarwalVs ACIT light of the same, in the instant case, we are of the view that the AO was not correct in accepting only the debit entries in respect of the debtors and ignoring the credit entries in respect of the creditors found recorded in the same set of seized documents especially when the particulars of both the debtors as well as creditors are clearly visible along with date and amount in the said seized documents. In respect of applicability of peak theory, it is noted that there is nothing on record which can help determine the real income which has accrued to the assessee in respect of his money lending business in terms of agreements, contracts etc. with the borrowers and lenders which can throw light on the rate of interest charged /paid by the assessee, duration of loans /advances, repayment, etc. In such circumstances, application of the peak credit theory is the most reasonable and appropriate basis for determining the real income in the hands of the assessee. From perusal of the various entries found recorded in the seized documents and the cash flow statements prepared by the assessee, it is observed that in terms of amount advanced to various debtors, repayment thereof to the assessee, amount received from the creditors and its repayment by the assessee, the assessee has tried to establish the necessary linkage in terms of outflow and inflow of funds. It is also not the case of the Revenue that inflow of funds through 19 ITA 721 to 726/JP/2014 Om PrakashAgarwalVs ACIT various credit entries was applied elsewhere by the assessee other than his money lending business. Also, where necessary linkage in terms of inflow and outflow of funds are established, it is immaterial whether these transactions are happening in physical form or routed through the banking channel. Accordingly, we do not see any infirmity in applying the peak credit theory in the facts of the present case. In light of this discussion, we set aside the matter to the file of the AO to apply the peak credit theory after taking into consideration both the debtors and creditors entries found recorded in the seized documents."

- **Hon Rajasthan High Court Commissioner Of Income Tax vs Ishwardass Mutha** on 7 April, 2002 (2004) 186 CTR Raj 759, 2004 270 ITR 597 Raj (PB 666) where reference application has been rejected against order of Tribunal). Before the Tribunal, it was contended that the AO has committed error in taking the debit side only, he could take into account the peak credit and , the Tribunal sustained the addition only to the extent of peak credit.
- Hon ITAT, Ahmedabad in case Saral Plastic Pvt Ltd Vs ITO, ITA no 3118 and 3063 dt 25-5-17 applied global method of peak credit for 5 parties having similar nature of unexplained advances.
- **Income Tax Appellate Tribunal – Mumbai Akshar Developers, Navi Mumbai vs Acit Cen Cir 3, Thane** on 28 February, 2018 observed that “ We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The facts with regard to the seizure of two RCBs 1 & 2 and admission of additional income on the basis of rough cash book is not disputed. The assessee Akshar Developers group has admitted the fact that transactions recorded in seized materials relate to its business activity and amount received from parties towards on-money received for sale of flats and also payments towards unaccounted expenses in respect of its project. The partner of the firm, Shri Hari B Mujat has admitted the fact that entries recorded in RCBs 1 & 2 are unaccounted transactions in respect of receipts and payments and accordingly voluntarily admitted undisclosed income of Rs.16,04,84,872 spread over to 3 assessment years in the statement recorded u/s 132(4) on 29-09-2011 and 17-10-2011. It is also an admitted fact that the assessee has filed letter on 02-09-2013 in the form of a separate booklet which contains 16 pages wherein it was submitted before the AO that disclosure made during the course of search in respect of undisclosed income was made without going through the seized materials and after analysis of the seized materials it has come to the notice that there was a mistake in disclosure of Rs.14,19,10,000 and accordingly suggested 2 methods to compute the undisclosed income i.e. one on the basis of peak cash theory where the assessee has arrived at peak cash balance of Rs.2,73,87,071 on 02-06-2010 and second, estimation of reasonable net profit on total receipts recorded in RCB excluding cash with employees and cash drawn from bank which worked out to Rs.27.89

crores. To substantiate the plea of peak cash credit theory, the assessee firm further submitted that the assessee has Akshar Developers group analysed the transactions and as per which certain credits appeared in RCB are unsecured loan received from Smt. Janaki Shah of Rs.45 lakhs, profit on sale of Ulve land of Rs.1.27 crore, transaction with Rameshbhai Rs.78.58 lakhs and transaction with Shri ML Shah of Rs.1.05 crore and all these are not on-money receipts and the details of the above payments are recorded in RCB 1. The assessee further submitted that receipt of on-money amounting to Rs.3.82 crores from different projects and Rs.2.21 crores arising from Hari Mujat account already stood accounted for in RCB. Therefore, no separate addition for the aforesaid amount is required. The sum and substance of the arguments of the assessee is that admission of additional income during the course of search in the statement recorded u/s 132(4) is not correct and which is not supported by any materials and hence, determination of income should be on the basis of peak credit theory or estimation of reasonable net profit from total receipts”

- **Income Tax Appellate Tribunal – Ahmedabad in case S.R. Enterprise v. ITO [2002] 77 TTJ 69 (Ahd.) (PB667–671)** observed and held that

“on treating credit entries as non-genuine, the amount introduced has been taken to be assessee's deemed income. All the credits have been added without bothering to know as to what was the cash available with the assessee on a given date on which it was introduced in the books of accounts as receipt from the customer. The AO has not even mentioned dates of credits. It is also not available on record as to what was the opening balance with the assessee and how much cash he had from known and accepted sources. In the absence of above material, the addition for unexplained cash could not be worked out. What has been introduced beyond the available cash could only be treated as "unexplained". It is, therefore, necessary to work out the peak of the credits as also details of available funds with the assessee and then see how much unaccounted for cash has been introduced in the books of accounts. The peak of such amounts is to be added in the hands of the assessee as "deemed income" and in accordance with law. “

- In the case of ACIT vs Praveen Kumar Agarwal [IT (SS) A No. 61 & 74/Kol/2003], the Hon'ble ITAT, 'C' Bench, Kolkata upheld the combined peak credit method. In this

case, the appellant maintained various undisclosed bank accounts. The AO added the entire deposits amounting to Rs.23,55,26,844/-. The Ld.CIT(A) confirmed the addition only to the extent of the combined peak credit of Rs.23,92,582/-. The Hon'ble ITAT upheld the decision of the Ld. CIT(A) .

- **Income Tax Appellate Tribunal – Kolkata** Provash Sardar,C/O-S.K. Khetan, ... vs Assessee on 15 July, 2016 ITA No. 1377-1378/Kol/2012(PB 672 – 679) held as under:"We have heard rival submissions and gone through facts and circumstances of the case. Admittedly, the bank accounts found during the course of search were undisclosed by the assessee. We find that the assessee had from the date of search stated that he was engaged in the business of selling cheques and main business was to convert cash into cheques and earned commission income in the range of .25% to .50% and accordingly, even made a disclosure petition u/s. 132(4) of the Act by giving a detailed working of the commission income purportedly earned by him. However, the same was not believed by the Ld. AO as assessee could not prove with any evidence. We find lot of force in the alternative argument of the assessee that the peak credit should be worked out after considering all the transactions in the undisclosed bank account and the peak credit so arrived should be treated as undisclosed income. We find that the Ld. AO took 'peak deposit' in the bank account acceptable under peak credit theory which, in our opinion, is against the spirit of such theory. It is well settled that the peak credit theory is based on practical way of determining the undisclosed income of a person. We find that the Ld. AO did not dispute that all the deposits in bank accounts were interlinked with withdrawals. We find that the concept of peak credit has been approved in the aforesaid decisions. In our opinion, adoption of peak credit balance after considering all the transactions in the bank account and adding the same as undisclosed income of each year would meet the ends of justice. Accordingly, we deem it fit and proper in the interest of justice and fair play to set aside this issue to the file of the Ld. AO to determine the undisclosed ITA No. 1377-1378/Kol/2012 Provash Sardar, AYs 2009-10 & 2010-11 income based on the peak credit workings as directed above.

- (iii) With considering common submission on all addition made combined for all years in respect of cash loans and advances,

we submit year wise cash flow statement after modification in cash flow prepared by the CIT Appeal in order AY 2014-15 page 82-89 in accordance with our submission in para 1.1 above for consideration of peak calculation. As submitted at para 1, Therefore, the loans raised by the assessee as found noted on various papers and documents found in search has to be considered as true and therefore, no addition should be made on account of loan raised. Alternatively in case the same is not accepted, then the amount raised cannot be considered as income but only the peak of such amount should be considered as income

(iv) Considering above fact which are common in all year, our yearwise submission for respective ground of appeal as under:

- A.Y. 2014-15

GOA. 1&2 : Addition sustained of Rs.591812 on account of alleged hidden undisclosed fund used by appellant and Rs 27600000 on account of alleged unexplained cash advances given by the appellant(Deemed income)- is covered by detailed submission at para 1-2 above as such no separate addition can be made and at worst only peak from cash flow statement as submitted by us after modification in cash flow prepared by the CIT Appeal in order AY 2014-15 page 82-89 in accordance with our submission in para 1.1 can be charged to tax.

Additional ground: Addition u/s 44AD Rs.737495/- by wrongly mentioning that assessee has declared income from business u/s 44AD at Rs.9,26,992/- is factually wrong. As per return filed, the income u/s 44AD is declared Rs 1664487 and not Rs 926992 as evidence from copy of full return in ITR 4S submitted(PB 146-151). The Id CIT Appeal hence request to delete the addition made wrongly. The Id CIT Appeal however again state to show the source of wrong figure Rs 926992 taken by AO. As it is clearly verifiable from the record submitted for income disclosed in 44AD Rs 1664487, than how appellant to show the source of incorrect figure taken by the A.O hence issue of further verification does not arise. Your honor is requested to kindly delete the addition which was on basis of incorrect figure of disclosed income u/s 44Ad taken by the AO>

- A.Y. 2015-16

GOA. 1&2 : Addition sustained of Rs.34156775 on account of alleged hidden undisclosed fund used by appellant and Rs 100512700 on account of alleged unexplained cash advances given by the appellant(Deemed income)- is covered by detailed submission at para 1-2 above as such no separate addition can be made and at worst only peak from cash flow statement as submitted by us after modification in cash flow prepared by the CIT Appeal in order AY 2014-15 page 82-89 in accordance with our submission in para 1.1 can be charged to tax.

GOA.3 Addition sustained of Rs.4,50,000/- u/s 69C by estimating interest on alleged loan taken in spite of considered the same as part of peak working as covered by detailed submission at para 1 &2 above as such no separate addition can be made

- A.Y. 2016-17

GOA. 1&2 : Addition sustained of Rs.29581754 on account of alleged hidden undisclosed fund used by appellant and Rs 43044246 on account of alleged unexplained cash advances given by the appellant(Deemed income)- is covered by detailed submission at para 1-2 above as such no separate addition can be made and at worst only peak from cash flow statement as submitted by us after modification in cash flow prepared by the CIT Appeal in order AY 2014-15 page 82-89 in accordance with our submission in para1.1 can be charged to tax.

GOA.3 Addition sustained of Rs.1181300- u/s 69C by estimating interest on alleged loan taken inspite of considered the same as part of peak wirking as covered by detailed submission at para 1 &2 above as such no separate addition can be made

- AY. 2017-18:

GOA. 1&2 : Addition sustained of Rs. 36847600 on account of alleged hidden undisclosed fund used by appellant and Rs 3847400 on account of alleged unexplained cash advances given by the appellant(Deemed income)- is covered by detailed submission at para 1-2 above as such no separate addition can be made and at worst only peak from cash flow statement as submitted by us after modification in cash flow prepared by the CIT Appeal in order AY 2014-15 page 82-89 in accordance with our submission in para1.1 can be charged to tax.

GOA.3: Addition sustained Rs 10,00,000/-68 by treating the cash found during the course of search to this extent as unexplained. In this regards the submitted facts are that in search, cash of Rs.11,45,900/- was found at residential premises 178 Surya Nagar, Taro Ki Koot, Jaipur, Rs 4250 at business palce of Shri Ram Enterprises(Proprietorship of assessee) at 881 Panchgali, Sonkhyonkarasta, Kishanpole bazar, Jaipur. Against this, the cash available as per the books of the account as on 29.07.2016 of his propriory business and company is as under:

Sr.No.	Name of concerns	Cash as per books
1	LaxmiKripa Real Estate Pvt Ltd	168493.00
2.	ChandramohanBadaya	374261.70
	Total	542754.70

Copy of cash book submitted during course of hearing (PB 173-174). Thus, cash to the extent of Rs. 542754.70/- is explained as available in the regular books of accounts. Accordingly part of the cash is verifiable from the regular books of accounts and balance amount has been covered by the peak fund flow statement and various additions made by A.O.. As per our detailed submission at para 1 to 2 above no separate addition can be made.

GOA.4 Addition sustained of Rs.943467 u/s 69C by estimating interest on alleged loan taken inspite of considered the same as part of peak working as covered by detailed submission at para 1 &2 above as such no separate addition can be made.

GOA.5: Addition sustained on account of foreign tour. The Ld. AO has further erred on fact and in law in making addition of Rs.5,12,867/- on account of alleged unexplained foreign tour expenses. It is submitted that the assessee and his family members have made foreign travel in period relevant to AY 2017-18 amount spent Rs 512867 transferred from travelling account to capital account being personal use and shown in capital account submitted (PB 172). A copy of travelling account which was part of books of account attached for your reference. The Ld A.O rejected the evidence of withdrawal shown in capital account alleging that the assessee has not made cash withdrawal prior to travel, the assessee has been filing return u/s 44AD of I.T Act and does not maintain regular books of accounts, books of accounts are not being audited. The Ld A.O treated the foreign travel unreasonable and held unexplained expenditure u/s 69C. It is submitted that the Ld A.O misconception of view and not appreciated the regular books of accounts produced before him for verification of expenditure duly disclosed in books of accounts, payment made mainly through bank. The Ld A.O again misconception of view for rejecting explanation on basis of that account are not audited, it is again submitted that there is no requirement of audit of accounts and complete accounts has been produced before the Ld A.O for verification of source in books of accounts and no any deficiency noticed during course of verification. Even the expenditure taken for treating it unexplained expenses are from books of account produced before us and there is no separate document from which he derived the travelling expenses incurred by the assessee.

As submitted above, the expenses are recorded in regular books and source is verifiable from books of accounts and from the withdrawals shown in capital account submitted during course of hearing. The Ld A.O made addition without considering the fact verifiable from the books of accounts maintained by the assessee hence requested to delete the addition on account of foreign tour.

GOA.6: Upholding addition Rs.811636/- (Out of addition made by Ld A.O Rs 1051887) by separately taxing brokerage income under the head

income from other sources. The fact is that assessee having business of jewelry and property. In profit and loss account there includes brokerage receipt Rs 1201255 and net profit Rs 292455.41 arises after claiming all expenses for all business. The Id A.O however taxed income from business u/s 44AD after separating brokerage income brokerage expenses and such net brokerage income under head of other sources resulted addition to total income Rs 1051887. The Id CIT appeal upheld the action of A.O after directing to allow further 20% of brokerage income deduction for expenses for earning brokerage income. In the regards we submit as under:

- (i) The Id A.O computed income from business u/s 44AD though as per sub section 6 of 44AD, the section not applicable to a person earning income in nature of commission or brokerage. Looking to trading and profit and loss account (PB 171), the substantial income of assessee is brokerage income as such the section 44AD is not applicable to assessee during the year. It is also to be noted that property business of assessee includes working as agent to earn brokerage income. This is also undisputed fact that the assessee not claimed business income u/s 44AD but calculated actual profit and submitted trading and profit and loss account and balance sheet to verify the income computed under business. Hence the whole business income is to be taxed as profit arrived from books of accounts.
- (ii) Further the Id A.O alleging that the assessee does not maintain proper books of accounts which against the fact. The assessee submitted all statement of account, balance sheet, trading and profit and loss account and capital account(PB 212-214) and also produced complete books of account to verify the statements. The profit arrived as per statement is fully verifiable from the books of accounts. No defect was pointed out by the Id A.O.
- (iii) The A.O arbitrarily taxed brokerage income separately though it is part of combined business engaged by the assessee.
- (iv) The Id A.O made addition without pointing out any defect in books of accounts nor rejected books of account.

GOA.7: Uphold addition of Rs.16,86,465/- by working out the profit on sale of capital assets under the head income from business. The assessee sold two properties, one is land at Ninand purchased in July 2015 and sold in May 2016 and other is agricultural land at Village Rampura, The Chaksu was purchased in 2008 and sold in October 2016 undivided to three different person. Copy of sale and purchased document submitted during course of hearing(PB 288-356). Both are being kept as capital assets and profit on sale of such assets computed under head capital Gain.

The first one is having short term capital gain Rs 46275 offered for tax under head short term gain. The Id A.O. treated same as business income though no effect on taxable income but treated in turnover for purpose of initiating penalty u/s 270(2)(a) in misconception of facts that the land was kept as investment and not shown in stock in trade since purchases.

The other is long term assets having long term loss Rs 351073 after indexation benefit. The main issue is on long term assets where the assessee compute loss after indexation of cost but the Id A.O assessed business profit Rs 1640190/- due to not giving indexation benefit. In this regards it is submitted that the land was about 1.516 hector purchases in the year 2008 with intention to agricultural activities. The assessee also earned agricultural income in some of years evident from return of income submitted. Further since 2008 the assessee neither taken the land as stock in trade nor have any intention to business activity or trading activity of this land. The land was sold only due to financial need. The Id A.O alleged that land sale of land is business activity considering sold to three different person is factually wrong as the assessee sold the whole land by executing sale deed in name of three different person as specified share of land as undivided and without plotting or any development. As such no entrepreneur activity has been carried out before sale of such land. Further Id A.O further alleged that the sale of land is business receipt as he is in property business is also misconception of fact as how a sale of capital assets can be treated business receipt. Further claim of agricultural activity disregarded by the IdA.O.. Also the Id A.O alleged that the land was taken capital assets intentionally to having benefit of indexation at the time of sale, but it does not understand how this intention can be projected for 8 year back. For denial of benefit of indexation which is available as per law, blaming of the intention of assessee is after though interpretation. The Id CIT appeal further alleged that there is no evidence to prove agricultural income shown are derived from same land, it is submitted that it is undisputed fact that agricultural lands was purchased in the year 2008 when assessee was not engaged in property business and also at that time only this agricultural land he was owing.

GOA.8: Uphold addition of Rs.28,55,102/- on account of alleged unexplained investment in jewelry found in search. The fact is that in search, gold jewelry and silver articles were found as per Annexures JF-1 and JF-2 of Panchnamadated 31-07-2016 as under:

Place where found	Found		Seized	
	Gold (in gms)	Silver (in Kgs)	Gold (in gms)	Silver (in Kgs)
Residence at 178, Surya Nagar, Tonk Road, Jaipur	575.500 (Rs.13,72,703)	2.312 (Rs.1,01,305)		

Locker No. 466 of SBBJ, Kisanpole Bazaar, Jaipur	1722.200 (Rs.46,71,686)	Nil		
Total	2297.700 (Rs.60,44,389)	2.312 (Rs.1,01,305)	739.700 (Rs.20,78,162)	Nil

In the statement recorded u/s 132(4) dated 29.07.2016, the assessee in reply to question no.38 has explained that gold ornaments found from the premises and the locker pertains to the various family members. However, considering that the family of the assessee comprises of his parents, wife, 1 daughter, and 1 son, gold jewelry to the extent of 1558 gms was considered explained and 739.700 gms valued at Rs.20,78,162/- was seized.

It is submitted that the entire gold ornaments and silver items found in search are old / parental jewelry received at the time of marriage or other social functions or inherited from the forefathers. In search, not a single paper or document of purchase of jewelry was found. Therefore, the source of the gold ornaments / silver articles found is fully explained. Even the CBDT Instruction No. 1914 dated 06.01.1994, with reference to the seizure of gold ornaments has considered that 500 gms of gold jewelry in the hands of the married ladies, 250 gms in the hands of unmarried lady, and 100 gms in case of male members should be considered as reasonable possession of jewelry as per the Hindu customs being acquired at the time of marriage or otherwise. Considering the same, 1550 gms of gold is explained. However, this is the minimum quantity which is considered as explained as per the Board Instruction but at the same time, it is clarified that having regard to the status of the family, the customs and practices of the community to which the family belongs, and other circumstances of the case, a larger quantity of jewelry and ornaments can be considered as explained. It may be noted that the assessee and his forefathers are themselves engaged in the jewelry business. It is an ancestral family where the ladies at the time of marriages are given more gold ornaments than considered in the Board Instruction. In view of this, the Hon'ble Delhi High Court in case of Ashok Kumar Chaddha vs. ITO (2012) 69 DTR 0082 / (2011) 202 Taxman 0395 has held that assessee being married for the last 25-30 years and gold jewelry weighting 906 gms found during search could not be said to be substantial and the same having been claimed to be 'Shri Dhan' of assessee's wife no addition under s. 69A was called for. Thus, collecting jewelry of 906.900 grams by a woman in a married life of 25-30 years is not abnormal.

In the present case also, the father of the assessee was married in the year 1977 whereas the assessee was married in the year 2003. The family is engaged in jewelry business and therefore, considering these facts, the entire jewelry found in search is explained. In case, this explanation is not acceptable, then also, only 797.700 gms of jewelry

which is seized by the search party after considering the CBDT Circular can only be considered as unexplained which is valued at Rs.20,78,162/-. However, no separate addition for the same would be required since the same is covered by the peak credit statement submitted during course of hearing.

As submitted above, your hone is requested to kindly accept the appeal and requested to kindly delete the various addition made.”

9. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions by the Id. AR of the assessee :

S.No.	Particulars	Page No.	Before AO/CIT(A)
1	Copy of written Submission made before CIT Appeal	1-22	Both
2	Copy of Written submission filed before Dy Commissioner of Income Tax(AO)	23-32	Both
3	Show cause notice by A.O dt 01-10-2018	33-71	Both
4	Copy of exel sheet of deleted data	72-83	Both
5	Copy of statement recorded u/s132 dt 29-7-16	84-145	Both
6	Copy of Panchnama		Both
7	Copy of ack ITR-V, Complete ITR 4S, computation, Balance sheet,trading and profit and loss account,capital account AY 2014-15	146-151	Both
8	Copy of ack ITR-V, computation, Balance sheet,trading and profit and loss account,capital account AY 2015-16	152-157	Both
9	Copy of ack ITR-V, computation, Balance sheet,trading and profit and loss account,capital account AY 2016-17	158-163	Both
10	Copy of ack ITR-V, computation, Balance sheet,trading and profit and loss account,capital account AY 2017-18	164-172	Both
11	Copy of cash book from 01-04-2016 to 29-07-2016	173-174	Both
12	Copy of document relating to sale and purchases of Nindad Land-By A.R Properties	175-204	Both

13	Copy of document relating to sale and purchases of Nindad Land-By Fortune Real Estate	205-242	Both
14	Copy of document relating to sale and purchases of Nindad Land-By Eminent Build Developers	243-287	Both
15	Copy of document for execution of sale and purchases of property Agricultural land at RampuraChaksubeing capital assets.	288-356	Both
16	All Bank statement 2013-14	357-402	Both
17	All Bank statement 2014-15	403-481	Both
18	All Bank statement 2015-16	482-514	Both
19	All Bank statement 2015-16	515-649	Both
20	Account Sanjay Jain	650	Both
21	Account Sanjay Natani	651	Both
22	Copy of case law referred in submission	652-680	Both

9.1 The Id. AR of the assessee vide letter dated 17.10.2024 in support of the arguments so advanced filed the following documents :

1. Summary of peak with year wise cash flow statement for unaccounted transaction. The cash flow statement were also submitted during course of assessment proceeding. Page 48-56.
2. Detail of business income declared under section 44AD and interest receipt and interest paid-Additional ground A.Y 2014-15 Page 57-58
3. Details of property sold in AY 2017-18 and mode of acquisition-Ground 7 A.Y 2017-18 Page 59
4. Details of Jewellery found during search and explanation thereof- Ground 8 A.Y 2017-18 Page 60.

10. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee that Id. CIT(A) in part considered the contention and applied the peak

theory in part of the transactions and has not appreciated the fact that the money trail being on hotchpotch the separate peak cannot be worked and applied but in fact it should have been applied as whole. The Id. AR of the assessee filed the detailed year wise working so as to establish the correct peak based on the 19 points show cause notices figured and added in the income of the assessee. He prayed that the relief be given in full based on the peak theory as the revenue has already considered the laptop data, mobile data and physical noting/documents found at the time of search. Thus, those records should be read in full and not in piecemeal.

As regard the addition made on account of difference of Rs. 7,37,495/- by wrongly mentioning that assessee declared income from business u/s 44AD at Rs. 9,26,992 whereas the income u/s 44AD is declared in return Rs. 16,64,487. The appellant has filed the documents in this regard and the contention appears to be correct but at the same time finding of the Id CIT(A) is not correct that the assessee failed to show the source of figure of Rs. 9,26,992/- referred by the Id. AO when the same is reflected in the accounts and thereby set aside that issue is not correct and the assessee should be given relief.

11. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the orders of the lower authority as favorable to the revenue.

The Id. DR vehemently argued that as the assessee failed to place on record the details of the source of money received and paid back the theory of peak advanced cannot be applied looking to the fact that the assessee failed give money trail showing from where the money received and to whom in fact the money advanced.

Based on these set of fact Id. DR vehemently opposed to the theory of peak adopted by the Id. CIT(A) and thereby contended that the relief granted to the assessee is without considering the fact that the assessee failed to place on record the details of the credit with evidence, the assessee knowingly repeating to consider the peak is not correct as the source of money received is in real terms of loan or assessee's own on money and without establishing that the theory of peak cannot be considered. Based on these facts, in the case of the assessee, the relief granted by the Id. CIT(A) by calculating the peak and thereby reducing the

addition made by the Id. AO is required to be sustained in the absence of proving the nexus the relief granted is without any evidence or that of confronting the Id. AO while calculating the peak also.

As regard the calculation of peak Id. DR submitted that since, the advances received and paid in piecemeal the theory of the peak is not correct approach to compute the income. The assessee has purchased the land and sold the land and the exact source of the money was not substantiated by the assessee. Ld. DR therefore, submitted that the theory adopted by the Id. CIT(A) in granting the relief to the assessee was incorrect. The Id. DR referring to the finding recorded at page 31 of the order of the Id. CIT(A) submitted that the stand taken by the Id. CIT(A) is the stand of revenue and the contention recorded and relied upon by the Id. DR as emanates from the order of the Id. CIT(A) is reproduced herein below for the sake of convenience :

There is no dispute on the issue regarding the taking of unaccounted cash loans by the appellant. Unaccounted cash interest payment is also disallowable u/s 69C of the Act.

The identity, genuineness and creditworthiness are not proved by the borrower appellant. In this regard reference is made to section 68 of the Act. The appellant has not even furnished the complete address and PAN numbers of these parties from whom the loan has been borrowed. Merely because in the present appeal the loan transactions of the appellant are in cash and have be kept undisclosed and have been detected only during the course of search and seizure action does not make the appellant eligible for some premium benefit or treatment

regarding exemption from not complying with legal requirements and taxability under section 68, 69 and 69D etc. of the Act. It is a settled law that no premium can be awarded to the dishonesty.

Had the appellant provided the complete details of the lenders the assessments in those cases of the lenders could have been reopened and addition regarding unaccounted cash or unaccounted investment could have been done in the hands of such lenders. However identity and other details of the parties have been deliberately withheld by the appellant.

Thus, on the one hand Id. CIT(A) hold the assessee cannot be given premium benefit and on the other hand accepted the contention of the assessee for peak without considering the details of the source of cash loan received and details of cash loan repaid. Even the Id. CIT(A) has considered the interest received and payment not being accounted by the assessee which are chargeable to tax separately u/s 68 & 69C the relief granted by the Id. CIT(A) is contrary to the finding already recorded in his order. The Id. CIT(A) has not dealt with the contention of the Id. AO that to consider the peak theory benefit the assessee has not placed on record any document whatsoever suggesting nexus between availability of cash funds and its subsequent utilization. Therefore, the Id. DR strongly supported the finding recorded in the order of the Id. AO and submitted that the finding of the Id. CIT(A) contrary and required to be quashed.

In the present case the loan has been given and loan has been taken in cash. The assessee has not disclosed the details of the person's involved. Conversely, even when the loans are received through banking channel and the transactions are even recorded in the formal audited books of accounts even then the credit entries and the investments are liable to be explained by the assessee depending upon the facts and circumstances of the case. Even in such a scenario the investments if made out of unexplained money received will be liable to be taxed under section 69 despite of the acceptance the fact loans have been received by such assessee. Alternatively such credit (loans received) will be liable to be taxed under section 68. Whereas in the present case the transactions have been done in unaccounted cash and the onus is much greater on the assessee-appellant which he failed to discharge, even on this aspect of the matter Id. CIT(A) is on the same page. He therefore relied upon the finding of the AO being consistent and appropriate requires to be sustained. The Id. DR as regards the addition for Jewelry submitted that the instruction of the CBDT is not to seize the jewelry to that extent as mentioned in the circular but the assessee has to show the source of the investment made in the jewelry.

The Id. DR in addition to the above arguments has also placed reliance on the detailed written submission of the revenue came from the AO and the said submission is reproduced herein below :

To
The Commissioner of Income Tax (DR-II)
ITAT, Jaipur
(Through Addl. CIT, Central Range, Jaipur)

Sir,
Sub: Appeal before Hon'ble ITAT, Jaipur in ITA No. 404, 421 to 423/JPR/2024 (Assessee's appeal) (A. Y. 2014-15 to 2017-18), 427 and 462 to 464/JPR/2024 (Departmental appeal) (A.Y. 2014-15 to 2017-18) in case of Chandra Mohan Badaya- Submission of paper book-reg-

Kindly refer to your good office letter No. 200 dated 06.06.2024 on the subject cited above.

2. In this connection, it is submitted that your good honour has sought paper book containing copies of seized material and any other material which has been mentioned in the assessment order and also any other document which may be helpful in arguing the case. You have also directed to submit counter submissions if any, on paper book submitted by the assessee in the four appeals for A. Y's. 2014-15 to 2017-18.

3. Brief facts of the case:

a) A search and seizure action u/s 132 of the Income Tax Act, 1961 was carried out on the members of Chandra Prakash Agarwal Group on 28-07-2016 of which assessee is one of the members covered u/s 132. During the course of search proceedings, various incriminating documents and digital data was found/seized from the residential & business premises of the appellant assessee including cash found from residence, details of foreign travel.

b) The statements of the assessee appellant were recorded during search and thereafter during post search proceedings, wherein the assessee has admitted receipt and disbursal of cash loans from various parties at different interest rates. Further, various incriminating documents in digital data was found/seized containing details of cash loans /cash credits taken by the assessee appellant.

c) The proceedings were initiated in the case of assessee appellant u/s 153A of the Act for the A.Y.s 2011-12 to A.Y.2017-18.

d) During the assessment proceedings, detailed queries were sent to the assessee appellant and assessment orders were passed by the then AO after considering the information/seized material available on record and reply furnished by the assessee.

d) Being aggrieved, the assessee appellant filed appeal before the Ld.CIT(A). The Ld. CIT(A) decided the appeals by partially allowing the appeal in favour of the assessee.

e) Thereafter, both the department and assessee have challenged the order of CIT(A)-4, Jaipur.

4. As directed, the incriminating seized material and statements relied upon in the assessment order and copies of these documents are enclosed for ready reference:

S.N.	Particulars	Page No.
1.	Copy of statement of Shri Chandra Mohan Badaya Recorded during the search, u/s 132 (4) of the 1. T. Act, 1961 on 29.07.2016.	1-19
2.	Copy of statement recorded of Shri Chandra Mohan Badaya on oath u/s 131 of the act on 22.09.2016	20-26
3.	Copy of statement of Shri Chandra Mohan Badaya recorded on oath u/s 131 of the L. T. Act, 1961 on 02.12.2016	27-45
4.	A survey u/s 133A of the L. T. Act, 1961 was conducted on 30.07.2016 at the business premises of Shri Ram Enterprises' a proprietary concern of the assessor at 881, Punchgall, Shokhiyon Ka Rasta, Kishanpole Bazar, Jaipur Statement of Shri Chandra Mohan Badaya, (party no. 14)	46-47
5.	Statement of Shri Pradeep Dusad dated 10.11.2016	58-63
6.	Excel file in the name of 123 TALLY xis of 'deleted data' of working copy of hard disk (Party No. 14, Exhibit-4, Annexure-A), ledger of C M Badaya (Nikki Loan for the period 01.04.2013 to 21.12.2013. Query number-5 of Show cause notice (Assessment order for AY 2014-15 page no. 16-18) Rs. 21058188/-	64

7.	<p>excel file in the name of Book) xis of deleted data of working copy of hard disk (Party No. 14, Exhibit-4, Annexure-A), names of various persons with dates and amounts are found to be recorded on Sheet 1 & Sheet 2.</p> <p>Query number-6 of Show cause notice</p> <p>(Assessment order for AY 2014-15 page no. 18-24)- Rs. 26400000/-</p> <p>(Assessment order for AY 2015-16 page no. 18-24)- Rs. 112442000/-</p> <p>(Assessment order for AY 2016-17 page no. 18-24) Rs. 7300000/-</p>	65-66
8.	<p>Raju Bhai Shab 13092014 xls of deleted data' of working copy of 67 hard disk (Party No. 14, Exhibit-4, Annexure-A), names of various persons with dates, amounts, name of parties, rate of interest, amount of interest etc. are found recorded on Sheet 1 in the mam of Raju Bhai Shab A/C Of 4 Months. These entries appear to be cash loan given by the assessee through Raju Bhai Shab to various parties in cheques on this excel sheet entry of CASH ACCOUNT INDRA DEVI (RAJU BHAI SHAB)</p> <p>Query number-7 of Show cause notice</p> <p>(Assessment order for AY 2015-16 page no. 24-25) Rs. 1860000/-</p>	67
9.	<p>RAJU BHAI SHAB 13092014.xls of deleted data' of working copy of hard disk (Party No. 14, Exhibit-4, Annexure-A), names of various persons with dates, amounts, name of parties, rate of interest, amount of interest, amount of commission etc. are found recorded on Sheet 2 in the name of MUNNA JI SONKHIYA. These entries appear to be loan given by you, Smt. Teena Badaya, M/s Shree Ram Enterprises and M/s AR Properties & Colonizers through Mr. Munna Sonkhiya to various parties through cheques, on this excel sheet entry of CASH ACCOUNT (MUNNA JI</p> <p>Query number-8 of Show cause notice (Assessment order for AY 2015-16 – Page No.25-26) – Rs. 17500000/-</p>	68-69
10.	<p>RAJU BHAI SHAB 13092014.xls of deleted data' of working copy of 70 hard disk (Party No. 14, Exhibit-4, Annexure-AI, on Sheet 3, cash account of Indra khandelwal has been found recorded</p> <p>Query number-9 of Show cause notice</p> <p>(Assessment order for AY 2015-16 -page no. 27-28) Rs 10500000/-</p>	70
11.	<p>RAJU BHAI SHAB 13092014.xls of 'deleted data' of working copy of 71 hard disk (Party No. 14, Exhibit-4, Annexure-AI, there is an excel worksheet in the name of KAILASH BILWA on which details of PDCs</p>	71

	<p>(Post Dated Cheques) with its number and amount are entered in the name of 'KAILASH BILWA' with date 21/04/2014.</p> <p>Query number-10 of Show cause notice</p> <p>(Assessment order for AY 2015-16 page no. 28-30)- Rs.10000000</p>	
12.	<p>RAJU BHAI SHAB 13092014 xls of deleted data' of working copy of hard disk (Party No. 14, Exhibit-4, Annexure-A), names of various persons with dates, amounts, name of parties, rate of interest, amount of interest, amount of commission etc. are found recorded on Sheet 7 in the name of SUMER JAIN JI. These entries appear to be loan given by assessee, M/s Shree Ram Enterprises and M/s A R Properties & Colonisers through Mr. Sumer Jain to various parties in cheques, on this excel sheet entry of CASH ACCOUNT is also found recorded.</p> <p>Query number-11 of Show cause notice</p> <p>(Assessment order for AY 2014-15 page no. 30-32)- Rs. 27450000/-</p> <p>(Assessment order for AY 2015-16 -page no. 30-32)- Rs. 280000/-</p>	72-73
13.	<p>RAJU BHAI SHAB 13092014.xls of 'deleted data' of working copy of hard disk (Party No. 14, Exhibit-4, Annexure-A), names of various persons with dates, amounts, name of parties, rate of interest, amount of interest, amount of commission/brokerage etc. are found recorded on Sheet 9 in the name of A/C OF VINAYAK SONKHIYA. These entries prima facie appears to be loans given by the assessee, M/s Shree Ram Enterprises, Ms. Teena Badaya, M/s A. R. Properties & Colonisers and others to various parties.</p> <p>Query number-13 of Show cause notice</p> <p>(Assessment order for AY 2015-16 page no. 32-36) Rs. 45792766/-</p>	74-75
14	<p>An excel file in the name of TALLY xls of deleted data' of working 76 copy of hard disk (Party No. 14, Exhibit-4, Annexure-A), ledger account in the name of CM BADAYA (Nikkij for the period of 01.04.2013 to 23.12.2013 is found recorded. The entries recorded on this sheet prima facie appear to be cash loans/cash credits of Shri Chandra Mohan Badaya and cash loans given by Shri Chandra Mohan Badaya in cash and through bank.</p> <p>Query number-14 of Show cause notice</p> <p>(Assessment order for AY 2014-15 page no. 36-39) Rs. 48750000/-</p>	76

14	<p>Party No. 1:1456, Telipada, Choura Rasta, SMS Highway, Jaipur details of land.</p> <table border="1" data-bbox="392 353 1203 1527"> <thead> <tr> <th data-bbox="392 353 555 452">Name of sellers</th> <th data-bbox="561 353 715 452">Name of Purchasers</th> <th data-bbox="721 353 906 452">Description of land</th> <th data-bbox="912 353 1056 452">Date of agreement</th> <th data-bbox="1062 353 1203 452">Details of annexure</th> </tr> </thead> <tbody> <tr> <td data-bbox="392 461 555 784">Smt. Prabha Devi, S/ Shri Chittarmal, Rampal, Kaluram, Nanchuram</td> <td data-bbox="561 461 715 784">M/s. Eminent Build Developers through partner Shri Pradeep Kumar Dusad</td> <td data-bbox="721 461 906 784">Agriculture land at Arajikhasra No.384 area 2.99 hectare at Village-Ninder, Tehsil-Amer, Jaipur</td> <td data-bbox="912 461 1056 784">28-07-2015</td> <td data-bbox="1062 461 1203 784">Party No. 1 Annexure A Exhibit-28 Page No. 13 to 17</td> </tr> <tr> <td data-bbox="392 792 555 1151">-do-</td> <td data-bbox="561 792 715 1151">M/s. A.R. Enterprises & Colonizers through Proprietor Shri Chandra Mohan Badaya</td> <td data-bbox="721 792 906 1151">Agriculture land at Arajikhasra No.384 area 2.99 hectare at Village-Ninder, Tehsil-Amer, Jaipur</td> <td data-bbox="912 792 1056 1151">28-07-2015</td> <td data-bbox="1062 792 1203 1151">Party No. 1 Annexure A Exhibit-28 Page No. 44 to 48</td> </tr> <tr> <td data-bbox="392 1160 555 1527">-do-</td> <td data-bbox="561 1160 715 1527">M/s. Fortune Real Estate through Partner Shri Chandra Mohan Badaya</td> <td data-bbox="721 1160 906 1527">Agriculture land at Arajikhasra No.379 area 1.12 hectare at Village-Ninder, Tehsil-Amer, Jaipur</td> <td data-bbox="912 1160 1056 1527">28-07-2015</td> <td data-bbox="1062 1160 1203 1527">Party No. 1 Annexure A Exhibit-24 Page No.7 to 11</td> </tr> </tbody> </table>	Name of sellers	Name of Purchasers	Description of land	Date of agreement	Details of annexure	Smt. Prabha Devi, S/ Shri Chittarmal, Rampal, Kaluram, Nanchuram	M/s. Eminent Build Developers through partner Shri Pradeep Kumar Dusad	Agriculture land at Arajikhasra No.384 area 2.99 hectare at Village-Ninder, Tehsil-Amer, Jaipur	28-07-2015	Party No. 1 Annexure A Exhibit-28 Page No. 13 to 17	-do-	M/s. A.R. Enterprises & Colonizers through Proprietor Shri Chandra Mohan Badaya	Agriculture land at Arajikhasra No.384 area 2.99 hectare at Village-Ninder, Tehsil-Amer, Jaipur	28-07-2015	Party No. 1 Annexure A Exhibit-28 Page No. 44 to 48	-do-	M/s. Fortune Real Estate through Partner Shri Chandra Mohan Badaya	Agriculture land at Arajikhasra No.379 area 1.12 hectare at Village-Ninder, Tehsil-Amer, Jaipur	28-07-2015	Party No. 1 Annexure A Exhibit-24 Page No.7 to 11	These documents are submitted by the appellant in his paper book
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15.	Document found at A-178, Surya Nagar, Taroo Ki Koot, Tonk Road, Jaipur (Party No. 10).																					
15a	<p>A document was extracted from the mobile of the assessee during post search proceedings through path F:\Chandra Mohan Badaya Phone Data Whatsapp Messages\data. This document contains details of loans provided by Shri Nikki Badaya (Chandra Mohan Badaya) which is to be paid upto the various date ranging from 10.07.2015 to 26.08.2015.</p> <p>Query number-19(a) of Show cause notice (Assessment order for AY</p>	77																				

	2016-17 20567000/- page no. 64-68) - Rs.20567000	
15b	<p>A document was extracted from the mobile. This document contain date wise details of loan provided by the assessee to a person known as Chawalwala.</p> <p>Query number-19(b) of Show cause notice</p> <p>[Assessment order for AY 2015-16 page no. 64-68) Rs.2514249/- (Assessment order for AY 2016-17 page no. 64-68) Rs. 8528750/-</p>	77a
15c	<p>A document (image no. 8036 IMG 6202) is extracted from the mobile of the assessee. The content of this document appears to be the amount of loans given and received during the month of the May, 2016.</p> <p>Query number-19(c) of Show cause notice</p> <p>(Assessment order for AY 2017-18 - page no. 65-67) Rs.38700000/-</p> <p>Query number-19(d) of Show cause notice</p> <p>(Assessment order for AY 2017-18 – Page No.65-67) Rs. 1795000/-</p>	78
15d	<p>Document (8049 IMG 6111) is captured from the mobile of the assessee during post search proceedings. The content of this document appears to be the amount given by the assessee as loan to various persons during the F.Y. 2014-15.</p> <p>Query number-19(e) of Show cause notice (Assessment order for AY 2015-16- page no. 71-73)-Rs.101747/-</p>	79
15e	<p>A image was extracted from mobile phone of assessee during post search proceedings. Images are of a paper sheet on which detailed working of money receiving and payments are made to persons named one Mr. Kailash Ji and Mr. Pawan.</p> <p>Query number-19(f) of Show cause notice (Assessment order for AY 2015-16 - page no. 73-75) Rs.45584774/-</p>	80
15f	<p>A images of 2 paper slips with 4 pieces of information (3 on one 81 sheet and 1 on second sheet) followed by a rough working</p> <p>Query number-19(g) of Show cause notice (Assessment order for AY 2016-17 - page no. 75-77) Rs.20820000/-</p>	81
15g.	<p>The image is of Hisab Parchi which is hand written and has systematic working of financial transactions</p> <p>Query number-19(h) of Show cause notice</p> <p>(Assessment order for AY 2014-15 -page no. 77-79) Rs.150000/-</p> <p>(Assessment order for AY 2016-17 - page no. 77-79) - Rs.920000/-</p>	82-83

15h	Document extracted from Mobile phone Query number-19(i) of Show cause notice (Assessment order for AY 2016-17 - page no. 79-81) Rs.9756250/-	84

5. It is further submitted that the appellant assessee has submitted paper book before the Hon'ble ITAT, Jaipur which was forwarded by your good office for comments, if any. On going through the documents filed by the appellant, it is seen that he has not submitted any fresh submissions or documents in paper book forwarded to this office. The appellant assessee has only submitted copy of ITRs, Bank A/c Statements, copy of documents seized and written submissions filed before the Hon'ble CIT(A) & AO. All these documents and submissions have been dealt with by the AO as well as Ld. CIT(A) in their respective orders.

Submitted for kind consideration.”

12. We have heard the rival contentions and perused the material placed on record. The ground no. 1, 1.1, 2 , 2.1 & 2.2 raised by the assessee in ITA no. 404/JPR/2024 relates to taxing the income that has been found recorded in the seized records in the form of laptop, mobile data, Pen drive and physical documents. The assessee contended that majority of the transaction recorded on those seized records are related to his cash loan transaction undertaken for taking and giving on interest and making the investment in the property. The Id. CIT(A) has considered the submission of the assessee in part and accepted the theory of the peak in part and not in full and thereby the assessee is in appeal.

Whereas revenue vide solitary ground raised in ITA no. 427/JPR/2024 challenged the finding of the Id. CIT(A) reducing the addition from Rs. 12,70,45,683/- to Rs. 2,89,29,307/- contending that the Id. CIT(A) has erred in holding the income be taxed based on the peak theory.

13. Since in both the appeal the issue raised by the assessee and that of the revenue is related to unaccounted transaction found recorded in the seized record both the appeal were heard together and decided by a common order. As is evident from the assessment order that pursuant to search based on the incriminating material found Id. AO has raised as many as 1 to 19 (19 a to i) points and has dealt with each records one by one and the same being reproduced in the orders of the lower authority that facts are not repeated but will be discussed as and when required to be referred.

As is not disputed that the assessee is engaged in the activity whereby it is found that he has accepted the cash loan and out of that cash loan he has made investment as well as advanced cash loans on interest also. The assessee also found to have earned commission on brokerage of property. For the year under consideration the Id. AO made two addition one addition made is

unaccounted cash loans for an amount of Rs. 12,63,08,188/- u/s.68 of the Act and second addition for Rs. 7,37,495/- being the amount of difference of income offered u/s. 44AD and income reflected in the trading and profit and loss account of the assessee.

14. The Id. CIT(A) while dealing with the second addition he set aside the matter to the file of the Id. AO holding that as the assessee failed to establish the source of figure of Rs. 9,26,992/- the matter requires verification. Brief facts related to the dispute, as raised by way of additional ground are that Id. AO noted that the assessee declared income u/s. 44AD at Rs. 9,26,992/-. Whereas the trading and profit and loss account furnished shows net profit at Rs. 16,64,487/- and therefore, the difference amount was added in the income of the assessee for an amount of Rs. 7,37,495/-. When the matter carried to Id. CIT(A) he set aside the issue holding that the assessee failed to show the source of income of Rs. 9,26,992/- and therefore, he set aside the issue to the file of Id. AO for verification.

Before us the Id. AR of the assessee submitted that all facts related to making the decision to the said ground raised were available on record in the form of Income Tax Return (ITR),

Computation of total income, financial statement etc., the Id. CIT(A) has set aside the issue before the Id. AO. The Id. AO for the reasons best known to him has not given the effect to the ground so set aside. Therefore, the Id. AR of the assessee stated that the assessee has raised that additional ground. As we note from the record of the assessment as filed by the assessee in the assessment proceeding in the form of computation of income (page 147 of the paper book) that income offered by the assessee in the computation stood at Rs. 16,64,487/-. The Id. AR of the assessee in addition referred to page 151 of the paper book submitted that the interest earned and credited in the capital account at Rs. 4,14,000/- and paid by the assessee at Rs. 11,14,671/- being in the negative offered in the computation of income and the same being not disputed the assessee should be allowed to set off that loss on the income already offered by the assessee and there is no ground in the revenue's appeal the issue which is already verifiable from the record cannot be disputed. The Id. AR of the assessee also submitted that against that income short as referred by the AO, assessee claimed set off of loss under the head income from other source for an amount of Rs. 7,37,392/- which the lower authority has denied without giving any reasons.

Therefore, the issue raised by the lower authority and finding given while making the addition is not aligned and therefore, merely referring to the figure of profit and income offered the addition cannot be made which is otherwise not disputed by the revenue. Considering that aspect of the matter that the income reflected in the computation of income supported by the trading and profit and loss account and capital account already placed on record upon which there is not finding of any illegality on the claim of the assessee the same cannot be denied to the assessee. Based on these set of facts additional ground raised by the assessee is allowed.

15. Now we deal with the issue of rival parties disputed which relates to addition made on account of the cash loan / investment of on money on the transaction found to have been recorded in the seized records for which Id. AO made the addition of Rs. 12,63,08,188/- and in an appeal the Id. CIT(A) considering the submission of the assessee accepted the concept of assessing the income on peak theory for some of the loan transactions and restricted the addition to Rs. 2,95,81,754/- (table at page 82 of

order of Id. CIT(A). On these cross appeals we have heard the rival contentions and perused the material placed on record.

As we note from the seized documents that the assessee-received undisclosed cash advances and at the same time given cash advances to certain parties. It is also evident that the names of the parties are mentioned in both the cases of advances received and advances given and in number of cases the dates are also mentioned. That record also reveals that in few cases some references to the purpose of cash loans are also mentioned. There is no dispute regarding the seized documents and that of the transaction recorded there in clearly stating that the assessee-appellant indulges into undisclosed activities of taking and giving cash advances.

Before us the rival parties did not dispute the contents of the seized documents and assessee- appellant found to have been engaged in accepting the cash loans and giving the cash loans. Since, that activity done by the assessee was not in dispute the only issue that is to be decided as to whether the whole amount so found to have been recorded in that seized material is to be considered as undisclosed/unexplained income of the assessee or

the year wise peak amount available and remained unexplained would be the income of the assessee.

The word peak refer to the maximum balance (revenue-as remained unexplained as to its source) or profit a business achieves during a specific period, such as a fiscal year or the years. The calculation of peak in financial transactions involves identifying the highest level of activity, volume, or value within a defined period. Here since the assessee failed to explain source of each loan taken and the details of the loan given him the assessee in such a case can be taxed on the highest amount calculated based on these transaction for which the assessee could not establish its source.

As is evident from the assessment record that in this case the Id. AO has made the addition of Rs. 12,63,08,188/- considering the entry no. 1, 5, 6, 11, 14 & 19h as tabulated at page 81 of the assessment order. The addition was made by the Id. AO after giving a detailed show cause notice to the assessee on 01.10.2018 and considering the reply of the assessee. While making the addition the Id. AO has repeatedly contended that “the assessee has given cash loan to various parties out of his undisclosed income and on such loans assessee earned interest income which

also remained undisclosed. Since, the assessee failed to furnish any satisfactory explanation and also failed to produce these parties for verification the same was treated as undisclosed income of the assessee as taxable.” Whereas the assessee in the submission made before the assessing officer contended that "in this connection we would like to submit that once the assessee has stated that he has raised cash loan and this fact is also accepted in the show cause notice, the loan raised being a capital receipt cannot be added as such as to income. However, since assessee is not in a position to obtain confirmation from these creditors, at the best it could be considered in working peak credit of the loan taken / given. Accordingly, same along with the interest paid would be considered in the working of the peak calculation". The Id. AO rejected this explanation of the assessee and contended that this being the transaction remained undisclosed by the assessee the same is chargeable to tax as per provision of section 68 of the Act.

Before us as argued that in a given situation as to the case of the assessee the apex court in the case of Commissioner of Income-Tax, Madras vs M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC) vide para 15 have held as under :

15. It has been urged by Mr. Kapur, the learned counsel for the appellant that the Tribunal adopted the right approach. It was for the assessee to explain the credit of 87,500 dollars standing in his books,

and he having failed to show that this sum was borrowed from Ayyaru, the conclusion was irresistible that the said sum was income of the assessee. He relied on the decisions of this court in [A. Govindarajulu Mudaliar v. Commissioner of Income tax](#) and [Kale Khan Mohammed Hanif v. Commissioner of Income-tax In Mudaliar](#)'s case, this court held that "there is ample authority for the position that where an assessee fails to provide satisfactory the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature."

Thus, it is held by the apex court that when the assessee failed to prove satisfactorily the source and nature of a credit entry and it is held that the relevant amount is the income of the assessee. Thus, it is not necessary for the revenue to locate its exact source and thereby the revenue cannot be taxed the entire amount that has been found recorded which clearly demonstrate the loan given are the source of loan taken and when the transaction of having both recorded on same seized records. As it is held in the case of co-ordinate bench of ITAT Mumbai in the case of DCIT Vs. Kanakia Hospitality P. Ltd. 110 taxmann.com 4 that the Contents of a '**seized document**' are to be **read** in toto, and it is not permissible on part of an Assessing Officer to dissect same and therein summarily accept same in part and reject other part. Even the Gujarat High Court in the case of Glass Lines Equipments Co. Ltd. Vs. CIT 253 ITR 454 held that "Documents must be read as whole. It is well settled cannon of interpretation that a document has to be read as a whole

and it is not permissible to accept part and ignore the rest the document. Here in this case when the assessee shouting from the first day of search that he is engaged in the activity of the accepting cash loan and giving the cash loans which has not been disputed. He also confirmed that on this activity he has received the interest and at the same time paid interest on the money so borrowed. This fact is verifiable from the said record which has been seized by the revenue. Looking to that aspect of the matter and referring to the decision of the apex court it would not proper to tax the entire amount found recorded as income of the assessee.

As we note from the show cause notice issued and there upon the reply filed by the assessee the assessee against each issue stated that entries mentioned in the seized record as unaccounted cash credit with seized record as unaccounted cash credit without considering the fact that these transaction are both for loan taken as well as loan given and loan being capital receipt is not chargeable to tax and is source of loan given is the source of loan accepted. At the very same time we also endorse the view of the revenue that the assessee has to explain the credit taken and pleaded to have been accepted as loan. But in the absence of that details the entire credit [which include the repaid and re credit of

the same parties] cannot be taxed as income of the assessee. Thus, in the light of that situation at worst only peak of such transaction can be charged to tax as income of the assessee. In the appeal so filed before us the assessee-appellant has primarily raised two arguments (i) receipt of loan is the source of loan given and (ii) at worst only peak of such transaction can be charged to tax.

Since, the assessee fairly admitted that he is involved in cash loan activity where he accepts and advances money in cash [out of books] Therefore, it is not correct to tax the entire credit and debit separately but only credit or debit whichever is higher because the same is not income as it emanates from the records relied upon by the revenue. Thus, to tax income earned out of such activity when there is no conclusive working available with either party. In this situation one of the ways of working the income is to tax peak amount available with the assessee once upon a time at the most be considered as income earned.

The term Peak credit denotes the **highest undisclosed cash available**. This plea is generally accepted as it is logical and acceptable (whether the creditor is genuine or not), provided there is no material on record to show that a particular withdrawal /

repayment has flown out of some other source or such withdrawal / repayment could not have been available on the date of the subsequent credit. This peak theory is usually applied in cases when the unexplained credit and debit entries are standing in the same account of a person. However the peak credit theory may also be extended to the cases where the credits appear not in the same account but in the accounts of different persons. Even if the genuineness of all such persons is disbelieved and all the credits appearing in the different accounts are held to be assessee's own moneys, the assessee still will be entitled to a set off and a determination of the peak credit theory after arranging all the credits in chronological order. Here we note that these propositions cannot be treated as propositions of law but are only the inferences which can be drawn based upon the normal probabilities. The basic idea behind the peak credit theory is to avoid double addition and to bring only the actual income of the assessee to suffer tax, where there are large numbers of unexplained credit and debit entries involved. The peak credit theory should normally be applied to non-genuine entries and not to genuine ones. Where there are many credits, all treated as non-genuine, withdrawal from one account should be treated as available for credit in another. In *Bhaiyalal*

Shyam Behari v CIT (2005) 276 ITR 38 (All.) the Hon'ble High court upheld the view of the Tribunal that working of the peak should be confined to credits and withdrawals in accounts admittedly non-genuine. As in case of large number of non-genuine credit and debit entries, peak theory may be applied, similarly, additions for low gross profits can be given credit against unapproved cash credits or unexplained expenditure or investment with similar set offs between additions and such practice is known as telescoping. Thus in such case instead of adding both unexplained income as well as unexplained investment to the income of the assessee, it would be wise to add one of them, represent only income and the other is the outcome of the income. ***This theory may also be extend to number of years income, where the unexplained income of previous year is being used in an unexplained investment in the subsequent year.*** It should be kept in mind that both the theories of peak credit as well as telescoping should be applied with some degree of caution, because it is available only in such cases, where an earlier addition made could be considered as available for a later investment. If there is some intervening unrecorded expenditure in between such period then the theory of telescoping may not be available. To conclude it is to be kept in

mind that both ***the peak credit and telescoping theories have to be applied after appreciating the facts of each case and neither of the theory is readily available in every case*** as these are not the propositions of the law. The basic principle behind the theories is that there should not be overlapping additions and only the actual and real income of the assessee is taxed. Similar view is taken by our Hon'ble Jurisdictional High Court in the case of Sind Medical Stores, Kota vs The Commissioner of Income-tax, Jaipur, DB Income Tax Reference No.24/1992. (Judgment pronounced on :: 12th November, 2014) has held as under:-

"12. This court in the case of Commissioner of Income Tax Vs. Tyaryamal Balchand (supra), after relying on several judgments, also upheld the finding about peak credit theory. This Court in CIT Vs. Ishwardas Mutha (2004) 270 ITR 597 (Raj.) also accepted the contention to take into account, the peak credit. When any amount is paid, later withdrawn from the books, would be available for recycling and rotation, unless otherwise established as invested elsewhere by the Revenue. **We hold the assessee was entitled to the benefit of peak credit which ought to have been allowed instead of making separate addition of entire amount.** However, we may observe that the Assessing Officer has to come to a definite finding that the amount withdrawn was used by the assessee in any other expenditure or investment. If the Assessing Officer comes to a finding that withdrawn amount was used or spent by the assessee for any other investment or expenditure than the benefit of peak of such credit, in such circumstances, may not be available".

Here as we note that that the assessee- appellant has received cash loans and also has given cash loans to different parties. There is no evidence on records or any specific finding is not on

record regarding the utilization of the cash loan received somewhere else and not in advancing of further cash loans by the assessee- appellant. Therefore, looking to the discussion as held herein above and binding precedent of our Hon'ble Jurisdictional High Court we do not find any infirmity in the finding of the Id. CIT(A) in deciding to tax the income in the case of the assessee based on the peak credit in the hands of the assessee. Accordingly, broadly, the addition can be done only on one side either on account of the unexplained cash loan received or on account of unexplained investment and / or unexplained cash loan given and that too on peak amount.

Moving forward with the concept in mind of peak, before us the assessee has also contended that while calculating the peak amount which has been repaid and again received back was found recorded. Therefore, that subsequent advances from the loan repayment received back is to be given credit. In support of this contention the assessee relied upon the judgement of our Hon'ble Rajasthan High Court in the case of Commissioner of Income-tax v. Ishwardass Mutha [2004] 141 Taxman 555 (Rajasthan)/[2004] 270 ITR 597 (Rajasthan)/[2004] 186 CTR 759 (Rajasthan)[17-04-2002] the Hon'ble High Court has held that:-

"Both the reference applications under section 256(2) of the Income-tax Act, are at the instance of the Revenue from the order of the Tribunal, dated 3rd Sept., 1997. The IT Ref. No. 43 of 1998 pertains to assessment year 1981-82 and the IT Ref. No. 1/1998 pertains to assessment year 1982-83 and the same assessee namely, Ishwardass Mutha.

2. In D.B. IT Ref No. 43/1998 it appears that the assessee Ishwardass Mutha filed a return in the year 1983 showing the total income of Rs. 13,410 representing share from M/s. Chogalal Bhimraj, a firm. This return was accepted under section 143(1) on 19th March, 1983, in a routine manner. On the basis of certain incriminating documents seized in the course of search, the assessing authority opined that there was an escapement of income. Accordingly, he issued a notice under section 148 and found that there was unexplained investment in the money-lending business during the period 24th May, 1980, to 1st Nov., 1980, aggregating to Rs. 78,000. Thus, an addition was made of Rs. 78,000 on account of alleged unexplained investment in the money-lending business. This was confirmed by the CIT(A). Before the Tribunal, it was contended that the Assessing Officer has committed error in taking the debit side only, he could take into account the peak credit. This contention was accepted and worked out the peak credit of Rs. 48,000 out of the addition of Rs. 78,000 made by the Assessing Officer. Thus, the Tribunal sustained the addition only to the extent of peak credit of Rs. 48,000.

3. In DB IT Ref. No. 1/1998 the Assessing Officer added a sum of Rs. 50,000 as income from undisclosed sources as interest income. It was found that a sum of Rs. 50,000 was advanced to one M/s. Ramrakh Poonamchand on 9th March, 1980, and 17th March, 1980, by the assessee. The addition was confirmed by the CIT(A). It is significant to notice at this stage that Dy. CIT(A) by order, dated 4th Nov., 1992, deleted the addition of Rs. 50,000 for the assessment year 1980-81. In this fact, the Tribunal deleted the addition of Rs. 6,720, the same being consequential to the main addition of Rs. 50,000.

4. Having considered the facts of both the cases, we are satisfied that no referable question arises from the order of the Tribunal. Both the reference applications being DB IT Ref. No. 43/1998 and DB IT Ref. No. 1/1998 are rejected"

Based on that judicial precedent and considering the fact that in the seized documents there were some instances when the date, amount and name of the person making the repayment are

mentioned specifically w.r.t. the repayment of the advances/loans received back by the appellant. In this regard, the credit/appropriate deduction of the same is allowable to the appellant while calculating the peak credit as well as while calculating the source of advances given and it is held accordingly.

Here also looking to the discussion as held herein above and binding precedent of our Hon'ble Jurisdictional High Court we do not find any infirmity in the finding of the Id. CIT(A) in deciding to tax the income based on the peak credit but when the repeated entries are reported from the same source the same is required to be reduced, considering the credit of the amount already considered in peak and received back cannot be taxed in the hands of the assessee again.

Now coming to the conclusion as to the amount chargeable to tax in the hands of the assessee based on the peak theory, the assessee was directed to submit the year wise chart of amount available with the assessee. The Id. AR of the assessee has worked out that chart and when we compared that peak working submitted by the Id. AR of the assessee with that of the order of the Id. CIT(A) we found that there exist a difference wherein the Id. CIT(A) has ordered to tax the income of Rs.2,76,00,000/-, whereas

the peak worked out for the year under consideration i.e. A. Y. 2014-15 comes to Rs. 3,25,00,000/-. As we note that for the year under consideration the Id. CIT(A) has considered the amount advanced as income of the assessee, whereas when the assessee asked to compute the year wise peak availability considering the amount received / paid / invested which remained out of books. The credit of peak comes to Rs. 3,25,00,000/- as against the amount taxed in hands of the assessee based on the amount paid for loan comes to Rs. 2,76,00,000/-. The said working made based on the material already on record is extracted herein below:

CHANDRA MOHAN BADAYA						
CASH FLOW STATEMENT FY 2013-14(A.Y 2014-15)						
Date	Name	Receipt	Payment	Balance	SCN No	Assessment order page no
01-04-2013	Opening Balance			150000.00		
03-06-2013	Khushi Sansar	4300000.00		4450000.00	SCN 14	33
03-06-2013	Khushi Sansar	1300000.00		5750000.00	SCN 14	33
03-06-2013	Khushi Sansar		700000.00	5050000.00	SCN 14	33
03-06-2013	Khushi Sansar		2400000.00	2650000.00	SCN 14	33
03-06-2013	Khushi Sansar		1000000.00	2550000.00	SCN 14	33
15-07-2013	Khushi Sansar		14450000.00	(11900000.00)	SCN 14	33
30-07-2013	Khushi Sansar		3600000.00	(15500000.00)	SCN 14	33
01-08-2013	Indra Devi Khandelwal	10000000.00		(5500000.00)	SCN 9	24
04-09-2013	Khushi Sansar		4800000.00	(10300000.00)	SCN 14	33
05-10-2013	Khushi Sansar	700000.00		(9600000.00)	SCN 14	33
18-10-2013	Khushi Sansar	4400000.00		(5200000.00)	SCN 14	33
18-10-2013	Khushi Sansar	800000.00		(4400000.00)	SCN 14	33
20-10-2013	Khushi Sansar	3000000.00		(1400000.00)	SCN 14	33
21-10-2013	Khushi Sansar	1000000.00		(400000.00)	SCN 14	33
23-10-2013	Khushi Sansar	300000.00		(100000.00)	SCN 14	33
23-10-2013	Khushi Sansar	400000.00		300000.00	SCN 14	33
23-10-2013	Khushi Sansar	150000.00		450000.00	SCN 14	33
23-10-2013	Khushi Sansar	2000000.00		2450000.00	SCN 14	33
23-10-2013	Khushi Sansar	2000000.00		4450000.00	SCN 14	33
01-11-2013	Khushi Sansar	350000.00		4800000.00	SCN 14	33
08-11-2013	Surendar Ji		1000000.00	3800000.00	SCN 6	16
09-11-2013	Suni Ji Badaya	6500000.00		10300000.00	SCN 6	18
12-11-2013	Virendra Ji Haldiya	1500000.00		11800000.00	SCN 6	18
11-12-2013	Virendra Ji Haldiya	1000000.00		12800000.00	SCN 6	18
14-12-2013	Khushi Sansar		2000000.00	10800000.00	SCN 14	34
01-01-2014	Shri Sunil Badaya	2500000.00		13300000.00	SCN 1	2
10-01-2014	Munna Ji Sonkhiya		5000000.00	8300000.00	SCN 11	28
10-01-2014	Suresh Baid	2500000.00		10800000.00	SCN 6	18
10-01-2014	Rajesh Ji Khandelwal- Ganesh Namkeen Bhandar	600000.00		11400000.00	SCN 11	28
10-01-2014	Anil Patni		1250000.00	10150000.00	SCN 6	16
11-01-2014	Shree Nath Ji	1500000.00		25150000.00	SCN 11	28
11-01-2014	Dinesh Ji	1500000.00		26650000.00	SCN 11	28
11-01-2014	Saheb Sonkhiya	2850000.00		29500000.00	SCN 11	28
11-01-2014	Suni Ji Badaya	500000.00		30000000.00	SCN 6	18
12-01-2014	Vijay Sonkhiya	2500000.00		32500000.00	SCN 11	28 ✓
15-01-2014	Rajiv Jain (Advances)		3600000.00	28900000.00	SCN 6	17
22-01-2014	Rajiv Jain (Loan)	700000.00		29600000.00	SCN 6	18
23-01-2014	Rajiv Jain (Advances)		7000000.00	22600000.00	SCN 6	17
27-01-2014	Rajiv Jain (Loan)	1000000.00		23600000.00	SCN 6	18
31-01-2014	Rajiv Jain (Advances)		2600000.00	21000000.00	SCN 6	17
12-02-2014	Virendra Ji Haldiya	2500000.00		23500000.00	SCN 6	18
23-02-2014	Rajiv Jain (Loan)	1200000.00		24700000.00	SCN 6	18
28-02-2014	Shri Sunil Badaya		150000.00	24550000.00	SCN 1	2
09-03-2014	Anil Ji Jagatpura		1200000.00	23350000.00	SCN 6	16
09-03-2014	Deepak Dusad		5000000.00	18350000.00	SCN 6	17
27-03-2014	Park Residence		1820000.00	16530000.00	SCN 6	17
31-03-2014	Closing Balance			16530000.00		

As is evident from the above working that when the income of the assessee is to be computed the same is required to be computed as whole and on the same line the revenue cannot be considered the base of tax on choose and peak. Since, the assessee has computed the peak date wise based on the details already on record we are of the considered opinion that the working

of peak of unaccounted transaction be considered as whole and not on selective basis. Even the Id. AR of the assessee vide his written submission invited our attention on the other error made while computing the addition or that of the peak by the Id. CIT(A) which reads as under:

SCN 5 addition Rs 21058188 on account of alleged unexplained cash credit from the hard disk you have extracted excel file in name of "123Tally.xls" of deleted data is a ledger of CM Badaya (Nikki) loan for the period 01.04.2013 to 21.12.2013 (PB 40 & 72). The appellant has already replied during course of hearing that as per this ledger account, there is certain credit in the account of the assessee from 01.04.2013 to 21.12.2013. The total of these credit entries which include both cash and cheque transactions is Rs.2,90,58,188/-. However, this appears to be a consolidated entry of one person named Khushi Sanshar of various amounts of which the Id A.O added the cash amount of Rs.2,10,58,188/-though for similar name day-to-day ledger account from the hard disk for the period 01.04.2013 to 23.12.2013 is also extracted as mentioned in SCN. 14 found in searched record (PB 54 and 73). As per this ledger account, there is a credit of Rs.3,30,50,000/- and debit of Rs.2,07,00,000/- in the account of the assessee during the aforesaid period leaving a balance of Rs.1,23,50,000/-. In this ledger account, there are two credit entries of Rs. 20 lakhs each dated 21.08.2013(from ICICI Bank-SRE, PB-380) and 30.08.2013 (PB-360) against Axis Bank which is verifiable from the books of accounts of the assessee in the name of Khushi Sansar Pvt Ltd. Accordingly the assessee has given this amount to M/s Khushi Sansaar Pvt. Ltd. Thus, in fact both the statement provided by Khushi Sansar to whom the assessee has made transaction but the difference between two is that one as given in SCN 5 is a summary of only receipt transaction prepared by person without correlating from records form period 1-4-13 to 21-12-13 and the other in SCN 14 after two days prepared by different person for all transaction from records for period 1-4-13 to 23-12-13. Therefore, the addition of Rs.2,10,58,188/- made should be excluded as it is covered by the transaction specified at Point No. SCN 14 as discussed in order. The Id CIT has not accepted the submission stating not matching date and amount in two statement and treated two different document. In this regards it is further submitted that these two paper are for same transaction prepared on different way. One is consolidated rough paper prepared without confirming actual date and amount of transaction but the other as specified in SCN 14 is after confirming actual day to day transaction which is

final account among them. This fact can be understood with both the statement mentioned for same name where period start date is same but the correct statement period end two days later and cheque amount is also matched though there is date difference which is due to fact mentioned above.

Thus from the fact of seized document, when the other statement found with all correct transaction detailed, it has to be dealt with that statement as per SCN 14 and no repeated addition required here for same transaction.

SCN 6 addition Rs146142000 u/s 68 on account of alleged unexplained cash credit from the hard disk, an excel file in the name of "book1.xls" of deleted was extracted containing Sheet 1 and Sheet 2. First of all the A.O alleged that assessee has taken cash loan of Rs.14,61,42,000/- between AYs 2014-15 to 2016-17 but it is pointed out that on in Sheet 2,(PB 75) the amount raised by the assessee from various persons along with the due date of repayment of loan and amount is mentioned. This is evident from the fact that in the name of Sanjay Natani on 23.11.2014, Rs.20 lakhs is mentioned by cheque which means that assessee has taken the loan from him on 23.09.2014 which was due for repayment on 23.11.2014. In the ICICI Bank account of the assessee, the loan of Rs.20 lakhs received from Sanjay Natani is duly reflected(ICICI SRE PB 451) . This loan has been repaid also as per ledger account produced(PB 651) Thus, on this sheet, the due date of the repayment of loan raised by the assessee is noted and accordingly, the same has to be considered in the statement of peak credit as loan raised. Similarly on 'sheet 1'(PB-74) the name of the person along with the various dates and certain amounts thereunder are mentioned are in respect of due date of the repayment of amount advanced to various parties. This is established from the fact that in the name of Sanjay Jain on 25.10.2014, Rs.20 lakhs is mentioned as cheque of Axis Bank. In fact, assessee has advanced Rs.20 lakhs for which cheque of PNB Bank for payment to Sanjay Jain issued on 26.08.2014(PB 408 PNBARP) which was due for repayment after two months on 25.10.2014 and therefore, in the Sheet, the due date of repayment is mentioned as 25.10.2014. The amount was repaid by him as per ledger account produced(PB 650). Thus, the amount mentioned on this paper indicates the amounts advanced by the assessee to various persons and not the loan raised. Accordingly, it has been considered in the peak working as amount advanced two months before the date mentioned on this sheet. The Id A.O disregarded the facts which has upheld by Id CIT Appeal for want of various clarification which is not possible with limited records available from search documents. Though the facts are verifiable from available seized documents where any entry can be co-related from the bank record and the other on same sheet should be treated as such.

Hence addition made are wrong and bad in law. The Id CIT Appeal appeal upheld the addition and for calculation of addition the following mistake arisen:

- (iv) Entries verifiable from bank should not be considered in peak calculation Rs 6100000 (Sanjay Jain 2000000 + Virendra Haldia 900000 + 1200000 + Sanjay Natani 2000000)
- (v) Repeated one entry Rs 500000/-
- (vi) Payment entry Rs 88042000 in sheet considered loan raised. The Loan receipt and payment should be treated as per nature of bank entries in that sheet.

SCN 7 to 9 Addition u/s 68 Rs 18600000, 17500000 and 10500000 on account of alleged cash credit from the hard disk, an excel file in the name of "Raju Bhai Shab 13092014.xls" of deleted data was extracted containing sheets 1 to 3 as referred in Point Nos. 7, 8 & 9 of the show cause notice. The complete copy of these sheets is enclosed (PB 76-79). In the show cause notice only that part of the sheet is extracted which reflects the cash transactions and on that basis, it is alleged that assessee has given cash loan of Rs. 1,86,00,000/-, Rs. 1,75,00,000/- and Rs. 1,00,00,000/- which is added as undisclosed income of the assessee. In this connection, we have pointed out firstly that these sheets do not indicate the transaction of loan given rather these sheets are in respect of the amount taken from various parties through "Raju Bhaisaab". This is evident from the fact that on first part of this sheet, cheque transactions are noted and on the second part, cash transaction is noted. Some of instances as under:

21-02-2014	Renu Goyal	300000	SBBJ CMB	-PB 384
23-11-2013	Rishabh Goyal	200000	SBBJ SRE	- PB 397
28-11-2013	Omprakash Agarwal	350000	SBBJ SRE	- PB 397

All the cheque transactions are of the amount raised by the assessee and his family members / concerns which is verified from the regular books of accounts / bank accounts of the concerned person. Therefore, the details noted in the bottom part of these pages are also of the amount taken and not amount given. Second there is one entry in name of Indra Devi on Sheet 1 and Sheet 3, both. In Sheet 3 (SCN9), an amount of Rs. 1,00,00,000/- at interest rate of 2.50% with due date of 01.06.2014 is mentioned in the name of 'Indira Khandelwal'. Thereafter, on sheet 1, Rs. 1.25 crores is mentioned in the name of 'Indira Devi' with the date of receipt as 01.06.2014 and due date of repayment as 01.10.2014. This indicates that assessee raised Rs. 1,00,00,000/- in 01-08-2013 which was due for repayment with interest of Rs. 25 lakhs (For 10 month @ 2.5%

PM) on 01.06.2014 but since the amount was not paid, it was rescheduled on 01.06.2014 for Rs.1.25 crores with due date of repayment as 01.10.2014 as mentioned in sheet 1(SCN 7). There is no transaction on 01-06-2014 as mentioned on sheet 3 SCN 9. Hence Rs 100000 loan raised on 01-08-2013 as explained above from sheet 1 as given in scn 9 only to be included and re-scheduled with interest on due date Rs 1.25 crores in sheet 1(SCN 7) should exclude.

Ref SCN No. 11 Addition Rs 27730000 on basis an excel file in the name of "Raju Bhai Shab 13092014.xls" of deleted data containing sheet 7 in the name of Sumer Jain. On the basis of this sheet, it is alleged that assessee has given cash loan of Rs.2,74,50,000/- and in form of silver weighing 2kg and 5 kg aggregating 7kg giving amount Rs280000. In this connection, we have pointed out that other entries recorded in same sheet(PB 80) containing the name, date of cheque, amount, rate of interest, no. of months, and interest amount are verifiable from books of account and bank statement of the assessee which indicates that this sheet is with reference to the amount received and not the amount given. The Id A.O. has no dispute for nature of bank entries on same page which are of fund taken. The Id CIT Appeal has also accepted that nature of the cash entries will be same on basis of nature of the bank entries whether fund take or fund given. As such as per nature of bank entries, these are of fund taken but still Id CIT Appeal has erred in taking the same as payment while calculation addition in his statement.

Ref SCN No. 13 Addition Rs 45792766 on basis of an excel file in the name of "Raju Bhai Shab 13092014.xls" of deleted data containing sheet 9 in the name of 'VinayakSonkia' in the last part of this sheet, certain transaction under the title 'Others' is mentioned. In this connection, we have pointed out that other entries recorded in same sheet(PB 82) containing the name, date of cheque, amount, rate of interest, no. of months, and interest amount are verifiable from books of account and bank statement of the assessee which indicates that this sheet is with reference to the amount received and not the amount given. The Id A.O. has no dispute for nature of bank entries on same page which are of fund taken Further in the sheet the silver fine reflects the quantity of silver received by the assessee which was to be given back on due date with the interest as mentioned in the sheet to considered these transaction in working of peak for prevailing rate of silver at Rs.40,000/- per kg as considered in SCN 11. However Id CIT appeal upheld addition without considering due date and nature of the cash entries on basis of nature of the bank entries on same sheet whether fund take or fund given.

Ref SCN 19 (a. to j.) various addition made u/s 68 Rs 149437770(20567000+11042299+38700000+1795000+101747+4 5584774+20820000+1070000+9756250) on basis of WhatsApp messages have been extracted from the mobile of the assessee. These messages relate to the transaction of funds received / given but in some cases Id A.O dealt the transaction different than facts appearing from seized records. The following are the transaction the Id A.O treated different than from searched record:

- (g) In document extracted from mobile as mentioned in para (a) of SCN 19 shows the amount payable by assessee and interest due on date mentioned in the sheet but Id A.O treated all these as advance given by assessee and LD CIT appeal upheld the action of A.O and treated as advance given in calculation of addition. Further in the sheet following amount are bank transaction verifiable from books and bank account but has not excluded by the Id CIT while calculating additions.
- 14-07-2015 Rs 4200000 cheque deposited at branch Goner, Goner (PNB ARP-PB 494)
- 23-07-2015 Rs 1700000 cheque deposited at branch Goner, Goner (PNB ARP-PB 492)

These bank account transaction recorded in books of accounts in name of Ramkalyan Sharma verified by Id AO during course of assessment proceeding. Copy of ledger account as per books of account produced before AO during course of assessment proceeding attached.

- (h) In document extracted from mobile as mentioned in para (b) of SCN 19 shows the account of chawalwala it appear receipt of amount on various date Rs 1100000 and repayment of same at various dates and also interest payment at various dates on same sheet. The Id CIT appeal upheld addition considering payment entry. As the sheet appear the account of receipt and payment to same party hence both side to consider for computing peak for taxation.
- (i) In document extracted from mobile as mentioned in para (c) of SCN 19 shows the account credit and debit entries separately given by Lekhraj credit shows payment to Lekhraj includes two entry Rs 6500000 on 30-05-2016 (20 PNB –PB 516 and 45 ICICI-ARP) and 5000000 on 01-06-2016 (ICICI ARP) are in bank from Lekhraj verifiable from bank and Rs 25 lacs in cash. Similarly in debit shows receipt from Lekhraj where total given Rs 38700000 out of which Rs 14000000 from cheque specially mentioned in document itself. Cheque entries includes Rs 10000000 on 13-11-15 (PB498), Rs 2500000 on 6-10-15 (PB 499), 1500000 on 16-7-15 and 27-7-15 (PB 492) which are verifiable from books and bank statement. The Id CIT appeal

upheld addition considering all debit entris Rs 38700000 in sheet though it appears to be receipt by assessee without excluding bank transaction and also and ignored the receipt of loan on same sheet in calculation of peak.

These bank account transaction recorded in books of accounts and verified by Id AO during course of assessment proceeding. Copy of ledger account in name of Lekhraj as per books of account produced before AO during course of assessment proceeding attached.

- (j) In document extracted from mobile as mentioned in para (d) of SCN 19 shows the account credit and debit entries separately given by unknown name but identified by assessee from Lekhraj. The debit side appears amount paid to assessee (Receipt by assessee) and credit side appears to be amount receipt from assessee (Paid by the assessee). The Id CIT appeal uphold addition to debit side Rs 1795000 considering payment by the assessee though its nature as per document is receipt by the assessee. However this is account of same person to be taken both side for calculation of peak for taxation.
- (k) In document extracted from mobile as mentioned in para (f) of SCN 19 shows the account given Rs 39624000 and received Rs 2830069 separately mentioned in name Kailashji and Pavan. The Id CIT appeal uphold addition to payment amount and included in peak calculation and ignored the receipt by assessee shown on same sheet. Both receipt and payment should consider to calculate peak.
- (l) In document extracted from mobile as mentioned in para (h) of SCN 19 shows the various entries of loan transaction same as already considered in clause (g). The assessing officer however stated Rs 800000 and interest 120000 not found which has been upheld by the Id CIT appeal which is against the facts. In fact the document in clause (g) is of later period where total amount from same person Raju La shown Rs 3776000 and interest 944000 which includes this figures also. Hence this amount taken repeated for addition. Further there is one Rs 150000 cash received shown in document but Id CIT appeal considered it as payment for addition.

As we hold that the income to be taxed based on the peak theory and while doing so by the Id. CIT(A) Id. AO was not given

equal chance to counter the working as claimed herein above. Therefore, we deem it fit that Id. AO should compute the correct income after considering the above factual error and the contention of the assessee alternatively based on the same set of seized material already on record so as to correct the addition/peak working. Considering that facts of the matter we consider it fit to remand the matter to the file of the Id. AO who will compute the income as claimed and worked out by the assessee at Rs. 3,23,50,000 [(3,25,00,000/- less 1,50,000/-) as the peak of this year is computed as opening balance already taxed in year A. Y. 2013-14]. **Similar working to be made as whole and the progress income as worked out be taxed in each subsequent year.**

As regards the grounds of appeal of the revenue to tax the entire amount as computed by the Id. AO as against the peak theory applied by the Id. CIT(A) we note that the Id. CIT(A) while considering that arguments of the assessee has relied upon the two decision of the our Jurisdictional High Court as discussed herein above. Against that binding precedent available the Id. AO through the Id. DR relied only on the seized material and statement

of the assessee recorded while in search. Since there is no other binding precedent cited before us we do not find any infirmity in the finding of the Id. CIT(A) to hold a view that the income be taxed on the basis of the peak theory. However, the peak calculated and confirmed by the Id. CIT(A) charged to tax as per the peak statement reworked and submitted before us and not been tested by the revenue as contended by that assessee that the same be computed at Rs. 3,23,50,000 [(3,25,00,000/- less 1,50,000/-) as the peak of this year is computed as opening balance already taxed in year A. Y. 2013-14] as against Rs. 2,95,81,754/- [(table at page 82 of order of Id. CIT(A)), 2,76,00,000/- and Rs. 5,91,812/-] as computed by the Id. CIT(A). Based on these observations the appeal of the revenue stands partly allowed to that extent of the peak to be reworked based on the contention of the assessee and after affording a reasonable opportunity of being heard on the working of the peak.

Thus, the appeal of the assessee is partly allowed so far as to the ground no. 1, 1.1, 2 , 2.1 & 2.2 is concerned based on the finding so recorded herein above and that of the revenue is also partly allowed to the extent of reworking of the peak to be verified at his end.

In the result, the appeal of the revenue in ITA no. 427/JPR/2024 is partly allowed and that of the assessee in ITA no. 404/JPR/2024 is also partly allowed.

16. Now we take up the appeal of the assessee in ITA no. 421/JP/2024 & 422/JP/2024 and that of the revenue in ITA no. 462/JP/2024 & 463 which relates to the assessment year 2015-16 & 2016-17. The grounds of appeal taken by each of them are as under :

ITA No. 421/JP/20214 for A.Y 2015-16 (Assessee)

1. The Ld. CIT Appeal has erred on fact and in law in upholding addition on by treating the various entries mentioned in the seized record as unaccounted cash credit without considering the fact that these transaction are both for loan taken as well as loan given and loan being capital receipt is not chargeable to tax and is source of loan given and therefore at worst only peak of such transaction can charged to tax.

1.1 The Ld. CIT Appeal has further erred on fact and in law in upholding the above addition by not considering the fact that part of the entries are verifiable from the books of accounts and part of the entries are duplicate entries as evident from the seized record itself.

2The Ld. CIT Appeal has erred on fact and in law in disallowing peak credit theory by netting transaction in search record for cash loan taken and cash loan given and uphold the addition by own presumption method termed as incremental negative peak Rs 34156775 and account of unexplained loan given u/s 69 Rs 100512700 without considering all facts in seized documents.

2.1 The Ld. CIT Appeal further erred in calculation of negative peak on data with wrong presumption himself without considering fact explained and verifiable from available seized records itself. In some cases various receipt either loan or repayment of loan as verifiable from seized record either excluded or has treated as loan given or vice versa as per his own convenience.

2.2 The Ld. CIT Appeal further erred in confirming repeated addition for alleged unexplained loan first in calculating negative peak and again as unexplained investment.

3The Ld. CIT Appeal has erred on fact law in law in upholding the addition of Rs.4,50,000/- u/s 69C by estimating the interest paid on alleged loan taken separately instead of considering the same as part of the peak working of investment or loan.

4. The appellant prays your honor's indulgence to add, amend or alter all or any of the ground of the appeal on or before the date of hearing."

ITA No. 422/JP/2024 for A.Y 2016-17 (Assessee)

1. The Ld. CIT Appeals has erred on fact and in law in upholding addition on by treating the various entries mentioned in the seized record as unaccounted cash credit without considering the fact that these transaction are both for loan taken as well as loan given and loan being capital receipt is not chargeable to tax and is source of loan given and therefore at worst only peak of such transaction can charged to tax.

1.1 The Ld. CIT Appeal has further erred on fact and in law in upholding the above addition by not considering the fact that part of the entries are verifiable from the books of accounts and part of the entries are duplicate entries as evident from the seized record itself.

2The Ld. CIT Appeal has erred on fact and in law in disallowing peak credit theory by netting transaction in search record for cash loan taken and cash loan given and uphold the addition by own presumption method termed as incremental negative peak Rs 29581754 and account of unexplained loan given u/s 69 Rs 43044246 without considering all facts in seized documents.

2.1 The Id CIT Appeal further erred in calculation of negative peak on data with wrong presumption himself without considering fact explained and verifiable from available seized records itself. In some cases various receipt either loan or repayment of loan as verifiable from seized record either excluded or has treated as loan given or vice versa as per his own convenience.

2.2 The Id CIT Appeal further erred in confirming repeated addition for alleged unexplained loan first in calculating negative peak and again as unexplained investment.

2.3 The Id CIT Appeal further erred in upholding addition made on presumption of on money paid for purchases of land and taken in

incremental negative peek without considering the fact in seized documents.

3The Ld. CIT Appeal has erred on fact law in law in upholding the addition of Rs.1181300/- u/s 69C by estimating the interest paid on alleged loan taken seperately instead of considering the same as part of the peak working of investment or loan

4The appellant prays your honor's indulgence to add, amend or alter all or any of the ground of the appeal on or before the date of hearing."

ITA No. 462/JP/2024 for A.Y 2015-16 (Revenue)

"1. Whether on the facts and in the circumstances of the case, the Id. CIT(A) is justified in reducing the addition of Rs. 26,70,99,536/- to Rs. 13,62,53,475/- without appreciating the fact that assessee has failed to reconcile the amount of unaccounted loans given and taken by him during the course of assessment proceedings.

2. The appellant craves leave to add, amend or withdraw any of the ground of appeal during the course of appeal proceeding."

ITA No. 463/JP/2024 for A.Y 2016-17 (Revenue)

"1. Whether on the facts and in the circumstances of the case, the Id. CIT(A) is justified in reducing the addition of Rs. 7,51,77,000/- to Rs. 7,33,46,000/- without appreciating the fact that assessee has failed to reconcile the amount of unaccounted loans given and taken by him during the course of assessment proceedings.

2. Whether on the facts and in the circumstances of the case, the Id. CIT(A) is justified in reducing the addition of Rs. 3,40,17,400/- to Rs. 1,82,17,400/- without appreciating the fact that assessee has failed to prove that the money of Rs. 1,58,00,000/- on purchase of land was paid out of money received from sale of land.

3. The appellant craves leave to add, amend or withdraw any of the ground of appeal during the course of appeal proceeding."

17. The issue raised by both the parties in assessment year 2015-16 is similar on facts and ground with that of the A. Y. 2014-15 except ground no. 3 which relates to charging of interest u/s.

69C. As we have while dealing with the ground of loan given and taken decided that the peak of those transaction progressively be taxed and this interest is part and parcel of that activity we direct the Id. AO to compute the peak including that of the loan given, taken and interest together as decided with dealing with the appeal for assessment year 2014-15 and the amount related to this addition to be clubbed with the peak that is to be reworked out. Based on this observation this ground no. 3 raised by the assessee stands partly allowed. Ground no. 4 raised by the assessee being general in nature does not require our findings.

Based on this observation the appeal in ITA no. 421/JP/2024 & 422/JP/2024 filed by the assessee and that of the revenue in ITA no. 462/JP/2024 & 463/JP/2024 for assessment year 2015-16 & 2016-17 respectively stands partly allowed.

18. Now the left out assessment year 2017-18 grounds of appeal raised by each of the party reads as under:

ITA No. 423/JP/2024 for A.Y 2017-18 (Assessee)

1. The Ld. CIT Appeal has erred on fact and in law in upholding addition on by treating the various entries mentioned in the seized record as unaccounted cash credit without considering the fact that these transaction are both for loan taken as well as loan given and loan being capital receipt is not chargeable to tax and is source of loan given and therefore at worst only peak of such transaction can charged to tax.

1.1 The Ld. CIT Appeal has further erred on fact and in law in upholding the above addition by not considering the fact that part of the entries are verifiable from the books of accounts and part of the entries are duplicate entries as evident from the seized record itself.

2. The Ld. CIT Appeal has erred on fact and in law in disallowing peak credit theory by netting transaction in search record for cash loan taken and cash loan given and uphold the addition by own presumption method termed as incremental negative peak Rs 36847600 and account of unexplained loan given u/s 69 Rs 3847400 without considering all facts in seized documents.

2.1 The Id CIT Appeal further erred in calculation of negative peak on data with wrong presumption himself without considering fact explained and verifiable from available seized records itself. In some cases various receipt either loan or repayment of loan as verifiable from seized record either excluded or has treated as loan given or vice versa as per his own convenience.

2.2 The Id CIT Appeal further erred in confirming repeated addition for alleged unexplained loan first in calculating negative peak and again as unexplained investment.

3. The Ld. CIT Appeal has erred on fact law in law in upholding the addition of Rs.10,00,000/- u/s 68 by treating the cash found during the course of search to this extent as unexplained without considering the fact that part of the cash is verifiable from the regular books of accounts and balance amount is covered by balance in the peak fund flow statement and various additions made by A.O.

4. The Ld. CIT Appeal has erred on fact law in law in upholding the addition of Rs.430600/- u/s 69C by estimating the interest paid on alleged loan taken separately instead of considering the same as part of the peak working of investment or loan

5. The Ld. CIT Appeal has erred on fact law in law in upholding addition of Rs. 5,12,867/- on account of alleged unexplained foreign tour expenses without fact that all details relating to payment for foreign tour has submitted before A.O and source is duly verifiable from the withdrawals shown in capital account.

6. The Ld. CIT Appeal has erred on fact law in law in upholding addition of Rs.961004/- by separately taxing brokerage income under the head income from other sources due to disallowance of expenses as per profit and loss account and allowed only 20% of income arbitrarily.

7. The Ld. CIT Appeal has erred on fact law in law in upholding addition of Rs.16,86,465/- by working out the profit on sale of the four properties under the head income from business whereas the assessee

has sold the capital asset and therefore the same should have been assessed under the head income from capital gain.

8. The Ld. CIT Appeal has erred on fact law in law in upholding addition of Rs.28,55,102/- on account of alleged unexplained investment in jewellery found in search.

8.1 The Ld. CIT Appeal has erred on fact law in law in upholding the above addition separately whereas the same is covered by peak fund flow statement and various addition made by A.O.

9. The appellant prays your honor's indulgence to add, amend or alter all or any of the ground of the appeal on or before the date of hearing."

ITA No. 464/JP/2024 for A.Y 2017-18 (Revenue)

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in reducing the addition of Rs. 7,52,03,000/- to Rs. 4,07,43,000/- without appreciating the fact that assessee has failed to reconcile the amount of unaccounted loans given and taken by him during the course of assessment proceedings.

2. The appellant craves leave to add, amend or withdraw any of the ground of appeal during the course of appeal proceeding."

19. The bench noted that in the appeal of the assessee for assessment year 2017-18 ground no. ground no. 1, 1.1, 2 , 2.1 & 2.2 and that of the grounds of appeal of the revenue exactly deals with the same facts, grounds and arguments except the difference in figure disputed.

Therefore, we do not deem it fit to repeat the facts, arguments and finding for those grounds of the assessee and that of the revenue for assessment year 2017-18 and the decision

taken by us in ITA no. 427/JPR/2024 and ITA no. 404/JPR/2024 for A. Y. 2014-15 shall apply to those grounds of the assessee and that of the appeal of the revenue shall apply mutatis mutandis. Now the left out 3 deals with the cash found added u/s. 68 of the Act and ground no. 4 deals with interest added u/s. 69C of the Act. Since, we have already taken a view that the assessee is engaged in the out of book money lending activity and we have given our detailed finding while dealing with the appeal of each party that looking to the facts and arguments presented before we have in ITA no. 427/JPR/2024 and ITA no. 404/JPR/2024 for A. Y. 2014-15 taken a view that income in this case be taxed on the peak theory basis and as that peak which was worked out by the Id. CIT(A) was without giving an opportunity of hearing to the assessee and that working was not based on the complete transaction we have directed to calculate the complete peak and while making the addition of that peak income the addition of interest paid or received be clubbed together. Therefore, ground no. 4 raised by the assessee is partly allowed. So far as ground no. 3 is concerned we direct the Id. AO to give the benefit of the cash found against the peak income computed and added so as to avoid duplication of taxing the income and that of asset (in form of cash) which has not

been explained from the books of accounts maintained by the assessee. Based on this observation ground no. 3 raised by the assessee is allowed.

20. Ground no. 5 raised by the assessee deals with the addition sustained by the Id. CIT(A) for an amount of Rs. 5,12,867/- being the amount of alleged unexplained foreign tour expenses without verifying the fact that the assessee has already explained that the same is verifiable from the withdrawals shown in the capital account of that year. The relevant finding of the Id. CIT(A) on this aspect of the matter reads as under :

Decision

The Id. AO has done addition w.r.t the expenses on travel incurred in the month of June 2016. The search action took place on 28th July 2016. The travel was done in the month of June 2016 however in the ledger account produced in the appeal the said travel expense is recorded in the books on 31st March 2017 through a journal entry of traveling expenses and not of cash withdrawal.

In the appeal the appellant has made certain self-serving statements. Further the appellant has not denied the finding of the Id. AO that the cash was not withdrawn from business capital account before the travel.

Further in the statement recoded under section 131 of the Act, appellant had stated that the payment was made through banking cheque whereas subsequently he has changed his stand and made a statement that it was from the drawings from capital account. This shows that the cash drawn from the capital account if any was for some other purpose as it was not the initial and the original response of the appellant that the expenditure of foreign travel was met out of the cash withdrawn.

As per (PB-214) appellant submission, entry of these travelling expenses has been recorded by the appellant much later on

31.03.2017. The appellant has not shown how the payment of the same was done whether it was done through banking channel or through cash and in case the payment was done through cash whether the same was through the recorded cash book. Further it is not the claim of the appellant and that such transaction was reflected in the books of accounts found during the course of search and seizures.

In view of this discussion this ground of the appellant is hereby dismissed. “

21. Before us, to counter the finding of the Id. CIT(A) on this issue, the Id. AR of the assessee submitted as under ;

GOA.5:Addition sustained on account of foreign tour. The Ld. AO has further erred on fact and in law in making addition of Rs.5,12,867/- on account of alleged unexplained foreign tour expenses. It is submitted that the assessee and his family members have made foreign travel in period relevant to AY 2017-18 amount spent Rs 512867 transferred from travelling account to capital account being personal use and shown in capital account submitted(PB 172). A copy of travelling account which was part of books of account attached for your reference. The Id A.O rejected the evidence of withdrawal shown in capital account alleging that the assessee has not made cash withdrawal prior to travel, the assessee has been filing return u/s 44AD of I.T Act and does not maintain regular books of accounts, books of accounts are not being audited. The Id A.O treated the foreign travel unreasonable and held unexplained expenditure u/s 69C. It is submitted that the Id A.O misconception of view and not appreciated the regular books of accounts produced before him for verification of expenditure duly disclosed in books of accounts, payment made mainly through bank. The Id A.O again misconception of view for rejecting explanation on basis of that account are not audited, it is again submitted that there is no requirement of audit of accounts and complete accounts has been produced before the Id A.O for verification of source in books of accounts and no any deficiency noticed during course of verification. Even the expenditure taken for treating it unexplained expenses are from books of account produced before us and there is no separate document from which he derived the travelling expenses incurred by the assessee.

As submitted above, the expenses are recorded in regular books and source is verifiable from books of accounts and from the withdrawals shown in capital account submitted during course of hearing. The Id A.O made addition without considering the fact verifiable from the

books of accounts maintained by the assessee hence requested to delete the addition on account of foreign tour.

The Id. AR based on this contention submitted that lower authority have not appreciated that expenditure disputed is duly disclosed in books of accounts, payment made mainly through bank. The Id A.O rejected the contention that account are not audited but in fact there is no requirement of audit of accounts.

22. On the other hand on this aspect of the matter Id. DR relied upon the finding of lower authority and stated that the assessee has filed the return based on the presumptive taxation and therefore, the said records are not reliable and thereby he relied upon the finding recorded in the order of the lower authority.

23. We have heard the arguments and perused the record for this ground no. 5 raised by the assessee. The bench noted that the assessee vide page no. 172 of the paper book placed on record the entries passed in the books of account for an amount of Rs. 3,04,167 and Rs. 2,08,700/- for travelling expenses. Both the authority has denied that records without verifying the relevant entries. The source of that entry expenditure is recorded in the books already and stands explained. Thus, with that factum we see no reason to sustain the addition and the same is directed to

be deleted. Based on this observation ground no. 5 raised by the assessee is allowed.

24. Vide ground no. 6 the assessee challenges the finding of the Id. CIT(A) in upholding the addition of Rs. 9,61,004/- taxing brokerage income. The brief facts related to the issue emerges from the order of the lower authorities are that the assessee-appellant has shown brokerage income of Rs. 12,01,255/-. Before Id. AO assessee contended that he has offered the income u/s. 44AD and in that income is reflected. The Id. AO however, on perusal of ITR along with trading and profit and loss account furnished by the assessee, it is found that the assessee has shown brokerage income of ₹12,01,255 and claim various expenses under the head, depreciation, interest on car loan, etc., however, as per the provision of section 44AD (6)(ii) of the act, income derived in the nature of commission or brokerage is not liable to be offered under section 44AD. Accordingly, assessee was asked to explain why the brokerage income should not be considered as income from other sources, vide order sheet entry dated 27-12-2018 and in reply of the same assessee submitted that we offer to be assessed under the head, profit and gain of business and profession as computed from the books of account. The Id. AO

considered the reply of the assessee however, the same was not found convincing to him for the reason that the assessee is regularly declaring its income under the presumptive provision u/s. 44AD of the act and does not maintain the proper books of account. During the course of search, also, he did not furnished books of accounts in respect of his business. The assessee has furnished trading and profit and loss account which has been prepared during the course of assessment proceeding itself. Hence, trading as well as profit and loss account cannot be relied upon. Based on these observation, that brokerage expenses claimed by the assessee for ₹1,49,368 was considered for the purpose of earning the brokerage income of ₹12 0 1255, accordingly income from brokerage amount to ₹10,51,887 was charged separately to tax in the case of the assessee.

25. Aggrieved from the said findings of the Id. AO the assessee challenged that addition before the Id. CIT(A), who has after considering the fact of the case has considered that the expenses to the extent of 20 % is allowable so against the addition of Rs.10,51,887/- he sustained the addition to the extent of Rs. 9,61,004/-. Feeling dissatisfied the assessee challenged that finding vide ground no. 6 raised in this appeal. Apropos to this

ground the relevant submission made by the assessee reads as under :

GOA.6: Upholding addition Rs.811636/- (Out of addition made by Id A.O Rs 1051887) by separately taxing brokerage income under the head income from other sources. The fact is that assessee having business of jewelry and property. In profit and loss account there includes brokerage receipt Rs 1201255 and net profit Rs 292455.41 arises after claiming all expenses for all business. The Id A.O however taxed income from business u/s 44AD after separating brokerage income brokerage expenses and such net brokerage income under head of other sources resulted addition to total income Rs 1051887. The Id CIT appeal upheld the action of A.O after directing to allow further 20% of brokerage income deduction for expenses for earning brokerage income. In the regards we submit as under:

- (v) The Id A.O computed income from business u/s 44AD though as per sub section 6 of 44AD, the section not applicable to a person earning income in nature of commission or brokerage. Looking to trading and profit and loss account (PB 171), the substantial income of assessee is brokerage income as such the section 44AD is not applicable to assessee during the year. It is also to be noted that property business of assessee includes working as agent to earn brokerage income. This is also undisputed fact that the assessee not claimed business income u/s 44AD but calculated actual profit and submitted trading and profit and loss account and balance sheet to verify the income computed under business. Hence the whole business income is to be taxed as profit arrived from books of accounts.
- (vi) Further the Id A.O alleging that the assessee does not maintain proper books of accounts which against the fact. The assessee submitted all statement of account, balance sheet, trading and profit and loss account and capital account(PB 212-214) and also produced complete books of account to verify the statements. The profit arrived as per statement is fully verifiable from the books of accounts. No defect was pointed out by the Id A.O.
- (vii) The A.O arbitrarily taxed brokerage income separately though it is part of combined business engaged by the assessee.

The Id A.O made addition without pointing out any defect in books of accounts nor rejected books of account.

26. The Id. DR submitted that the assessee did not controvert the finding that what expenses he incurred to earn brokerage income and therefore, Id. DR relied upon the findings recorded in the order of the lower authority.

27. We have heard the arguments and perused the record for this ground no. 6 raised by the assessee. The Id. AR of the assessee on the hand submit that he has offered the meager income of Rs. 2,92,455/- u/s. 44AD and on the other hand could not justify the expenses claimed against the brokerage income earned by the assessee. Moreover, on going through the provision of section 44AD(6), the assessee who earns, brokerage or commission are excluded and therefore, we do not find any infirmity in the finding recorded in the order of the Id. CIT(A). But at the same time Id. AR of the assesses submitted that during the pendency of the assessment proceeding the assessee filed the revised computation of income and has offered the total income of Rs. 14,66,665/- as against that original return. Based on these set of fact the Id. AO will verify that whether the brokerage income as decided by the Id. CIT(A) is in line with the income disclosed or not in the revised computation or not. To that extent the Id. AO will

verify this issue. Based on these observation ground no. 6 raised by the assessee allowed for statistical purpose.

28. Vide ground no. 7 the assessee challenges the finding of the lower authority taxing the income earned by the assessee for an amount of Rs. 16,86,465/- by working out the profit on sale of the four properties under the head income from business whereas the assessee has sold the capital asset and therefore the same should have been assessed under the head income from capital gain. The brief facts related to the disputes are that the assessee sold two properties, one is land at Ninand purchased in July 2015 and sold in May 2016 and other is agricultural land at Village Rampura, The Chaksu was purchased in 2008 and sold in October 2016 undivided to three different person. Copy of sale and purchased document submitted (PB 288-356). Assessee submits that both are being kept as capital assets and profit on sale of such assets computed under head capital Gain as per provision of the Act.

The first one is having short term capital gain of Rs 46,275 offered for tax under head short term gain. The Id A.O. treated same as business income though no effect on taxable income but treated in turnover for purpose of initiating penalty u/s 270(2)(a) in

misconception of facts that the land was kept as investment and not shown in stock in trade since purchases.

The gain on sale of other property was offered as long term capital gain and considering the indexation benefit in the cost of acquisition the same was offered as long term capital loss Rs 3,51,073/-. The Id. AR of the assessee contended that based on the fact the assessee considered it as long term capital assets where the assessee compute loss after indexation of cost but the Id A.O assessed business profit Rs 16,40,190/- without giving benefit of indexation to the assessee. As regards the contention of the assessee considering the land as capital asset it was submitted that the land was about 1.516 hector purchased in the year 2008 with intention to perform agricultural activities. The assessee also earned agricultural income in some of years evident from return of income submitted. Further since 2008 the assessee neither taken the land as stock in trade nor have any intention to business activity or trading activity of this land. The land was sold only due to financial need. The Id A.O alleged that land sale of land is business activity considering sold to three different person is factually wrong as the assessee sold the whole land by executing sale deed in name of three different person as specified share of

land as undivided and without plotting or any development. As such no entrepreneur activity has been carried out before sale of such land. Further Id A.O further alleged that the sale of land is business receipt as he is in property business is also misconception of fact as how a sale of capital assets in the form of agricultural land can be treated business receipt. Further claim of agricultural activity disregarded by the Id AO. Also the Id A.O alleged that the land was taken capital assets intentionally to having benefit of indexation at the time of sale, but it does not understand how this intention can be projected for 8 year back. For denial of benefit of indexation which is available as per law, blaming of the intention of assessee is after thought interpretation.

When the matter carried before the Id. CIT he alleged that there is no evidence to prove agricultural income shown are derived from same land, it is submitted that it is undisputed fact that agricultural land was purchased in the year 2008 when assessee was not engaged in property business and also at that time only this agricultural land he was holding.

Before us in support of this ground so raised the Id. AR of the assessee relied upon the contentions so raised before the lower authorities, whereas Id. DR relied upon the finding recorded in the

order of the lower authorities and submitted that the addition sustained is based on the detailed finding recorded.

29. We have heard the arguments and perused the record for this ground no. 7 raised by the assessee. The bench noted that the assessee sold two properties, one is land at Ninand purchased in July 2015 and sold in May 2016 and other is agricultural land at Village Rampura, The Chaksu was purchased in 2008 and sold in October 2016 undivided to three different person. To support this sale copy of deed for sale and purchase was submitted at page 288-356 of the paper book filed. Before us the Id. DR did not dispute the fact that the assessee has offered the income of agricultural activity in past, land was owned from 2008 and the intention of the assessee to hold that as capital assets and not as stock in trade. This fact was not disputed by the Id. DR that both assets were kept as capital assets and profit on sale of such assets computed under head capital Gain as per provision of the Act. Out of two property one is having short term capital gain of Rs 46,275 offered for tax under head short term gain. The Id A.O. treated same as business income though no effect on taxable income but treated in turnover for purpose of initiating penalty u/s 270(2)(a) in misconception of facts that the land was kept as

investment and not shown in stock in trade since purchases. For the second one the gain on sale of other property was offered as long term capital gain and considering the indexation benefit in the cost of acquisition the same was offered as long term capital loss Rs 3,51,073/-. Assessee considered it as long term capital assets where the assessee compute loss after indexation of cost but the Id A.O assessed business profit Rs 16,40,190/- without giving benefit of indexation to the assessee. As regards the contention of the assessee considering the land as capital asset it was submitted that the land was about 1.516 hector purchased in the year 2008 with intention to perform agricultural activities. The assessee also earned agricultural income in some of years evident from return of income submitted. Further since 2008 the assessee neither taken the land as stock in trade nor have any intention to business activity or trading activity of this land. The land was sold only due to financial need of the assessee. The Id A.O alleged that sale of land is business activity considering sold to three different person is factually wrong as the assessee sold the whole land by executing sale deed in the name of three different person as specified share of land as undivided and without plotting or any development. As such no entrepreneur activity has been carried

out before sale of such land. Further Id A.O further alleged that the sale of land is business receipt as he is in property business is also misconception of fact as how a sale of capital assets in the form of agricultural land can be treated business receipt. Further claim of agricultural activity disregarded by the Id AO. Also the Id A.O alleged that the land was taken capital assets intentionally to having benefit of indexation at the time of sale, but it does not understand how this intention can be projected for 8 year back by the assessee therefore denial of benefit of indexation which is available as per law is not correct and blaming on the intention of assessee merely based on the after thought is without considering the records and without countering that records already on record. Even at time of hearing the present appeal, Id. DR did not filed any contrary facts before us and therefore, considering the facts presented by the assessee supported by evidence we hold that the income offered by the assessee be taxed as capital gain and not as business income in the hands of the assessee. Based on this observation ground no. 7 raised by the assessee is allowed.

30. Ground no. 8 & 8.1 raised by the assessee is challenging the addition of Rs.28,55,102/- sustained by the Id. CIT(A) on account of alleged unexplained investment in jewellery found in search.

The assessee also challenges that his alternative plea of making the investment in the jewellery out of the amount that has been contended before the lower authority has not been considered.

31. The brief facts related to this dispute are that the in the search carried out, gold jewelry and silver articles were found as per Annexures JF-1 and JF-2 of Panchnama dated 31-07-2016.

The details of the valuables found are as under:

Place where found	Found		Seized	
	Gold (in gms)	Silver (in Kgs)	Gold (in gms)	Silver (in Kgs)
Residence at 178, Surya Nagar, Tonk Road, Jaipur	575.500 (Rs.13,72,703)	2.312 (Rs.1,01,305)		
Locker No. 466 of SBBJ, Kisanpole Bazaar, Jaipur	1722.200 (Rs.46,71,686)	Nil		
Total	2297.700 (Rs.60,44,389)	2.312 (Rs.1,01,305)	739.700 (Rs.20,78,162)	Nil

32. The Id. AR of the assessee submitted that the assessee on being confronted while recording the statement u/s 132(4) dated 29.07.2016 vide reply to question no. 38 has explained and clarified that gold ornaments found from the premises and the locker pertains to the various family members. The family of the assessee comprises of his parents, wife, 1 daughter, and 1 son,

gold jewelry to the extent of 1558 gms was considered explained and 739.700 gms valued at Rs.20,78,162/- was seized.

The assessee contended that the entire gold ornaments and silver items found in search are old / parental jewelry received at the time of marriage or other social functions or inherited from the forefathers. The assessee also contended that in search, not a single paper or document of purchase of jewelry was found. Therefore, the source of the gold ornaments / silver articles found is fully explained. Even the CBDT Instruction No. 1914 dated 06.01.1994, with reference to the seizure of gold ornaments has considered that 500 gms of gold jewelry in the hands of the married ladies, 250 gms in the hands of unmarried lady, and 100 gms in case of male members should be considered as reasonable possession of jewelry as per the Hindu customs being acquired at the time of marriage or otherwise.

Considering the same, 1550 gms of gold be considered as explained. However, this is the minimum quantity which is considered as explained as per the Board Instruction but at the same time, it is clarified that having regard to the status of the family, the customs and practices of the community to which the family belongs, and other circumstances of the case, a larger

quantity of jewelry and ornaments can be considered as explained. It may be noted that the assessee and his forefathers are themselves engaged in the jewelry business. It is an ancestral family where the ladies at the time of marriages are given more gold ornaments than considered in the Board Instruction. In view of this, the Hon'ble Delhi High Court in case of Ashok Kumar Chaddha vs. ITO (2012) 69 DTR 0082 / (2011) 202 Taxman 0395 has held that assessee being married for the last 25-30 years and gold jewelry weighting 906 gms found during search could not be said to be substantial and the same having been claimed to be 'Shri Dhan' of assessee's wife no addition under s. 69A was called for. Thus, collecting jewelry of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. The Id. AR of the assessee further submitted that the father of the assessee was married in the year 1977 whereas the assessee was married in the year 2003. The family is engaged in jewelry business and therefore, considering these facts, the entire jewelry found in search is explained. In case, this explanation is not acceptable, then also, only 797.700 gms of jewelry which is seized by the search party after considering the CBDT Circular can only be considered as unexplained which is valued at Rs.20,78,162/-.

However, no separate addition for the same would be required since the same is covered by the peak credit statement submitted during course of hearing.

33. On the other hand Id. DR stated that the circular of the board is guideline for not making the seizure and that has been followed and since the assessee failed to explain the source of the valuable found the same is rightly added in the hands of the assessee and thereby Id. DR supported the order of the Id. CIT(A).

34. We have heard the arguments and perused the record for this ground no. 8 & 8.1 raised by the assessee. The bench noted that the in the search action carried out, gold jewelry and silver articles were found as per Annexures JF-1 and JF-2 of Panchnama dated 31-07-2016. The gold valuable was valued at Rs. 60,44,389/- and silver was valued at Rs. 1,01,305/-. The valuable to the extent of Rs. 20,78,162/- for 739.700 was seized. In the statement so recorded while in search the assessee on being asked in the statement u/s 132(4) dated 29.07.2016 vide reply to question no. 38 has explained and clarified that gold ornaments found from the premises and the locker pertains to the various family members. The family of the assessee comprises of his parents, wife, 1 daughter, and 1 son, gold jewelry to the extent of

1558 gms was considered explained and 739.700 gms valued at Rs.20,78,162/- was seized. In the proceedings before AO assessee contended that the entire gold ornaments and silver items found in search are old / parental jewelry received at the time of marriage or other social functions or inherited from the forefathers. The assessee also contended that in search, not a single paper or document for purchase of jewelry was found and that is why the assessee considered it as explained. He while relying on the CBDT Instruction No. 1914 dated 06.01.1994, wherein with reference to the seizure of gold ornaments has considered that 500 gms of gold jewelry in the hands of the married ladies, 250 gms in the hands of unmarried lady, and 100 gms in case of male members should be considered as reasonable possession of jewelry as per the Hindu customs being acquired at the time of marriage or otherwise. That is why he relying on the Board Instruction and stature of family and customary practices of the community to which the family belongs contended to consider as explained. He further stated that his forefathers are themselves engaged in the jewelry business. It is an ancestral family where the ladies at the time of marriages are given more gold ornaments than considered in the Board Instruction. As we note that while

making the seizure the benefit of CBDT instruction were given and even the addition has been made for the valuable of gold for the grams which are exceeded that guideline of the board. Looking to the number of family members the benefit has been given and balance amount was only added as income of the assessee. As the contention of the revenue that the CBDT instruction are for the guidance only and are not binding is not correct as our Hon'ble Jurisdictional High Court held in the case of **Commissioner of Income-tax, Alwar v. Satya Narain Patni [46 taxmann.com 440 (Rajasthan)]** held that

13. Admittedly, looking to the status of the family and the jewellery found in possession of four ladies, was held to be reasonable and therefore, the authorized officers, in the first instance, did not seize the said jewellery as the same being within the tolerable limit or the limits prescribed by the Board and thus, in our view, subsequent addition is also not justifiable on the part of the Assessing Officer and rightly deleted by both the two appellate authorities namely' CIT(A) as well as the Tribunal.

Looking to this binding precedent we do not find merit in the argument of the Id. DR to confirm the whole amount in the hands of the assessee. Now for the balance jewelery of 739.700 gms the Id. AR of the assessee relying on the judgment of the Hon'ble Delhi High Court in case of Ashok Kumar Chaddha vs. ITO (2012) 69 DTR 0082 / (2011) 202 Taxman 0395 wherein it was held that

“assessee being married for the last 25-30 years and gold jewelry weighting 906 gms found during search could not be said to be substantial and the same having been claimed to be ‘Shri Dhan’ of assessee's wife no addition under s. 69A was called for. Thus, collecting jewelry of 906.900 grams by a woman in a married life of 25-30 years is not abnormal.”

Here also two married lady residence in the family and they are having long married life the excess gold jewellery for 739.700 gms could not be considered as unexplained. In support we relying on the judgment of our Hon'ble high court and that of Hon'ble Delhi High Court having two married lady in family we do not find merit to sustain the addition of 739.700 gms jewellery as unexplained in the hands of the assessee and the same cannot be added in the hands of the assessee. Even the Id. AO not contended that the jewellery found were not ornaments and were purchased by the assessee. The statement recorded was also confirm that this jewellery were of the lady and acquired / received on the various occasion in the family. Therefore, we do not see any reasons which suggest that the same can be considered as unexplained investment in hands of the assessee.

Based on these observations ground no. 8 & 8.1 raised by the assessee are allowed.

35. Ground no. 9 being general in nature does not require any adjudication.

Based on these observations the appeal filed by the assessee in ITA No. 423/JP/2024 for A. Y. 2017-18 filed by the assessee is partly allowed and that of the revenue in ITA No. 464/JP/2024 for A.Y 2017-18 is also partly allowed.

In the result the four appeals filed by the assessee stands partly allowed and that of the four appeal of the revenue are also stands partly allowed.

Order pronounced in the open Court on 27/11/2024

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27/11/2024

*Ganesh Kr, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Chandra Mohan Badaya, Jaipur/ ACIT, Central Circle-02, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-04, Jaipur
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA Nos. 404 & 421 to 423/JP/2024 & ITA No. 427 & 462 to 464/JP/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar