

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, AM

आयकर अपील सं./ITA. Nos. 239 & 240/JP/2024
निर्धारण वर्ष / Assessment Years : 2013-14 & 2018-19

ACIT, Central Circle, Kota	बनाम Vs.	Banas Minerals Private Ltd F 51 Phase III, RICCO Industrial Area, Jhalawar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCB 0164 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. Nos. 269/JP/2024
निर्धारण वर्ष / Assessment Years : 2018-19

ACIT, Central Circle, Kota	बनाम Vs.	Banas Builders And Developers LLP, F-49, Phase-III, RIICO Industrial Area, Jhalawar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAQFB6080P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./C.O. Nos. 4 & 5/JP/2024
(Arising out of ITA Nos. 239 & 240/JP/2024)
निर्धारण वर्ष / Assessment Years : 2013-14 & 2018-19

Banas Minerals Private Ltd F 51 Phase III, RICCO Industrial Area, Jhalawar	बनाम Vs.	ACIT, Central Circle, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCB 0164 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rajendra Jain (Adv.) (V.C)
राजस्व की ओर से / Revenue by : Smt. Alka Gautam, CIT-DR (V.H)

सुनवाई की तारीख / Date of Hearing : 14/10/2024
उदघोषणा की तारीख / Date of Pronouncement : 03/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present bunch of five appeals relates to the two different assessee named above. Since these were of the same group assessee with the consent of the parties same were clubbed together for hearing are disposed off with this common order.

2. First we considered to take up the appeal of the assessee named Banas Minerals Private Limited in ITA no. 239/JPR/2024 filed by the revenue and against that appeal so filed by the revenue and the cross objection of the assessee no. 4/JP/2024. That dispute relates to the assessment year 2013-14. Both the appeal of the revenue and that of the cross objection of the assessee arise because of an order passed by the Commissioner of Income Tax, Udaipur-2 [for short CIT(A)] passed as per provision of section 250 of the Income tax Act [for short Act] on 22.12.2023. That order of the Id. CIT(A) arise because the assessee challenged the order of the assessment passed u/s. 153A r.w.s. 143(3) of the Act dated 08.07.2019 passed by the Deputy/Assistant Commissioner of Income Tax, Central Circle, Kota [for short AO].

3. The revenue has assailed the appeal ITA no. 239/JP/2024 for A. Y. 2013-14 on the following grounds:

“1. Whether on facts in circumstances of the case, the CIT(A) is justified in deleting the addition of Rs. 5,05,81,050/- made on account of unexplained investment u/s 69B of the Act without appreciating the fact that addition was determined on the basis of unexplained and unaccounted transactions recorded in the excel sheet with name "BMPL", Jhalawar maintained in the laptop of Shri Devendra Singh Shekhawat who was accountant and person of confidence of the company and maintaining all records of actual transactions of immovable properties purchased by M/s Banas Minerals Pvt. Ltd under directions of the directors of the company.

2. Whether on facts in circumstances of the case, the CIT(A) is justified in deleting the addition of Rs. 50581050/- on account of unexplained investment u/s 69B of the Act without appreciating the fact that addition was only of difference in value of the properties owned by the assessee; and there is no role of other properties mentioned in the excel sheet.

3. Whether on facts and circumstances of the case, the CIT(A) is justified in deleting the addition of Rs. 5,05,81,050/- on account of unexplained investment u/s 69B of the Act without appreciating the fact that it was accepted by Shri Devendra Singh Shekhawat during search proceedings that the data in the laptop extracted into excel sheet pertains to M/s Banas Minerals Pvt. Ltd. and that he never denied this fact till the statement was recorded during remand report proceedings.”

4. Whereas assessee against that appeal filed cross objection [CO] which is numbered as CO/4/JPR/2024 and the grounds of the said CO reads as under :

“1. That on the facts & in the circumstances of the case the Id. CIT(A) erred in upholding the validity of order passed by the Id. AO.

2. That on the facts & in the circumstances of the case the Id. CIT(A) erred in upholding the validity of notice u/s 153A of the Act.

3. That on the facts & in the circumstances of the case the Id. CIT(A) erred in upholding the validity of digital data obtained from

computer of third party search without brought on record any evidence of genuineness of such digital data.

4. That on the facts & in the circumstances of the case the Id. CIT(A) erred in not analyzing the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell Private Limited in right perspective and judicious manner.

5. That on the facts & in the circumstances of the case the Id. CIT(A) ought to have quashed the proceedings u/s 153A as same was not based on any incriminating found as a result of search in the case of assessee rather relying the material found from third party search.

6. That the respondent may kindly be permitted to raise any additional and/or alternative ground at or before the hearing of appeal.

7. The respondent prays for justice & relief.”

5. Since the appeal of the revenue and the cross objection of the assessee deals with the same assessment year and of the same assessee we considered it for disposal together with the consent of the parties.

6. At the outset of the hearing of we note that the appeal filed by the revenue is delayed by 11 days. The Id. DR in support of the delay submitted that in fact the appeal is not delayed if the same is counted from the service of the notice. The revenue has filed an application stating the reasons for delay and prayed for condonation of delay. The content of the application so filed reads as under :-

Subject:- Application for condonation of delay for filing of appeal u/s 254 of the Act in the case of M/s Banas Minerals Private Ltd. (PAN – AADCB0164G) for the A.Y 2013-14 (appeal No. ITA 239/JP/2024)-reg.- Kindly refer to the above mentioned subject.

2. It is respectfully submitted that appeal has been filed on ITAT portal in the case of M/s Banas Minerals Private Limited for the AY 2013-14 as per direction of the Pr. Commissioner of Income Tax, (Central), Rajasthan, Jaipur. The details of appeal are as under:-

S. No.	Name & PAN of the Assessee	AY	Date of order of CIT(A)	Date of receiving of order in PCIT office	PCIT authorization for filing of appeal	Acknowledgement no & date of filing of appeal in ITAT
1	M/s Banas Minerals Private Limited, Jhalawar (AADCB0164G)	2013-14	22.12.2023	11.01.2024	28.02.2024	1709380204 dated 02.03.2024

3. Further, the mail has been received from the Hon'ble ITAT on 05.03.2024 in the case of M/s Banas Minerals Pvt. Ltd., Jhalawar for the AY 2013-14 wherein it is mentioned that the appeal is time barred by 11 days and applicant may rectify the defects within 10 days from the receipt.

4. In this connection, the relevant section 253 of the Act for filing of appeal in the ITAT against the order of Ld. CIT(A)-2, Udaipur is as under:-

(2) The [Principal Commissioner or] Commissioner may, if he objects to any order passed by a [Deputy Commissioner (Appeals) [before the 1^a day of October, 1998] [or as the case may be, a commissioner (Appeals)] under [section 154 or] section 250 direct the [Assessing Officer to appeal to the Appellate Tribunal Against the order.

(3) Every appeal under section (1) or sub-section shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the [Principal Commissioner or] Commissioner as the case may be.

4.1 Further, it is submitted that in this case, the Ld. CIT(Appeals)-2, Udaipur has forwarded the batch of appellate orders for the Month of December, 2023 in which the order of above said assessee is included vide letter no. 474 dated 02.01.2024 which was received in the office of Pr. Commissioner of Income Tax (Central), Rajasthan, Jaipur on

11.01.2024 (copy enclosed). Further, in regular practice followed till now, time limit of 60 days is considered from date on which order of CIT(A) is received in the office of PCIT(Central), Jaipur. Thus, as per regular practice, the limitation of 60 days for filing of appeal in the ITAT in the case of above said assessee is calculated from 11.01.2024 and therefore, limitation expired on 10.03.2024.

4.2 It is further submitted that in regular practice followed till now, limitation of 60 days is counted from date of receipt of order of CIT(A) in the office of Pr. CIT(Central). Due to this reason, in this case, time limit for filing appeal before Hon'ble ITAT is considered from 11.01.2024 i.e. date of receipt of CIT(A) order in the office of PCIT(Central), Jaipur and and due to this reason, delay occurred in filing of the appeal. This is a bonafide mistake which resulted in delay in filing of appeal.

4.3 Therefore, it is respectfully requested that delay in the filing of the appeal may be condoned and appeal may be treated as filed within prescribe time limit.

5. In this connection, it is respectfully submitted that the Pr. Commissioner of Income Tax (Central), Rajasthan, Jaipur has granted permission to file application for condonation of delay in filing of appeal vide letter no. 1534 dated 12/03/2024 (copy enclosed). Vide this letter, the undersigned is authorized to file appeal and application for condonation of delay before the Hon'ble ITAT as per authorization already issued vide office letter No. 1336 dated 28.02.2024."

7. On this issue during the course of hearing, the Id. AR of the assessee fairly not objected to revenue's application for condonation of delay and submitted that the bench take appropriate decision in the matter.

8. We have heard the contention of the parties and perused the materials available on record. The prayer by the revenue for condonation of delay of 11 days has merits. Even otherwise if the time limit is counted from the date of

receipt of the order the appeal is filed in time. Therefore, we concur with the submission of the revenue and delay of 11 days in filing the appeal by the revenue is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC).

9. The bench also noted that there exist a delay of 12 days in filling the cross objection by the assessee. To this effect the Id. AR of the assessee drawn our attention the application for condonation of delay filed by the assessee. The application of the assessee contend that the form no. 36 of the appeal filed by the revenue was serviced in post delayed and thereafter the same was sent to director and thereby filling that cross objection has delayed which is bond fide and it may be considered in the interest of the justice.

10. On this prayer of the assessee Id. DR did not object and submitted that the bench may decide the prayer of the assessee in accordance with the law.

11. We have heard the contention of the assessee and perused the materials available on record. The prayer by the

assessee for condonation of delay of 12 days has merits as assessee was prevented with sufficient cause while filling the cross objection.

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12. Succinctly, the fact as culled out from the records is that a search & seizure operation under section 132(1) of the Income-tax Act, 1961 (hereinafter "the Act") was carried out on 15.11.2017 at the various premises of Banas Group, Jhalawar to which the assessee belongs. A number of persons / premises covered u/s 132 of the I.T. Act, 1961. Cash, jewellery and other documents found and seized from some persons residence and business premise. The case of the assessee was also covered under search proceeding. The search action was carried out on the assessee on 15.11.2017 at its business premises F-49 and F-51, Phase-III, RIICO Industrial Area, Jhalawar, Rajasthan. Consequent to search action, the case of the assessee was centralized to Central Circle-Kota by the Principal Commissioner of Income-tax, Kota vide order No. Pr.CIT/TTO(Tech.)/KTA/S. 127/2017-18/3319 dated 20.12.2017. The assessee Company is engaged mining of stone and stone articles. Consequent to the search notice u/s 153A of

the Act was issued to the assessee on 19.06.2018 which was duly served.

In response to notice issued u/s 153A, the assessee company furnished his return of income on 03.07.2018, declaring total income of Rs. 2,52,04,150/-. Earlier the assessee company had filed his return of income u/s 139 of the Act on 30.09.2013 at the total income of Rs. 2,52,04,150/-. Assessment order u/s 143(3) of 1.T. Act, 1961 was passed on 19.01.2016 at assessed income of Rs. 2,54,75,220/-. There is difference between ITR filed under section 153A and 139 of the 1.T. Act, 1961. The assessment order under section 153A is hereby passed after considering assessed income under section 143(3) of the Act. Assessee has also revised its return of income on dated 22.02.2019 declaring total income of Rs. 2,54,75,220/-.

Notice u/s 143(2) of Act was issued on 11.09.2018 which was duly served. Further, notice under sub section (1) of Section 142 of the Act was issued on 30.11.2018 along with questionnaire / Annexure-A requiring certain details / information, which was served upon the assessee through Income Tax Inspector. In response to that, assessee furnished the desired details /

information / documents / which were examined with respect to claims made in the return of income.

Investment in immovable properties:

During the search and seizure action carried in the Banas Group of Jhalawar on 15.11.2017, at the residence of Shri Devendra Singh Shekhawat, accountant of the group a laptop was found whose data have been cloned in a hard disc and annexed as exhibit-4 of annexure AS of party no. A-3. During forensic examination of the hard disc seized from residence of Shri Devendra Singh Shekhawat, two excel sheet have been retrieved vide path- Devendra laptop- present data user file-excel- land 03.02.2013 BMPL, Jhalawar-sheet-1 & 2. The data so extracted was tabulated in Table 1 & 2 in the assessment order. In table -1 a list showing the amount of investment made in the land by assessee was tabulated. Table-2 shows a list showing name, category, Khasara No., area, location and registered or agreement regarding land investment made by the Banas Minerals P. Ltd.(the assessee).

Since the value of the investment recorded in the excel sheet prima facie appears to be substantially varying from the value of investment recorded in the Books of accounts of the assessee

company, a show cause notice requiring the assessee company to explain its positions vis a vis the above seized documents was issued to the assessee company. In response to the show cause notice, the assessee company denied to have made any undisclosed investment in land as alleged.

12.1 The assessee has submitted property wise details and the actual investment made by the assessee and also filed the supporting documents such as purchased documents source of that investment is already reflected in the books of accounts. Thereby the assessee submitted that there is no undisclosed investment as alleged. The assessee also submitted that they are not aware of the circumstances and intent under which Shri Devendra Singh Shekhawat might have prepared the same at his residence. The assessee stated that “at no stage of search the same was confronted either with Shri Devendra Singh Shekhawat or any other person”. [page 8 last para of the Assessment order]. The said table is not signed by any one. The same was not found with possession of any of the group companies or its directors. The assessee has made his efforts to comprehend the said table. The assessee also submitted that table -1 contains many properties belonging to the state Government and how the lands

which are owned by the Government can be considered as land belonging to the assessee. In Table -2, on Sr no 16 name of Shri Rajendra Paliwal has been mentioned whereas said land belongs to State Government at Gram Rooppura. Like-wise, at S.No. 11 in Table-2, against name of Ganga Bai two khasra numbers have been mentioned as 525 & 549 in village-Runji whereas there is no such khasra no. 525 in gram Runji and even in respect of Khasra 549, the share of Ganga bati own seeing the record is 18 biswa but in the table the area mentioned is 1.07 bigha. Moreso, in Table- 1. at S.No.13 Khasra No.510 is mentioned, the area of which is 2 bigha 10 biswa and the value shown is Rs.64,30,000/- @Rs.25,72,000/- per bigha whereas at S.No.14 for khasra No. 517 & 518 having 6 bigha 18 biswa in the same village the value shown is Rs.3,51,600/-, which comes to about Rs.50000/- per bigha though both the lands are adjoining in the same village. In Table-1 at S.No. 20, the value of 1 bigha 8 biswa land in Khasra No. 533, the value has been mentioned as Rs.59,60,000/-, which is valued @Rs.42,00,000/- per bigha approx which is too high. It is stated that in the said area the rate of land as mentioned in the valuation as in the year 2013 is not prevalent even today. The different purpose of Table-1 and 2 is also anonymity to the assessee and

has no relation with actual investments of the assessee group. The basis on which valuation as on 29.01.2013 has been taken it also unknown.

Therefore, the sole basis of the same is only dummy document found from possession of the third party. The computer pen drives said to be found from possession of Shri Devendra Singh Shekhawat cannot be said to be reliable for the following reasons as noted by the Id. AO:

(1) Shri Devendra Singh Shekhawat himself stated that he has prepared many documents in the computer pen drives directly and has not copied the data anywhere. It is highly improbable that such huge transactions are kept only in a pendrives and that too is in possession of Shri Devendra Singh Shekhawat and the assessee group has no control on such pendrives, which said to contain the data of assessee. Thus, according to Shri Devendra Singh Shekhawat if the pendrives get corrupt there is no source to recapture the data and if the same is edited by him, the assessee has no control on such data. It is against all probabilities that any person whose important financial transactions are recorded will loose his control on the same.

(ii) Neither Shri Devendra Singh Shekhawat nor any director of the assessee-comapany were cross examined in the search with reference to the impugned documents, the ownership of which is denied by the assessee group. There is no corroborative evidence in this regard and that too without an opportunity to cross-examine such party.

(iii) No loose papers, etc. in respect of noting in such Excel sheets were found from the possession of the assessee-company or its directors or key personnels, which may prove that such alleged transactions belong to the assessee.

(iv) In view of the totality of the facts stated here-in-above in respect of Table-1 & 2, on the basis of the computer pendrives said to be found from Shri Devendra Singh Shekhawat, no discriminatory loose papers supporting such Excel sheets, even Shri Devendra Singh Shekhawat retracted his original statement in respect of other documents, no opportunity of cross-examine to Shri Devendra Singh Shekhawat afforded to the assessee, it cannot be held that the same belong

corroborative evidence in support of the same is the assessee. No other brought on record by the search team.

(v) Further, during the course of search, when directors of assessee-company was Confronted with other seized material, they clearly stated that the concerned seized materials are not related to the assessee and also they were found from bed room of Shri Devendra Singh Shekhawat.

(vi) That the print-out from the computer pendrives found is not the books of account maintained in the regular course of business. It cannot be relied upon especially against a third person i.e. assessee in the absence of any corroborative evidence. There is no corroborative evidence that the assessee has made any unexplained investment. No other evidence of unaccounted investments in land is found in search. In support of the above contention, reliance is placed upon the decision of Tribunal, Calcutta Bench, in the case of T.S. Venkatesan vs. Asstt. CIT (2000) 69 TTJ (Cal) 66: (2000) 74 ITD 298 (Cal).

(vii) It is submitted that the uncorroborated notings in the Excel sheets should not be acted upon to derive any inference against the assessee.

(viii) The notings in the Excel sheets lacked corroboration of the notings although it appears that the department is attempting in this direction.

(ix) The said computer pendrives were never shown to the assessee or its directors. Only it is said that the same are taken from pendrives found from residence of Shri Devendra Singh Shekhawat.

(x) No data confirming to the notings in the Excel sheets could be found from the seized computer hard disks. It is clearly established that the Excel sheets were not prepared by the assessee.

(xi) In terms of section 60 of the Indian Evidence Act, computerized information is within the realm of hearsay evidence and lacks source of information. Therefore, the same by itself are not relevant at all. It is stated in the absence of any such corroboration, the evidence remained a hearsay evidence, carrying no evidentiary value, in the absence of any corroboration.

(xii) The notings in the Excel sheets only forms the basis of your proposed addition without any other documentary evidence. When asked, the director of the assessee- company denied being aware of all data. The entire exercise is based on suspicion.

(xiii) That the notings in the Excel sheets remains uncorroborated till end as the same are not a speaking document. No supporting evidence by way of on money receipt and other evidences are found. It is, therefore, submitted that the same is a dumb document and therefore, not to form

the basis of any addition in the hands of the assessee. With regard to evidentiary value of such notings, the assessee place reliance on the following decisions:

- a) DCIT Central vs.C. Krishna Yadav 2011, 12 Taxman.com 4 Hyd.
- b) Asst. CIT vs. Satyapal Wassan [2007] 295 ITR (AT) 352 (Jabalpur)
- c) ACII vs. DrKamla Prasad Singh 3 ITR Trib 533 Patna,
- d) CIT vs. Khazan Singh & Brothers 2007,304 ITR 243 (P & H)
- e) CIT vs. Girish Chaudhary [2007] 163 Taxman 608, Delhi
- e) Bansal Strips (P.) Ltd. vs. Asstt. CIT [2006] 99 ITD 177 Delhi
- g) CIT vs. Mauli Kumar K. Shah [2008] 307 ITR 137 (Guj.)

(xiv) It is not known that the data in Excel sheets exclusively pertains pertain the assessee because as stated here-in-before there are name of other entities also in the impugned tables and Shri Devendra Singh Shekhawat in his statements at the time of search on 15.11.2017 while answering to question no. 16 clearly stated that he at his residence has papers/documents relating to various firms, companies, etc. Moreover, in reply to question no. 17, he has even named few such companies as Karoli Stone Suppliers, Malik Stone Industries, Agrawal Industries, Siddhi Vinayak Stone Industries and mentioned that perhaps there may be few more bills and documents with him.

(xv) As regards the presumption w/s 132(4A), it is submitted that a loose sheet is not a book/document so as to raise the presumption. Moreover, the same were not in possession of the assessee or its directors. This can supplement but cannot supplant evidence. Nothing is found by the survey-team to support their suspicion.

It is further respectfully submitted that no quasi-judicial order can be based on suspicion, surmises or conjecture, is supported by the following judgements of the Hon'ble Supreme Court:

- (i) Dhirajpal Girdhari Lal v. CIT [1954] 26 ITR 726 (SC);
- (ii) Dhakeshwari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC);
- (iii) Lalchand BhagatAmbica Ram v. CIT [1959] 37 ITR 288 (SC);
- (iv) Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC):

It is submitted that on account of the aforesaid reasons and explanations, the values mentioned in the Table No. 1, cannot be taken as actual investment by the assessee- Company to compute any undisclosed investment.

We also furnish herewith the details of land owned by the assessee-company. From the copy of the purchase deeds submitted, it may please be appreciated that these lands were purchased at their prevailing market rates at the time of purchase at an aggregate cost of Rs.81,81,946/-. Therefore, it cannot be alleged that the assessee has paid any on account money for purchase of these lands"

12.2 The submission so made by the assessee considered by the AO but observed that examination of the seized documents and from the submission of the Assessee Company has been duly considered. From examination of the seized documents and from the submissions and documentary evidences submitted by the assessee Company, it is seen that all the properties mentioned in the seized document do not belong to the Assessee Company. However, it is also a matter of record that most of the properties are owned by the assessee M/s Banas Minerals Pvt Ltd. It is also seen that some of the properties referred to in the documents are not owned by the assessee Company but have been taken on lease by the assessee from the respective land owners. From the evidences brought on record by the assessee, it is seen that some of the properties mentioned in the documents are neither owned by the assessee nor taken on lease for its businesses but are Government land. However, there are properties owned by the assessee whose value recorded in the documents is differing from the investment recorded in the Books of accounts. The value mentioned in the seized document appears to be the actual value of investment made in the property indicating that assessee has made out of Books payments over and above the payments

recorded in the registered documents. Since these payments have not been recorded in the Books of accounts and no explanation of the source thereof has been furnished, the unrecorded investment in these properties has been made out of undisclosed income of the assessee company, after taking into consideration submissions of the assessee company. He has given finding on Immovable properties mentioned at serial no. 1, 2, 3, 4, 5, 6, 7, 12, 13, 14, 15, 17, 18, 19, 20 & 23 in the excel sheet. He also made observation on the property listed at 8, 9, 10, 11, 16, 21, 22, 24 & 25 and accordingly he has derived a figure of undisclosed investment for three years and the same is tabulated here in below :

Assessment Year	Undisclosed investment as per above table
2012-13	Rs. 22,93,570/-
2013-14	Rs. 5,05,81,050/-
2014-15	Rs. 1,48,84,030/-
Total	Rs. 6,77,58,650/-

Since the amount for the year under consideration is Rs. 5,05,81,050/- the same was considered as investment u/s. 69B of the Act.

13. Aggrieved from the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds

so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“4.6 I have considered assessment order, arguments as well as the submissions made by the appellant in this regard and also perused the relevant documents and records in the case for the assessment year.

In this case an excel sheet on the computer drive of Shri Devendra Singh Shekhawat accountant of the company was found. The addition made by the AO is on the basis of this excel sheet. The AO noted that all the properties mentioned in the seized document do not belong to the Company. However, most of the properties are owned by M/s Banas Minerals Pvt. Ltd. It is also seen that some of the properties referred to in the documents are not owned by the Company but have been taken on lease by the assessee from the respective land owners. From the evidences brought on record by the assessee, it is seen that some of the properties mentioned in the documents are neither owned by the appellant nor taken on lease for its business but are Government land. However, there are properties owned by the assessee whose value recorded in the documents is differing from the investment recorded in the books of accounts. The value mentioned in the seized documents appears to be the actual value of investment made in the property indicating that the company has made out of Books payments over and above the payments recorded in the registered documents. Since these payments have not been recorded in the Books of accounts and no explanation of the source thereof has been furnished, the unrecorded investment in these properties has been made out of undisclosed income of the assessee company.

Thus the sole evidence used by the AO for addition made in the hands of the appellant is the excel sheet. Now issue here is whether the excel sheet is proving in clear and unambiguous terms that the appellant company made a payment in cash for purchase of these lands. The AO himself noted that all the properties mentioned in the seized document do not belong to the Company. Further, the AO also noted that some of the properties referred to in the documents are not owned by the Company but have been taken on lease by the company from the respective land owners. It is also noted by the AO that some of the properties mentioned in the documents are neither owned by the appellant nor taken on lease for its business but are Government land. From perusal of the assessment itself it is evident that the excel sheet contains details of properties which are not owned by the appellant company. Therefore, it is evident that the details are not belonging to the appellant exclusively as land belonging to other persons and even government land is also included in this excel sheet. The inference drawn by the AO that the appellant or its employee prepared this sheet for recording actual value of properties is not found to be justified.

Now it needs to be examined whether this sheet contains details of actual value of the properties. This sheet contains details of government land where recorded and actual value cannot differ. Therefore, this inference is not found to be sustainable.

Further, the inferences drawn by the AO is not supported by any corroborative evidence or admission by any party or witness. Mr. Devendra Singh Shekhawat from whose possession, this excel sheet was recovered was not confronted during the search with regard to contents of this excel sheet. However, during the remand proceedings he has not stated anything with regard to these transactions. The AO stated in the order that value mentioned in the seized documents appears to be the actual value of investment made in the property. The inference drawn by the AO is indicating suspicion and not conclusion. There is no corroborative material in support of the conclusion drawn by the AO. The inference drawn by the AO is therefore, not found to be sustainable.

Argument of the appellants are being discussed as under-

There remains no evidence as to the allegation of unaccounted cash payment for purchase of land. There is no witness of such cash payment. There is no evidence that the cash has actually changed hands. Moreover, how, when and to whom the alleged cash money was transferred also remain unanswered

It is true that other than the excel sheet, there is no evidence for undisclosed investment as discussed by the AO in the assessment order. The excel sheet do show value which is more than the registered agreement but because of inclusion of lands not connected to the appellant it cannot be said with certainty that this sheet only provides detail of unaccounted transactions. The argument of the appellant is found to be acceptable in this regard.

It is submitted that the value shown in the registered purchase deeds are duly entered in books of account for various years, which needs to be treated as correct in absence of any contrary tangible evidence. There is no corroborative evidence to support that contentions of Shri Asad Anwar Khan are unjustified. Hence, there is no reason to disbelieve the statement of Shri Asad Anwar Khan and also a duly registered conveyance deeds.

There is contrary evidence found during search where value of land mentioned is higher to the value shown in the books account. However, the excel sheet in itself does not prove that actual payment made by the appellant are what is shown in the seized document as no evidence found during search which corroborate the notings of this document Further, as discussed earlier, the excel sheet is not prepared for the appellant exclusively and also there is government land in the list

of lands in the excel sheet. Therefore, the argument of the appellant is partly acceptable.

It is stated that the addition cannot be sustained in the absence of material which would conclusively show that amount revealed from seized documents are transferred from one side to another. There is no statement or examination of the seller of the premises to substantiate the contention of the appellant, Id. AO AO that that extra extra cash c has actually changed hands.

This argument of the appellant is found to be acceptable as no such evidence regarding transfer of amount is found to be recorded by the AO in the assessment order. The addition is made because as per AO it appears that the actual value is recorded in the excel sheet.

It is further stated that Shri Devendra Singh Shekhawat also averred that any transaction related to sale and purchase of land related to company are not provided to him so he is unable to tell anything about the details entered in the excel sheets.

This argument of the appellant is not found to be acceptable as the excel sheet was found from the possession of Shri Devendra Singh Shekhawat. It was his duty to explain the true nature of the document but he has avoided explaining the true nature of the excel sheet. Details of land related to company are found in the excel sheet found from the possession of Mr. Shekhawat, hence, it cannot be accepted that such details are not provided to him.

It is argued that the only document that is said to be found with reference to the alleged undisclosed investment is merely dumb excel sheet on the computer drive of Shri Devendra Singh Shekhawat without any authentication, merely gives details in cryptic or puzzling form, which nobody can understand except the author of it, who is not known. It is also not known under what circumstances and with what intent the same has been prepared by him. It is further stated that for jottings relied on in electronic data were not regularly kept during course of business, such documents have no evidentiary value against the assessee.

This argument of the appellant is found to be partly acceptable as there can be more than one inference drawn from the excel sheet. One inference is that it is actual value of land. This inference is drawn by the AO also. Another inference can be that it is projected value of land after certain period of time. So, more than one interpretation was possible. In these circumstances, where more than one interpretation is possible then corroborative evidences needs to be brought on record so that we can draw a certain conclusion that the inference drawn is correct or not. It is not correct that it is dumb document as the entries made are clear on the sheet. However, interpretation of the entries can be more than one. The person from whose possession this document was found has not

explained true nature of these entries. The argument of the appellant that this sheet is not having evidentiary value is not found to be acceptable as it is part of seized records during search. Therefore, this excel sheet is having evidentiary value. However, this evidence could have been used against the appellant if any corroborative evidence supporting this was there on record like statement of seller, statement of any person who was involved in the cash transaction or any other paper where similar transactions are recorded which could fortify the contention of the AO. In the absence of corroborative material the addition made by the AO is not found to be sustainable.

It is argued that suspicion though a ground for scrutiny of evidence cannot be made the foundation of a decision. Conjecture is not a substitute for legal stand. Suspicion however strong, cannot take the place of proof.

This argument of the appellant is found to be acceptable on the facts of the case. It is true that suspicion however strong, cannot take the place of proof. To support such documents which create suspicion, further corroborative material is required.

It is argued that the legal presumption u/s 132(4A) is only against the person in whose possession documents are found. The appellant-assessee never admitted that it has paid any alleged 'own money' for the investment in the lands. No such duplicate or parallel noting was found in the course of search in the case of the appellant-assessee or any of its directors and even at the residence of Shri Devendra Singh Shekhawat nothing was found to corroborate the said excel sheets. It is submitted that in the absence of any indication of nature and purpose of the excel sheet, without any corroboration, it is difficult on the part of the appellant-assessee to explain the same.

This argument of the appellant is found to be partly acceptable. This document is found from the possession of accountant of the company. The accountant has not explained the true nature of these entries. Therefore, the failure to provide explanation is on the part of the appellant. However, it is true that no corroborative evidence is found to be discussed by the AD where similar entries were noticed. It is also true that the appellant never admitted transaction of "own money".

It is argued that even the id. AO himself while making the addition at page no. 13 of the assessment order for the AY 2012-13 has stated that "the value mentioned in the seized document appears to be the actual value of investment made in the property. This itself shows that he himself was not sure but has made addition.

It was duty of the person from whose possession the seized document is found to explain true nature of the entries made in the excel sheet. In the absence of any explanation, the AO was justified in drawing

possible inferences. Since, there was no corroborative evidence, the AO drawn a conclusion on the basis of inference. The inference drawn by the AO is only one of the inferences which can be drawn from the seized document. Land not belonging to others and land belonging to government is also recorded on the excel sheet which shows that the inference drawn by the AO is not completely acceptable. The inference drawn by the AO in the absence of corroborative evidence only gives a suspicion but it cannot be said to be conclusive evidence.

The appellant argued that excel sheet found from computer hard disc of employee of the assessee, who confessed to have working for his other clients also and nothing else was found.

The evidence found from possession of its employee where transactions belonging to the appellant are found to be recorded can be used against the appellant. It does not make any material difference if the employee also works for other clients also. The employee is working for the company. Therefore, these arguments of the appellant are not found to be acceptable.

Considering the facts of the case, arguments of the appellant and decisions relied upon by the appellant, the addition made by the AO of Rs. 5,05,81,050/- on the basis of the seized excel sheet is not found to be sustainable in the absence of corroborative material on record. Since, the addition made by the AO is deleted, other issues raised by the appellant do not require adjudication.

This ground of appeal is treated as partly allowed.”

14. Since the Id. CIT(A) has partly allowed the appeal of the assessee, the revenue has challenged the finding of the Id. CIT(A) by filling an appeal whereas the assessee has filed the cross objection objecting the finding of the Id. CIT(A) holding the validity of the notice issued u/s. 153A of the Act.

15. Before us both the parties have relied upon the findings of the lower authority as favorable to them.

16. The Id. DR representing the revenue in support of the contention so raised supported the finding recorded in the order of the assessment. She vehemently argued that in the search statement of Shri Aasad Anwar was confronted with this aspect of the matter so the contention of the assessee that they were not confronted to this issue was incorrect and the same was brought to the notice of director of the company. He has submitted answer -7 to that aspect of the matter so the contention that they were not aware on this issue is not correct. Question no 9 relating the land in question was asked. Question no. 12 director stated that the account works for him and he has identified Mr. Devendra in whose possession these excel working was found. Vide question no. 15 even mobile data was also confronted. Thus, it is clear that all question related to the issue were confronted to the assessee. So the statement of the Mr. Devendra and Mr Aasad to be read together. Even the statement of Mr. Devendra was very much clear explaining each and every transaction and verbal denial is no denial.

17. Per contra, Id. AR of the assessee so far as the grounds of the revenue is concerned has supported the finding recorded in the order of the Id. CIT(A). In support of that order and to support his

cross objections Id. AR of the assessee has filed a detailed written submission which was made before the Id. CIT(A) and the same is reproduced herein below:-

A.Y 2013-14

With reference to the captioned subject and on behalf of the appellant-assessee, we crave leave to submit herewith as under for favour of your kind and sympathetic consideration please:

(A) STATEMENT OF FACTS:

01. A search & seizure operations u/s 132(1) of the Act was carried on 15.11.2017 at various premises of Banas Group, Jhalawar to which the appellant-assessee belongs and certain documents, loose papers, diaries, etc. were found and seized from the appellant-assessee and related parties. A Search was also conducted u/s 132 at the residence of Shri Devendra Singh Shekhawat, Accountant of the group entities by issue of separate independent warrant of authorisation.

02. The assessee-company in response to the notice issued u/s 153A filed its return of income on 03.07.2018. The case selected for scrutiny by issuing notice u/s 143(2) of Act, which was duly complied with. Accordingly, after examining the records, the Id. ACIT, Central Circle, Kota vide assessment order dated 08.07.2019 u/s 153A r/w 143(3) of the Act made addition of Rs.5,05,81,050/- as unexplained investment in land u/s 69 and taxed the same u/s 115BBE of the Act.

03. That being aggrieved by the impugned assessment order, the appellant-assessee has filed the present appeal petition.

(B) OUR SUBMISSIONS:

The grounds of defense are as follows:

Ground No.1 pertains to addition of Rs.5,05,81,050/- u/s 69 as unexplained investment in land and taxing the same u/s 115BBE of the Act.

01. It is stated that during the search and seizure action carried at the residence of Shri Devendra Singh Shekhawat, Accountant of the Banas

group on 15.11.2017 by issuance of independent warrant of authorization, laptop, pendrives, etc. were found. During examination of the computer hard disc seized from residence of Shri Devendra Singh Shekhawat, two excel sheets have been retrieved as tabulated in the impugned assessment order as Table-I & 2 at page no. 2 & 3 of the impugned assessment order containing the khasara-wise details of lands. Simultaneously, another search & seizure operations were carried on at the Banas Group of Jhalawar on the same date in pursuance of the separate warrants of authorization, to which the assessee-company also belongs.

02. That the sole basis of the addition made by the Id. AO is the excel sheets retrieved from the computer data found at the residence of Shri Devendra Singh Shekhawat, which were not even confronted with him. Based on these retrieved excel sheet, it is concluded by the Id. AO that the impugned excel sheet represents the undisclosed investment in lands by the assessee in various years. Accordingly, the Id. AO made addition u/s 69B of the Act. The submission of the appellant-assessee is that there cannot be any addition for unexplained investment in the hands of the assessee on the basis of such excel sheets.

03. It is respectfully submitted that the premises of the appellant-assessee was also subjected to the search under the provisions of section 132 of the Act and there was no document, whatsoever was found from the premises of the assessee suggesting any recording of under investment by the assessee or payment in cash made by the assessee as alleged. At this juncture, it is also important to submit that neither the Id. search team nor the Id. AO has been able to establish based on cogent materials that the assessee directly or indirectly has made payments over and above as mentioned in the registered conveyance deed for purchase of land. It is also submitted that even the person from whose possession the impugned excel was found in computer was not confronted with these excel sheets till end. Moreover, no verification was made from sellers of land. There is no trail or cogent evidence that the assessee has made payment in cash in excess of the amount mentioned in the purchase deed.

04. It is submitted that since these excel sheets were neither found from possession of the appellant-company nor its directors but from residence of third party in respect of which separate warrants of authorization was issued and who was not allowed to be cross-examined by the assessee, the assessee made his best efforts to comprehend and interpret the said

excel sheets as Tables-1 & 2. The appellant-assessee was not aware of the circumstances and intent under which the Shri Devendra Singh Shekhawat might have prepared the same at his residence. Though the details given in the seized documents itself do not put any liability upon the assessee to explain the seized paper because it was not recovered from the possession of the assessee but still to understand and co-operative with the Department, the assessee from available details as well as information taken from official web-site of the Revenue Department, Government of Rajasthan submitted a complete details of such land before the Id. AO alongwith copies of relevant purchase deeds.

05. It is respectfully submitted that it was duly brought to the knowledge of the Id. AO that Table-1 contains many properties do not belong to the assessee but belonging to the State Government e.g; Khasra No.527 at S.No.5, Khasra No.177 & 187 at S.No.13 for which values have also been mentioned in the excel sheet. Similarly, in Table-2, at S.No.16 name of Shri Rajendra Paliwal has been mentioned against Khasra No.177 & 187 whereas the said land belongs to State Government at Gram Roop pura.

Moreover, at S.No.11 in Table-2, against name of Ganga Bai two khasra numbers have been mentioned as 525 & 549 in village-Runji whereas there is no such khasra no. 525 in Gram Runji and even in respect of Khasra 549, the share of Ganga bai, on going through the government record is 18 biswa but in the table the area mentioned is 1.07 bigha. All such facts were produced before the Id. AO.

06. It was also brought to the notice of the Id. AO that it is not comprehended that how the lands which are owned by the government can be considered as land belonging to the assessee. It was also submitted before the Id. AO that even for the adjoining lands in the same village, in the valuation mentioned in the table there is a huge difference. For example; in Table-1 at S.No.13 Khasra No.510 the value shown is Rs.25,72,000/- per bigha whereas at S.No.14 for khasra No. 517 & 518 in the same village the value shown is Rs.50,000/- per bigha. Like-wise, for land at S.No.20 Khasra No. 533, the value has been mentioned @Rs.42,00,000/- per bigha approx. It was duly submitted before the Id. AO that in the said area the rate of land as mentioned in the year 2013 is not prevalent even today.

07. It was also requested to the Id. AO to appreciate that Table-1 contains particulars of lands wherein year has been mentioned as 2011-12, however; the assessee has not made any investment at all or the same does not pertain to the year mentioned. For example, lands at S.No.8, 9, 10, 11, 14, 21, 22. Even in respect of lands at S.No. 6 & 7, there is no description of the property against which the amounts have been mentioned. Moreover, in respect of land at S.No.14, the difference between values as per books and as mentioned in the impugned excel sheet is negative i.e. showing that there cannot be any extra payment. Further, if the excel sheet pertains to 29.01.2013, how can lands which were purchased subsequent to this date have been incorporated in this chart. To illustrate, lands mentioned at S.No. 14 & 24 were pertaining to 30.04.2015 & 06.07.2015. There is no mention of any undisclosed investment in land by the appellant-assessee. The amount mentioned at a stretch appears to be projections only without any relation with the actual investment. The Id. AO himself at page no. 17 of the order has mentioned that the excel sheet was prepared on 03.02.2013, then how entries of purchases of lands on 30.04.2015 & 06.07.2015 can be in the same sheet. Further, the Id. AO assessed the same in AY 2013-14, which itself is incorrect.

08. In this view of the matter, it was duly submitted to the Id. AO that different purpose of Table-1 and 2 is also anonymity to the assessee itself and has no relation with actual investments of the assessee group. The basis on which valuation as on 29.01.2013 has been taken and also why the same has been done on 29.01.2013 is also not known to the assessee.

09. It is respectfully submitted that the Id. AO himself in his impugned assessment order has accepted that from the evidences brought on record by the assessee that some of the properties mentioned in the documents are neither owned by the assessee nor taken on lease for its businesses but are Government lands. However, he mentioned that there are some properties in the said Table owned by the assessee whose values shown in the said tables are differing from the investment recorded in the books of account and the value mentioned in the seized document appears to be the actual value of investment, indicating that assessee has made payments over and above the amount mentioned in the registered documents and added the same to its income as unexplained investment u/s 69 of the Act.

10. In this regard, it is respectfully submitted that the Id. AO has considered part of the excel sheets as irrelevant and remaining as true without any corroborative evidences. It is a trite law that the contents of seized documents are to be read in *toto* and it is not permissible on the part of the Assessing Officer to dissect same and therein summarily accept same in part and reject other part. Reliance in this regard is placed in the case of *Dy. CIT vs. Kanakia Hospitality (P) Ltd. (2019) 110 taxmann.com 4/179 ITD 1 (Mum.-Trib.)*.

11. It is a settled proposition of law that no addition could be made merely on basis of seized excel sheet, which is a mere dumb document. Reliance is placed on the judgement of ITAT, Hyderabad in case of *Tarun Kumar Goyal vs. ACIT) in ITA No. 456/Hyd/20 Date of Judgement/Order 20/04/2021*.

12. Further, the Hyderabad Tribunal Co-ordinate Bench in the decision of *Nishan Constructions vs. ACIT ITA No. 1502/Ahd/2015*; after considering the Hon'ble Apex Court's landmark decisions in *Common Cause vs. Union of India (2017) 77 taxmann.com 245 (SC)* and *CBI vs. V.C. Shukla (1998) 3 SCC 410 (SC)* held that such loose sheets deserves to be treated as a dumb documents only since not revealing full details about the dates containing lack of further particulars and therefore, ought not to be made basis of an addition. Therefore, the impugned addition of on-money payment made in both these assessee's hands on the basis of a mere dumb document and not corroborated by any other evidence was not sustainable.

13. Similarly, other judicial precedents viz; *ACIT vs. Layer Exports (P) Ltd. (2017) [184 TTJ 469 Mum.]*, *ITO vs. Kranti Impex Pvt. Ltd. in ITA No. 1229/Mum/2013 dtd. 28-02-2018*, *Shri Neeraj Goyal vs. ACIT in ITA No. 5951/Del/2017 dtd. 21-03-2018*, (2012) 23 taxmann.com 269, *Nagarjuna Construction Co. Ltd. vs. DCIT, CIT vs. S.M.Agarwal 293 ITR 43*, *CIT vs. Shri Girish Chaudhary (2008) 296 ITR 619 (Del)* also echo the very principle.

14. Such addition has been made by the Id. AO without specifying the very nature and purpose of the said tables in excel sheet. It was duly submitted to the Id. AO that there is no undisclosed investments in the said lands. Even Shri Devendra Singh Shekhawat was not confronted with the said documents but on that basis fastened the liability on the shoulders of the appellant-assessee. There is no description or narration on the tables from which its nature can be inferred. The same was also

not found with the possession of any of the group entities or its directors in search operations but at the residence of employee Shri Devendra Singh Shekhawat, who does work of his many other clients also as explained by him while answering to question no. 16 on 15.11.2017 and question no. 38 in his statements dated 16.11.2017.

15. It is respectfully submitted that there is not any reliable evidence on record from which it can be said that the assessee has spent more than the amount recited in the purchase deed. No enquiry or verification were made from the seller of the lands. It is submitted that the uncorroborated excel sheets should not be acted upon to derive any inference against the assessee.

16. Thus, it is humbly submitted that merely from that computer hard disc when the veracity about that evidence is unproved or doubtful, no addition can be made. Even the Id. AO himself while making the addition on the same score at page no. 13 of the assessment order for the AY 2012-13 has stated that “the value mentioned in the seized document appears to be the actual value of investment made in the property”. This itself shows that he himself was not sure but has made addition merely on presupposition, assumption, surmises or conjecture in the absence of there being any tangible evidence or material to show that the lands in question were purchased at higher price. No independent and corroborative material is available on record to prove irrefutably that the excel sheets revealed either unaccounted income or unaccounted investment of the assessee. It is settled law that additions could not be made simply on the basis of excel sheet found from possession of another person on the basis of suspicion or presumption.

17. It is further respectfully submitted that no quasi-judicial order can be based on suspicion, surmises or conjecture is supported by the following judgements of the Hon'ble Supreme Court:

- (i) *Dhirajpal Girdhari Lal vs. CIT [1954] 26 ITR 726 (SC);*
- (ii) *Dhakeshwari Cotton Mills Ltd. vs. CIT [1954] 26 ITR 775 (SC);*
- (iii) *Lalchand Bhagat Ambica Ram vs. CIT [1959] 37 ITR 288 (SC);*
- (iv) *Umacharan Shaw & Bros. vs. CIT [1959] 37 ITR 271 (SC);*

18. It was also submitted before the Id. AO that the computer harddisc/pendrives said to be found from possession of Shri Devendra Singh Shekhawat cannot be said to be reliable and no cross-examination was allowed with reference to the impugned excel sheet. The same was found from possession of employee from his residence to

whom separate search warrant was issued and not from the present assessee. It cannot be relied upon, especially against the assessee in the absence of any corroborative evidence found. No other corroborative evidence in support of the same is brought on record by the search team and thereafter by the Id. AO.

19. It was also explained to the Id. AO that it is also not known that the data in excel sheets exclusively pertain the assessee because there are name of other entities also in the impugned tables and Shri Devendra Singh Shekhawat in his statements at the time of search on 15.11.2017 while answering to question no. 16 clearly stated that he at his residence has papers/documents relating to various firms, companies, etc. Moreover, in reply to question no. 17, he has even named few such persons as Karoli Stone Suppliers, Malik Stone Industries, Agrawal Industries, Siddhi Vinayak Stone Industries, etc. Similarly on 16.11.2017 also he averred the same.

It is, therefore, submitted that on account of the aforesaid reasons and explanations, the values mentioned in the impugned excel sheets cannot be taken as actual investment by the assessee-company to compute any undisclosed investment, especially when there is no such indication or corroboration. Thus, it cannot be alleged that the assessee has paid any 'on money' for purchase of these lands.

20. It is further stated that that no document either hard or soft was found in the premises of the assessee and the excel sheet found in a search in case of another person have no evidentiary value for assessee's case unless corroborated. The legal presumption u/s 132(4A) is only against the person in whose possession documents are found. The appellant-assessee never admitted that the assessee has paid any alleged 'on money' for the investment in the lands. No such duplicate or parallel; nothing was found in the course of search in the case of the appellant-assessee or any of its directors and even at the residence of Shri Devendra Singh Shekhawat nothing was found to corroborate the said excel sheets. Moreover, even he was not confronted with the same. The appellant-assessee consistently averred that it has no connection with the unaccounted transaction of the appellant-assessee and addition cannot be made without opportunity of cross-examining the person in whose possession the same was found. The appellant-assessee produced registered documents in support of its contention that the purchase consideration is same as accounted for in the books of account and also explained the source of such payments. It

is submitted that such unauthenticated and dumb excel sheet is not enough evidence to prove the exchange of cash during the deal and fasten the liability on the shoulder of the assessee. Such allegation made has to be supported by actual cash passing hands, which is not present in the instant case.

21. It is humbly submitted that a dumb document may raise only suspicion but no addition can be made merely on that basis when the tangible evidence in the form of registered document is available on record and same is not proved as false or untrue. However, the Id. AO disregarded the same. In support of the actual investment, the appellant-assessee had furnished copy of the purchase deeds in respect of said lands before the Id. AO and no incriminating document in this regard was found in the search carried out at Banas Group, to which the appellant-assessee also belongs.

22. It is humbly stated that the addition cannot be sustained in the absence of material which would conclusively show that amount revealed from seized documents are transferred from one side to another but in the present case, the main issues like basis, purpose and intent of such unauthenticated excel sheet, why government and other lands, lands even without description are also incorporated in excel sheet, what is actual date of payment, etc. remain a suspense even till end. There is no statement or examination of any seller of the land to substantiate the contention of the Id. AO that extra cash has actually changed hands. Such excel sheet without any corroboration on a standalone basis cannot empower the Id. AO to make the addition. No positive evidence is found. In absence of any proof of extra cash payment, addition made u/s 69B is not correct.

23. The jurisdictional Rajasthan High Court in the case of *Smt. Amar Kumari Surana vs. CIT 266 ITR 344 (Raj.)* held that the burden is on the revenue to prove that real investment exceeded the investment shown in account books of the assessee. Similar reliance is placed on judgement of the Delhi High Court in *CIT vs. Naresh Khattar (HUF) 261 ITR 664 (Del.)* that in order to invoke the provisions of section 69B of the Act, the burden is on the Revenue to prove.

The above judgement referred to the ratio laid down by the Apex Court in the case of *K.P. Varghese vs. ITO 131 ITR 597 (SC)* wherein it is held that to throw the burden of showing that there is no understatement of the consideration, on the assessee would be to cast an almost impossible burden upon him to establish a negative.

24. The assessee has discharged his burden by producing registered purchase deeds and proving the source of investment. Excel sheet might have a persuasive value but would not have much substantive evidentiary value in order to make additions in the hands of the assessee. No independent and corroborative material is available on record to prove irrefutably that revealed any unaccounted investment of the assessee. In the case of *Kamlesh R Soni vs. ITO (2002) 123 Taxman 190 (Ahd)*, it is held that the addition of sums to income of the assessee merely on suspicion, that too without giving opportunity of cross examination, was not justified.

25. It is a settled position of law that the burden to apply section 69B of the Act, which rests on the shoulder of AO, that burden cannot be discharged on the basis of assumption and presumption in the absence of there being any tangible evidence or material to show that the property in question was purchased at higher price than purchase consideration mentioned in the registered deed, which is not permissible in law. Section 69B is not applicable if there is no tangible evidence of understatement of purchase consideration. Reference is made to *CIT vs. Dinesh Jain 352 ITR 629; CIT vs. Sadhna Gupta 352 ITR 595*.

26. It is further stated that the contention of the appellant-assessee that no quasi-judicial order can be based on suspicion, surmises or conjecture is supported by the following judgements of the Hon'ble Supreme Court:

(i) *Dhirajpal Girdhari Lal vs. CIT 26 ITR 726 (SC)*

(ii) *Dhakeshwari Cotton Mills Ltd. vs. CIT 26 ITR 775 (SC)*

(iii) *Lalchand Bhagat Ambica Ram vs. CIT 37 ITR 288 (SC)*

(iv) *Umacharan Shaw & Bros. vs. CIT 37 ITR 271 (SC)*

27. It is further stated that prerequisite conditions of section 69 have to be satisfied before making addition and it cannot be presumed to have been established on the basis of section 132(4A) as held in case of *Ushakant N. Patel vs. CIT 154 Taxman 55 (Guj.)*.

28. It is respectfully submitted that the whole addition hinges on evidence in the form of excel sheet found from computer hard disc of employee of the assessee, who confessed to have working for his other clients also and nothing else was found. The absence of any corroborative evidence despite using ultimate weapon of search at the premises of the appellant-assessee and group entities of the appellant-

assessee, cannot result in justified addition. Presumptions regarding correctness of contents of books of account cannot be raised against another party. The search party and Id. AO did not bring on record any corroborative material to prove that such payment was in fact made outside the books. The alleged excel sheet is not corroborated from the search material in case of appellant and appellant's own group concerns. The Id. AO while using the same should have allowed the appellant to cross-examine the person from whose possession the same was found in order to use this as evidence, which has not been done. Therefore, the Id. AO is not justified in resting his case on the mere dumb and unauthenticated excel sheet. In this regard, reference is made to the judgement of the Hon'ble Supreme Court in the case of *Central Bureau of Investigation vs. V.C. Shukla (1988) 8 SSC 410 and Chuharmal Vs. Commissioner of Income Tax (1988) 172 250 I 38 Taxman 190 (SC)*.

29. In *Amarjit Singh Bakshi (HUF) vs. Assistant Commissioner of Income Tax (2003) 86 ITD 13 (Delhi)*, it has been held that where document in question was not recovered from assessee's possession but was recovered from N's possession, and assessee was not allowed any opportunity of cross-examination and further, N's testimony was not found credible at all, it could not be said that there was any iota of evidence to support revenue's case that a huge figure over and above figure booked in records and accounts changed hands between parties and therefore, no addition could be made based on such document in hands of assessee.

30. Further, placing implicit reliance of the decision of the Hon'ble Supreme Court in *CBI vs. V.C. Shukla, supra*, it is submitted that it was open to any unscrupulous person to make any entry any time against anybody's name unilaterally on any sheet of paper or computer excel sheet. There being no further corroborative material with respect to the payment, no case was made out so as to direct an investigation. It was held even then independent evidence was necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

31. It is reiterated that the impugned excel sheet is a dumb and unsubstantiated document. Such impugned excel sheet was prepared by assessee's employee namely, Shri Devendra Singh Shekhawat, who was not even confronted with the sheet to know the intent and purpose of such sheet and also not allowed to be cross-examined. The impugned

excel sheet containing details of other persons also was found from the residence of the employee without any authentication of the assessee. Likewise, there was a search operation u/s 132 of the Act on the same date at the premises of the assessee and group entities. But, no such document demonstrating the investment in the nature as specified u/s 69B of the Act was found from the premises of the assessee, its director or other group entities. Similarly, there was no other corroborative document found from possession of Shri Devendra Singh Shekhawat except the excel sheet said to be found from his computer. Thus, in the absence of any corroborative document, no adverse inference can be drawn against the assessee.

32. It is stated that there is no positive evidence on record that the assessee has made unaccounted investment. As a result, deeming provision of section 69/69B of the Act in regard to unexplained investment is not applicable in the present case. In support, the assessee relies on the decision of Gujarat High Court in the case of *Ushakant N. Patel vs. CIT (282 ITR 553)*.

33. It is further submitted that the onus in relation to section 69/69B lies on the Revenue to show that the payments were made outside the books. In *Bafakyh Export House vs. ITO (1995) 53TTJ (Coch-Trib) 293*, it is held that there is a material difference on the question of onus between section 68 and section 69. If the case falls u/s 68 of the Act, the onus is on the assessee to adduce evidence that the credits in the accounts are genuine. In a case under section 69, the onus is on the Revenue to show that the payments have been made outside the books of account. In case an addition proposed to be made under section 69 or 69B, the burden of proof lies on the revenue to show that the payments were made outside the books. Similarly, in *Asstt CIT vs. Sweety Traders 2008 TaxPub (DT) 2359 (Chd-Trib) : (2007) 105 ITD 0045* it is held that it was for the revenue to establish that fabrication charges were not accounted for in the regular books of account maintained by the assessee.

In *Gautam Laljibhai Gajjar vs. ITO (1991) 37 ITD 514 (Ahd-Trib.)*, it is held that it must be factually established by the Revenue that the real investment made was more than what was stated in the invoices. However, in the present case, the Id. AO did not bring on record any material and tangible evidence to prove that the appellant-assessee has actually made any unaccounted investment in the immovable property.

34. It is further stated that from the said seized computer document, it cannot be inferred that it represents undisclosed investment of the assessee. The only document that is said to be found with reference to the alleged undisclosed investment is merely dumb excel sheet on the computer drive of Shri Devendra Singh Shekhawat without any authentication. It merely gives details in cryptic or puzzling form, which nobody can understand except the author of it, who has not been confronted with the same. It is not known under what circumstances and with what intent the same has been prepared by him. It is further stated that for jottings relied on in electronic data were not regularly kept during course of business, such documents have no evidentiary value against the assessee.

35. It is submitted that in the absence of any indication of nature and purpose of the excel sheet, without any corroboration, it is difficult on the part of the appellant-assessee to explain the same. During search interrogation, neither Shri Devendra Singh Shekhawat nor the assessee was confronted with the same. The seized disc never operated in the office of the assessee nor in any of the computers belonging to the assessee such tables were found. It clearly establishes that the excel sheets were not belonging to the assessee. The same remained uncorroborated till end as non-speaking document. These are random sheets and their correctness and authenticity, even for the purpose of income, remains un-reliable having no evidentiary value.

36. In view of the totality of the above facts, on the basis of the computer data found from possession of Shri Devendra Singh Shekhawat, who himself has not been confronted with the excel sheets, no incriminatory loose papers or supportings or such data found in the assessee's computers, no opportunity of cross-examination of Shri Devendra Singh Shekhawat, undisputedly such computer data contain names of persons other than assessee also, where intend and purpose of such unauthenticated excel data remains silent and uncorroborated, even in the details in excel sheet there remains many discrepancies as mentioned here-in-above, there is no narration or indication of any unaccounted investment, all these factors conclude that excel sheet is nothing but dumb document and cannot be utilized as evidence against the assessee so as to make addition u/s 69/69B of the Act.

37. It is humbly & respectfully submitted that otherwise also, the assessment has been completed u/s 153A of the Act is bad in law since the addition has been made on the basis of material found in a search

conducted on a person other than the assessee (i.e. search conducted in the residential premises of Shri Devendra Singh Shekhawat, in respect of whom an independent search warrant was issued). Therefore, the assessment ought to have been completed u/s 153C of the Act.

38. It is respectfully submitted that a conjoint conspicuous perusal of section 153A read with section 132 of the Act speaks that only the material unearthed during the course of a search by virtue of the execution of a particular warrant of authorization *qua* a person can be used for framing assessment u/s 153A of the Act in case of such a person. No addition u/s 153A can be made in the case of the appellant-assessee based on a document seized by virtue of the execution of a different search warrant issued in the case of Shri Devendra Singh Shekhawat. The same can be brought to tax in hands of the assessee-company by effective application of section 153C in case of the assessee. Necessarily the legal procedure for assuming jurisdiction u/s 153C has to be strictly followed as provided in the Act.

39. It is respectfully stated that the Id. AO made assessment u/s 153A in case of the appellant-assessee by using the material found in the course of search at the residential premise of Shri Devendra Singh Shekhawat by virtue of the execution of a different search warrant, which is not permitted in view of the express provision of the law as proceedings should be initiated u/s 153C and failure to do so renders the addition in the section 153A assessment void *ab-initio*.

40. In this context, reliance is placed on the co-ordinate Bench order of Bangalore Tribunal in the case of *Sri. Anil H. Lad vs. DCIT in ITA No.1852 & 1853/ Bang/2013 order dated 28.06.2019*. Similar reliance is placed on the judgment of the Hon'ble Delhi High Court in the case of *PCIT (Central) vs. Anand Kumar Jain ITA No.978/Bang/20114 & Ors.*

41. Recently, on 04.04.2022, the ITAT, Bangalore in *Asst. CIT, Bangalore vs. M/s Shyamaraju & Co. India Pvt. Ltd.* in *ITA No.978/Bang/2014* examined the similar issue in the following manner: *The learned Standing Counsel, during the course of hearing, submitted that invoking the provisions of section 153C of the I.T.Act, would results in two assessment orders being passed, one u/s 153A and the other u/s 153C of the I.T.Act, which is impermissible in law. According to us, there is no bar on the A.O. to issue notice u/s 153C of the I.T.Act when there is pending proceedings u/s 153A of the I.T.Act in the case of the*

assessee, because the assessment proceedings which commence u/s 153A of the Act would become "pending proceedings" and the same would abate on the date on which the proceedings is initiated u/s 153C of the I.T.Act, inasmuch as the proceedings initiated u/s 153C of the I.T.Act is later than the proceedings u/s 153A of the I.T.Act. In an assessment order to be passed u/s 153C r.w.s. 143(3) of the I.T.Act, not only the material found in the search of the assessee and any other information pertaining to the assessee can be used in framing the assessment, but more importantly, the material found in the search of another person can also be used in framing the assessment. Thus, there would be only one assessment order, which should be u/s 153C r.w.s. 143(3) of the I.T.Act and not two assessment orders as apprehended by the learned Standing Counsel.

Now, the question arises whether the incriminating material found and seized in the search of Sri.V.Shambamoorthy can be used in an assessment of the assessee in a proceedings u/s 153A of the I.T.Act without invoking the provisions of section 153C of the I.T.Act. The answer to the above question would be `no'. The reason being that as per the provisions of section 153C of the I.T.Act. it is imperative that in order to use the material found and seized in a search of an another person other than the person who is subjected to assessment, such material cannot be used without invoking the provisions of section 153C of the I.T.Act. The proceedings u/s 153C of the I.T.Act ought to have been initiated in the case of the assessee when satisfaction was arrived at in the assessment proceedings of Sri.V.Shambamoorthy that material found and seized in the search of Sri.V.Shambamoorthy did not pertain to him, but instead pertains to the assessee.

42. In *Trilok Chand Chaudhary vs. ACIT (ITA No.5870/Del/2017)* pronounced on 20.08.2019 which was delivered following an earlier decision of Delhi ITAT in case of *DCIT vs. Shivali Mahajan (ITA 5585/DEL/2015)* pronounced on 19-03-2019 that the Act has provided separate provisions for making assessment in case of material found in the course of the search from the premises of the assessee as well as the material found in the course of search at the premises of the third party. The Assessing Officer is required to follow the procedure laid down in the Act for making the assessment and he cannot devise his own procedure for shortcut methods. It is further held that in our considered opinion, when the case of the assessee is covered under the provision of section 153 of the Act and if reliance is placed on the incriminating material found during the course of search of third-party,

then provision of section 153C of the Act would be applicable and have to be adhered to.

43. It is, therefore, respectfully submitted that the material/ information found in the case of other searched person is not entitled to be utilized u/s 153A of the Act and therefore, no addition is warranted on this score also. The Id. AO has made addition relying upon the un-confronted computer data found from residential premises of Shri Devendra Singh Shekhawat, in respect of which a separate & independent search warrant was issued to him. It is an undisputed fact that those materials which were all found and seized was during the course of search carried out in the residence of Shri Devendra Singh Shekhawat pursuant to a separate warrant of search. Under such circumstances though not agreed as submitted, *supra* but the Id. AO is entitled to use these materials to make addition in the hands of the assessee, provided he had initiated proceedings u/s 153C of the Act, which is absent in the present case. The incriminating material found possessed and seized in the search of Shri Devendra Singh Shekhawat from his residence cannot be used in an assessment of the assessee in a proceedings u/s 153A of the Act without invoking the provisions of section 153C of the Act. The reason being that as per the provisions of section 153C of the Act, it is imperative that in order to use the material found and seized in a search of an another person other than the person who is subjected to assessment, such material cannot be used without invoking the provisions of section 153C of the Act. The Hon'ble Bangalore Bench of the Tribunal as cited above had categorically held that material found in another search cannot be used without initiating proceedings u/s 153C of the Act.

44. As regards this addition is concerned, since it is based on the material found in the course of search at residential premises of Shri Devendra Singh Shekhawat and not based on incriminating material found during the course of search in the premises of the assessee and in absence of initiation of proceedings u/s 153C of the Act, addition cannot be made in the proceedings u/s 153A of the Act. The Id. AO did not assume jurisdiction u/s 153C of the Act but rather chose to use the said materials/information for making additions in the impugned order of assessment concluded u/s 153A of the Act, which is not permissible.

It is, therefore, humbly & respectfully submitted that in the event the Id. AO wanted to take cognizance of the said seized material, he ought to have invoked the provisions section 153C of the Act after recording his

satisfaction even if the AO is the same. This is the jurisdictional pre-condition laid down by the Legislature.

45. Without prejudice to the above submissions and without admitting the liability, it is further submitted that the provisions of section 115BBE are not applicable in the present case. The only source of appellant-company is business income. The assessee is regularly showing its income as business income in the ITRs in the past, which is being accepted by the Department. It has no other source of income. Even during the course of search at the group concerns, no incriminating document has been found which proves that the appellant is engaged in any other activity and therefore, it is taxed at the normal rate.

46. In the case of *J.K.Chokshi vs. ACIT (T.A. No.149 of 2003) order dated 22/12/2014*, it is held that once the assessee had no other source of income at the relevant time or in the past, it can be safely concluded that the assessee had no other income other than income from business. The Id. AO has not brought on record any iota of evidence to demonstrate that the assessee had any other source of income except income from business. Therefore, it is humbly submitted that the Id. AO could not have legally and validly resorted to taxing the income of the assessee in terms of provisions of section 115BBE of the Act.

Therefore, taking into account the aforesaid factual and legal matrix, it is humbly prayed to kindly allow this ground of appeal also.

Prayer

Under these facts, circumstances and provisions of law, it is prayed that the appeal may kindly be allowed.

18. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particulars	Page No.
01	The Hon'ble ITAT, Delhi Bench in the case of Bijendra Singh Lohia v/s JCIT(OSD) in ITA No. 1528 & 1529/Del/2022 dt. 16/04/2024.	1 - 14
02	The Hon'ble ITAT, Ahmedabad Bench in the case of Real Marketing Pvt Ltd v/s ACIT in ITA No. 128 to 133/Ahd/2021 dt. 19/05/2023.	15 - 66
03	The Hon'ble ITAT, Delhi Bench in the case of Rukneek Bawa v/s ACIT in ITA No. 3083/Del/2012 dt. 23/10/2023.	67 - 74

04	Copy of decision of Hon'ble Delhi High Court in the case of PCIT v/s Anand Kumar Jain(HUF) & Satish Dev Jain ITA No. 23, 26 to 31 of 2021 dt. 12/02/2021.	75	-	85
05	The Hon'ble ITAT, Delhi Bench in the case of Atul Kumar Gupta & Rajiv Gupta v/s ACIT in ITA No. 1931 & 1164/De1/2020 and 205, 206 & 1395/De1/2021 dt. 17/02/2023.	86	-	115
06	The Hon'ble ITAT, Jaipur Bench in the case of Virendra Singh Ratnawat v/s ACIT in ITA No. 179 to 181/Jp/2022 dt. 01/01/2024.	116	-	139
07	The Hon'ble ITAT, Kolkata Bench in the case of Atul Tantia v/s DCIT in ITA No. 492/Kol/2021 dt. 28/03/2023.	140	-	151
08	The Hon'ble ITAT, Delhi Bench in the case of Feather Infotech Pvt Ltd v/s DCIT in ITA No. 977 & 891/Del/2022 dt. 13/02/2024.	152	-	161
09	The Hon'ble ITAT, Ahmedabad Bench in the case of Rajesh Sajjanraj Bafna & Mihi r P. Panchal v/s DCIT in ITA No. 110 & 112/Ahd/2018 dt. 30/03/2022.	162	-	174
10	The Hon'ble, Jodhpur Bench in the case of SDPL Land & Builders Pvt Ltd v/s ACIT/DCIT in ITA No. 375/Jodh/2023 dt. 15/04/2024.	175	-	189
11	Copy of rejoinder and written submission before CIT(A).	190	-	214
12	Copy of punchnama and affidavit of Devendra Singh Shekhawat.	215	-	219

• **Case laws relied upon:**

S. No.	Particulars	Page No.
01	The Hon'ble ITAT, Amritsar Bench in the case of Nandini Sharma v/s ACIT/DCIT in ITA No.	1 - 14
02	The Hon'ble, Jodhpur Bench in the case of Lovish Singhal v/s ITO in in ITA No. 143/Jodh/2018 dt.	15 - 33
03	The Hon'ble ITAT, Delhi Bench in the case of DCIT v/s Tapesh Tyagi in ITA No. 1344/De1/2021 dt.	34 - 40
04	The written submission before the Ld CIT(A).	41 - 52

.Sl.	Particulars	Page No.
01	Copy of decision of Hon'ble ITAT, Pune Bench in the case of DCIT v/s Sandeep Bipinchandra Jhaveri in ITA No. 1185/Pun/2023 dt. 14/08/2024.	220 - 226
02	Copy of decision of Hon'ble ITAT, Ranchi Bench in the case of ACIT v/s Krishna Murari Choudhary in ITA No. 83/Ran/2019 dt. 26/02/2024.	227 - 237
03	Copy of decision of Hon'ble ITAT, "B" Bench, Ahmedabad in the case of JCIT v/s Sangani Industries Pvt. Ltd. in ITA No. 63/Ahd/2021 dt. 14/02/2024.	238 - 245
04	Copy of decision of Hon'ble ITAT, Amritsar Bench in the case of Ishtiaq Ahmad Dar v/s ACIT in ITA No. 275 & 276/Asr/2023 dt. 29/05/2024.	246 - 260
05	Copy of decision of Hon'ble ITAT, Amritsar Bench, Amritsar in the case of Sh. Nasir Ahmad Dar v/s DCIT in ITA No. 263/Asr/2023 Dt. 29/05/2024.	261 - 267

06	Copy of decision of Hon'ble Gujarat High Court in the case of The PCIT v/s Kaushik Nanubhai Majithia in R/Tax Appeal No. 20 of 2024 Dt. 06/03/2024.	268	-	270
07	Copy of decision of Hon'ble High Court of Judicature for Rajasthan at Jodhpur in the case of Micro Marbles Pvt. Ltd. v/s ITO in D.B. Civil Writ Petition No. 13719/2021 dt. 04/01/2023.	271	-	284

19. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the so far his cross objection is concerned his case is covered by the decision of the apex court in the case Abhisar Buildwell Private Limited. As regards the appeal of the revenue he submitted that the alleged data of excel sheet were never confronted to the director of the company Mr. Aasard. Even the cross examination was asked which was also not provided. The Id. CIT(A) has discussed all the issue and he relied upon that order of the Id. CIT(A).

20. In the rejoinder the Id. DR stated that the addition made in this case is based on the incriminating document found at premises of the accountant of the assessee company Shri Devendra Shekhawat in that excel sheet the details of property appearing in the name of the company and the value of the actual purchase was mentioned. Details were relates to 25 portion of the land appearing in the books of the assessee for those assets rather are in the name of assessee company and this aspect of the matter has not

been considered by Id. CIT(A). Therefore, the difference in the value of land price disclosed in the excel sheet with that of the book being added for an amount of Rs. 5,05,81,050/- in the hands of the assessee is required to be sustained. The Id. AO even in the remand proceedings confirmed the statement of the assessee which accountant Shri Devendra Shekhawat. Subsequently, retracted at the remand proceedings, therefore, his statement is to be read with incriminating documents found is required to be sustained based on the material found in the case of the assessee. The Id. DR also stated that the finding of Id. CIT(A) is clearly incorrect while holding that no corroborative evidences were found and therefore, the order of Id. AO be sustained.

21. We have heard the rival contentions and perused the material placed on record. First we take up the appeal of the revenue wherein effectively there were three grounds of appeal raised but all three relates to the only one addition of Rs. 5,05,81,050/- made on account of unexplained investment u/s 69B of the Act without appreciating the fact that addition was determined on the basis of unexplained and unaccounted transactions recorded in the excel sheet with name "BMPL", Jhalawar maintained in the laptop of Shri Devendra Singh Shekhawat who was accountant and person of

confidence of the company and maintaining all records of actual transactions of immovable properties purchased by M/s Banas Minerals Pvt. Ltd under directions of the directors of the company. It was also the contention of the revenue that CIT(A) was not justified in deleting the addition of Rs. 50581050/- on account of unexplained investment u/s 69B of the Act without appreciating the fact that addition was only of difference in value of the properties owned by the assessee; and there is no role of other properties mentioned in the excel sheet and without appreciating the fact that the accountant of the assessee company accepted by Shri Devendra Singh Shekhawat during search proceedings that the data in the laptop extracted into excel sheet pertains to M/s Banas Minerals Pvt. Ltd. and that he never denied this fact till the statement was recorded during remand report proceedings.

22. The brief facts related to the disputes are that in the search operation an excel sheet on the computer drive of Shri Devendra Singh Shekhawat accountant of the company was found based on that excel sheet Id. AO tabulated the transaction in those sheet as Table -1 and Table-2, the disputed addition of Rs. 5,05,81,050/- the same was considered as investment u/s. 69B of the Act. The AO noted that all the properties mentioned in the seized document do

not belong to the Company but are taken on lease from the respective land owners. From the evidences brought on record by the assessee, it is seen that some of the properties mentioned in the documents are neither owned by the assessee-appellant nor taken on lease for its business but are Government land. However, there are properties owned by the assessee whose value recorded in the excel sheet is differing from the investment recorded in the books of accounts. It is the contention of the revenue that the value mentioned in the seized documents appears to be the actual value of investment made in the property indicating that the company has made out of Books payments over and above the payments recorded in the registered documents. Since these payments of the difference amount have not been recorded in the Books of accounts and no explanation of the source thereof has been furnished, same was considered as unrecorded investment in these properties and the same was considered as per provision of section 69 of the Act.

The sole and only evidence made basis by the AO for making the addition made in the hands of the assessee-appellant is the excel sheet. Now issue here is whether the excel sheet is proving in clear and unambiguous terms that the appellant company made

a payment in cash for purchase of these lands. The AO himself noted that all the properties mentioned in the seized document do not belong to the Company. Further, the AO also noted that some of the properties referred to in the documents are not owned by the Company but have been taken on lease by the company from the respective land owners. It is also noted by the AO that some of the properties mentioned in the documents are neither owned by the appellant nor taken on lease for its business but are Government land. From perusal of the assessment order itself it is evident that the excel sheet contains details of properties which are not owned by the appellant company. Therefore, it is evident that the details are not belonging to the appellant exclusively as land belonging to other persons and even government land is also included in this excel sheet. The inference drawn by the AO that the appellant or its employee prepared this sheet for recording actual value of properties is not found to be justified. Not only that no corroborative evidence justifying the amount recorded in that excel sheet is in fact incurred by the assessee out of books. The inferences drawn by the AO is not supported by any corroborative evidence or admission by any party or witness. Mr. Devendra Singh Shekhawat from whose possession, this excel sheet was recovered was not

confronted during the search with regard to contents of this excel sheet that this properties are acquired by the assessee by paying the amount mentioned against each one. The Id. CIT(A) has also called for the remand report and during the remand proceedings he has not stated anything with regard to these transactions. The AO stated in the order that value mentioned in the seized documents appears to be the actual value of investment made in the property. The inference drawn by the AO is indicating suspicion and not conclusion and is not supported by any corroborative material in support of the conclusion drawn by the AO. We note that there remains no evidence as to the allegation of unaccounted cash payment for purchase of land. There is no witness of such cash payment. There is no evidence that the cash has actually changed hands. Moreover, how, when and to whom the alleged cash money was transferred also remain unanswered. It is true that other than the excel sheet, there is no evidence for undisclosed investment as discussed by the AO in the assessment order. The excel sheet do show value which is more than the registered agreement but because of inclusion of lands not connected to the appellant it cannot be said with certainty that this sheet only provides detail of unaccounted transactions. These contentions of the assessee-

appellant have been accepted only after hearing the Id. AO in the remand proceedings. The value shown in the registered purchase deeds are duly entered in the books of account for various years, which needs to be treated as correct in absence of any contrary tangible evidence. There is no corroborative evidence to support that contentions of Shri Asad Anwar Khan are unjustified. Hence, there is no reason to disbelieve the statement of Shri Asad Anwar Khan and also a duly registered conveyance deeds placed on record. The revenue conducted the search and in that no contrary evidence found during search where value of land mentioned is higher to the value shown in the books account and the flow of money for the value alleged to have been recorded in that excel sheet. However, the excel sheet in itself does not prove that actual payment made by the appellant are what is shown in the seized document as no evidence found during search which corroborate the notings of this document Further, as discussed earlier, the excel sheet is not prepared for the appellant exclusively and also there is government land in the list of lands in the excel sheet and why the value mentioned in that is also not considered as investment of the assessee. Before arriving at such conclusion no statement or examination of the seller of the property were

examined, to substantiate the contention extra money in fact has been flown. The addition is made because as per AO it appears that the actual value is recorded in the excel sheet. We also take note of the fact that Shri Devendra Singh Shekhawat also averred that any transaction related to sale and purchase of land related to company are not provided to him so he is unable to tell anything about the details entered in the excel sheets. Even before us the Id. DR merely relying on the statement recorded and the value found disclosed in the excel sheet were considered to be the basis for making the addition. As the disputed amount of addition was made by taking resort of provision of section 69B of the Act, we would like to reiterate the same for the applicability of the provision in the facts of the case of the assessee:

Amount of investments, etc., not fully disclosed in books of account.

69B. Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

As is evident from the above provision of law that the same can be invoked only if;

- (a) It is found that the assessee has made investment or the assessee is found be the owner of any bullion, jewellery or other valuable article, and
- (b) it is found that the amount expended on making such investment or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in that behalf in the books of account maintained by the assessee, and
- (c) either the assessee offers no explanation about such excess amount, or the explanation offered by him is not satisfactory.

As we note that these cumulative circumstances needs to be existed, which are failed and the Ld. AO in the assessment order merely on the presumption and assumption added the amount without bringing any evidence that the actual investment recorded is less and the value of the property is more. No efforts or records found to have made basis except the excel sheet wherein the value of the property of the government land and that of the lease lands also found to have been record. Thus, considering the provision of law and the facts of the case it does not attract the provision of section 69B of the Act and the addition has rightly been deleted by the Id. CIT(A). To take home this view of the matter we get support from the decision of the our Hon'ble Jurisdiction High Court in the case of **Smt. Amar Kumari Surana v. Commissioner of Income-tax [89 TAXMAN 544 (RAJ.)]** wherein the it has been held as under :

9. The main emphasis of Mr. Ranka is on the decision of their Lordships in the case of *K.P. Varghese (supra)* which is the leading authority on the issue, whether on the basis of fair market value any addition can be made in the hands of purchaser/seller, invoking the provisions of sub-section (2) of section 52.

10. Section 69B reads as under :

"Amount of investments etc., not fully disclosed in books of account - Where in any financial year the assessee has made investments or is found to be the owner of any bullion jewellery, or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year."

11. It is true that merely on the basis of fair market value no addition can be made under section 69B but on the basis of sufficient material on record some reasonable inference can be drawn that the petitioner has invested more amount than the one shown in account books, then only the addition under section 69B can be made. The burden is on the revenue to prove that real investment exceeds the investment shown in account books of the assessee.

12. Their Lordships of the Supreme Court in the case of *K.P. Varghese (supra)* have observed as under :

"... This burden may be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received by him and there is an understatement or concealment of the consideration in respect of the transfer. Sub-section (2) has no application in the case of an honest and *bona fide* transaction where the consideration received by the assessee has been correctly declared or disclosed by him, and there is no concealment or suppression of the consideration. We find that in the present case, it was not the contention of the revenue that the property was sold by the assessee to his daughter-in-law and five of his children for a consideration which was more than the sum of Rs. 16,500 shown to be the consideration for the property in the instrument of transfer and there was an understatement or concealment of the consideration in respect of the transfer. It was common ground between the parties and that was a finding of fact reached by the income-tax authorities that the transfer of the property by the assessee was a perfectly honest and *bona fide* transaction where the full value of consideration received by the assessee was correctly disclosed at the figure of Rs. 16,500 ..." (p. 618)

13. The consistent finding of the ITO, the AAC and the Tribunal is that the petitioner has not shown the correct value of the property in her account books and thereby concealed the investment made for purchase of the plot of land in C-scheme, Jaipur. The Tribunal has considered the valuation report of the Valuer in respect of the plot in question and also the fact that notice was given to the assessee as to why the value of the plot should not be taken as has been valued by the Valuer. The assessee failed to give any reason, as to why the value, valued by the valuer should not be accepted. The Tribunal has also considered the size of the plot, location and potential use of the plot of land. It is also noticed by the Tribunal that the assessee has failed to show that in area of C-scheme the value of plots is lesser than the rate which has been shown in valuation report.

14. In the valuation report, the costs have also been given of the neighbouring plots which were sold during the relevant period in C-scheme. One plot was purchased by Smt. Prem Kumari in that area at the rate of Rs. 75 per sq. yd. Smt. Padam Kumari had purchased the plot of land in that area at the rate of Rs. 60 per sq. yd. Smt. Shobha Kumari has purchased plot of land at the rate of Rs. 60 per sq. yds. As such the plot in question which was purchased by the assessee was measuring 1799.99 sq. yds. The value has been estimated by the Tribunal as Rs. 68,400. The cost of the land which has been shown by the assessee comes to Rs. 36 per sq. yd., that is, roughly half of the rate prevalent in C-scheme.

15. It is true that merely on the basis of valuation report and fair market value no addition can be made. But in the case in hand after obtaining the valuation report of plot of land notice has been given to the assessee to show cause as to why the value of plot of land in question may not be taken as per valuation report and on the basis of comparable cases.

16. Admittedly in account-books of the assessee the investment of Rs. 45,000 has been shown to purchase the plot of land measuring 1799.99 sq. yds. which comes roughly at the rate of Rs. 36 per sq. yd. Mr. Ranka has not seriously disputed the value of the plot of land as has been estimated by the income-tax authorities but his main emphasis is on the question that under section 69B the department should establish the fact that more consideration has been passed than the consideration shown in account- books/sale-deed. Therefore, considering the report of valuer and com parable cases cited above and also the fact that sufficient opportunity was given to the assessee to show cause as to why the value of plot of land should not be taken on the basis of the rate prevalent in the area, we find no justification to interfere in the value finally estimated by the Tribunal.

17. Now, it brings us to see whether the revenue has established the fact that some more consideration has been passed by the assessee to Vinaychand Praveenchand than that shown in sale deed.

18. There is no direct evidence that the assessee has paid more than Rs. 45,000 to Vinaychand Praveenchand for purchase of plot of land, but

at the same time it cannot be ignored that no evidence has been adduced by the assessee before the ITO as to why the plot of land has been sold to the assessee for roughly at half of the rate than the prevalent market rate.

19. In the case of *K.P. Varghese (supra)* their Lordships of the Supreme Court have observed that even if market value is more than the value/consideration received in respect of the transfer, it would amount to gift under the Gift-tax Act, 1958. The Income-tax Act and the Gift-tax Act are parts of an integrated scheme of taxation and the same amount which is chargeable as gift could not be intended to be charged also as capital gains.

20. In the case of *K.P. Varghese (supra)*, the house property was sold to daughter-in-law and five of her children. Therefore, the case of *K.P. Varghese (supra)* is covered under the provisions of section 4 and the difference between market value and consideration paid would amount to gift under section 4(1)(a) of Gift-tax Act, but that should be born out from the record that the particular case is of deeming gift. In that case certainly, no capital gain tax can be charged. But in the case on hand, there is no material on record which shows that property has been sold for less consideration and the difference between market value of property and consideration shown in account books can be a case of deemed gift under section 4(1)(a). Neither the assessee is a relation of seller nor of any reason has been advanced before the ITO as to why less consideration has been paid than the prevalent market rate. Not even a single reason has been given as to why the property has been sold to the assessee for roughly half of the prevalent market rate. In absence of that the only inference that can be drawn is that the petitioner has, in fact, concealed the actual consideration paid to seller.

21. It is true that the burden is on the department to establish the fact that the property has been sold for lesser consideration than the market value. It is also to be established that actual consideration is more than the consideration shown in account books/sale deed. In the case of *K.P. Varghese (supra)* their Lordships have observed that before invoking the powers under sub-section (2) of section 52 of the Act, the burden is on the revenue to prove that the actual consideration was more than that disclosed by the assessee. But their Lordships have further observed that this burden may be discharged by establishing the facts and circumstances, from which reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received or paid by him. As stated above, in the locality of C-scheme the adjoining plots were sold at the rate of Rs. 60 or 75 per sq. yd. and if we take the estimated rate taken by the AAC and the Tribunal, the rate of plot in question comes to Rs. 36 per sq. yd. that is, roughly half of the rate than the prevalent market rate in the area. Admittedly, no reason has been shown by the assessee as to why the plot of land has been sold to her half of rate of market rate. Nor any other reason has been shown to the ITO at the time of assessment. Even, in spite of specific

query, the assessee failed to point out any mistake/lacuna in ascertaining the value of plot of land by the valuer. In these circumstances, the only reasonable inference that can be drawn is that the assessee has shown less amount in the account books and sale-deed than the actual consideration paid. Considering, the comparable cases and the facts of the case we find no ground to interfere in the addition made under section 69B.

In view of the above discussion, we find nothing wrong in the view taken by the Tribunal. Therefore, we answer the question in the affirmative, that is, in favour of the revenue and against the assessee.

Respectfully following the binding precedent and facts as discussed herein above that there is no evidence for undisclosed investment as alleged by the Id. AO. The only evidence is the excel sheet which do show value which is more than the registered deeds but that sheet also includes the lands taken on lease and government land also and therefore, it cannot be said with certainty that the excel sheet only provides unaccounted investment of the assessee. Thus, the ground of appeals no. 1 to 3 raised by the revenue has no merit and the same are dismissed. Ground no. 4 raised being general in nature does not require our adjudication.

23. As regards the cross objections filed by the assessee wherein the assessee challenges the finding of the Id. CIT(A) holding the validity of the notice issued to the assessee u/s. 153A of the Act based on the digital data obtained from the compute of

the third party search without bringing on record any evidence of genuineness of the such digital data. The assessee also submit that considering the finding recorded by the apex court in the case of Abhishar Buildwell Private Limited the assessment is not required to be reopened.

So far as these grievance of the assessee is concerned as we note that the appeal of the assessee has already been allowed by the CIT(A) and we have also dismissed the appeal of the revenue thereby confirming the view of the Id. CIT(A). The assessee has not filed any such submission as to why the finding of the Id. CIT(A) is incorrect wherein Id. CIT(A) has categorically while dealing with the issue has held that the notice was rightly issued based on the seized documents:

This argument of the appellant is found to be partly acceptable as there can be more than one inference drawn from the excel sheet. One inference is that it is actual value of land. This inference is drawn by the AO also. Another inference can be that it is projected value of land after certain period of time. So, more than one interpretation was possible. In these circumstances, where more than one interpretation is possible then corroborative evidences needs to be brought on record so that we can draw a certain conclusion that the inference drawn is correct or not. It is not correct that it is dumb document as the entries made are clear on the sheet. However, interpretation of the entries can be more than one. The person from whose possession this document was found has not explained true nature of these entries. The argument of the appellant that this sheet is not having evidentiary value is not found to be acceptable as it is part of seized records during search. Therefore, this excel sheet is having evidentiary value. However, this evidence could have been used against the appellant if any corroborative evidence supporting this was there on record like statement of seller, statement of any person who was involved in the cash transaction or any other paper where similar

transactions are recorded which could fortify the contention of the AO. In the absence of corroborative material the addition made by the AO is not found to be sustainable.

Considering that finding so recorded by the Id. CIT(A) we do not find any merits in the arguments of the Id. AR of the assessee that no proceeding could have been done at the end of the assessee u/s. 153A of the Act. Based on this observation grounds of cross objection has not merits and the same are thus treated as dismissed.

In the result the appeal of the revenue in ITA no. 239/Jp/2024 and the cross objection of the assessee in CO/4/Jp/2024 also stands dismissed.

ITA No. 269/Jp/2024 for A. Y. 2018-19 - Banas Builders And Developers LLP

24. The appeal in ITA no. 269/Jp/2024 filed by the revenue. The grounds of appeal filed by the revenue are as under;

“1. Whether on facts and in circumstances of the case, the CIT(A) is justified in deleting the addition of Rs. 5,75,00,000/- on account of unaccounted investment u/s 69B of the Act without appreciating the facts that addition was determined on the basis of true facts recorded in statement u/s 132(4) of the Act on oath and on the basis of certain information found in the phone of Shri Devendra Shekhawat who was the main accountant and person of confidence maintaining, knowing and arranging the transactions of all the establishments including the assessee LLP of the Group under directions of the partners and the

partner has never denied it that Shri Shekhawat does not work of the Group.

2. Whether on facts and in circumstances of the case, the CIT(A) is justified in deleting the addition of Rs. 5,75,00,000/- made on accounted unaccounted investment u/s 69B of the Act without appreciating the facts that the statement recorded u/s 132(4) has the evidentiary value and binding on the person making it recorded and, the assessee made a baseless assertion that it was recorded in his unwell state without any evidences to prove it.

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

25. As we note that the facts of the case of Banas Builders And Developers LLP in ITA no. 269/JP/2024 are exactly similar with that of the facts and grounds so raised in ITA no. 239/JP/2024. Therefore, we do not deem it fit to discuss the arguments afresh, and hold that the decision taken in ITA no. 239/JP/2024, as noticed above, shall apply mutatis mutandis in the case of the assessee for the assessment year 2018-19 in ITA no. 269/JP/2024. Thus, the appeal of the revenue in ITA No. 269/JP/2024 stands dismissed.

ITA No. 240/JP/2024 and Co no. 05/JP/2024

26. Now we take up the appeal of the revenue in ITA no. 240/JP/2024 wherein the grounds of the revenue reads as under:

“(i) Whether on facts and in circumstances of the case, the Ld. CIT(A) is justified in its decision of not charging tax as per provision of section 115BBE of the IT Act which was imposed by invoking section 69B of the IT Act on the excess stock of Rs.1,52,83,105/- (treated as unexplained investment u/s 69B of the Act) without appreciating the fact that the assessee failed to substantiate the source of investment in excess stock with supporting documentary evidence and could not prove that the income for investment in excess stock was earned during the current financial year from its business activities.

(ii) Whether on facts and in circumstances of the case, the Ld. CIT(A) is justified in its decision of not charging tax as per provision of section 115BBE of the IT Act which was imposed by invoking section 69B of the IT Act on the excess stock of Rs. 1,52,83,105/- (treated as unexplained investment u/s 69B of the Act) without appreciating the fact that the assessee has failed to verify the excess stock(of the period from the date of search action to appellate proceedings) from the documents of excavation (mining of kota stone) submitted to the government authorities, bills/vouchers of purchase and other evidence.

(iii) Whether on facts and in circumstances of the case, the Ld. CIT(A) is justified in its decision of not charging tax as per provision of section 115BBE of the IT Act which was imposed by invoking section 69B of the IT Act on the excess stock of Rs. 1,52,83,105/- (treated as unexplained investment u/s 69B of the Act) without appreciating the fact that the excess stock found during the search proceedings was admitted as undisclosed by the assessee during the post search proceedings and was offered for taxation by the assessee.

(iv) Whether on facts and in circumstances of the case, the Ld. CIT(A) is justified in its decision of not charging tax as per provision of section 115BBE of the IT Act which was imposed by invoking section 69B of the IT Act on the excess stock of Rs.1,52,83,105/- (treated as unexplained investment u/s 69B of the Act) without appreciating the fact that on or before the date of search proceedings, the excess stock was not recorded in the books of accounts of the assessee and it was just an afterthought of the assessee to record the excess stock in the books of accounts after search proceedings on 21.12.2017 as undisclosed excess stock as to colour the nature of that excess stock as business income while the very nature of the stock was undisclosed and unaccounted.

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

27. Whereas the assessee preferred cross objections on the following ground in CO No. 05/JP/2024;

“1. That on the facts & in the circumstances of the case the Id. CIT(A) erred in upholding the application of provision of section 115BBE on labour expenses which was disclosed in the return of income by appellant.

2. That on the facts & in the circumstances of the case the Id. CIT(A) erred in upholding the provision of section 115BBE without analyzing the nature of expenditure and income surrendered in return of income in right perspective and judicious manner.

3. That on the facts & in the circumstances of the case the Id. CIT(A) erred in confirming the action of the Id. AO in changing the head from business expenditure to other sources bogus expenditure by invoking the provision of section 115BBE of the Income Tax Act, 1961.

4. That on the facts & in the circumstances of the case the Id. CIT(A) erred in not analyzing the judicial decisions in right perspective and judicious manner while upholding the provision of section 115BBE of the Act.

5. That on the facts & in the circumstances of the case the Id. CIT(A) erred in not appreciating the explanation of appellant while confirming the application of section 115BBE on labour expenses.

6. That the respondent may kindly be permitted to raise any additional and/or alternative ground at or before the hearing of appeal.

7. The respondent prays for justice & relief.”

28. At the outset of hearing the bench noted that the appeal filed by the revenue is filed 11 days delayed. Since on the same set of fact while dealing with the appeal of the revenue in ITA no. 239/JP/2024 herein above, we have condoned the delay and the facts mentioned therein and in this appeal being same therefore, we do not intend to repeat the arguments and fact and based on

the discussion so recorded at para 8 above we condone the delay of filling the present appeal by the revenue.

29. We take note of the facts that the cross objection filed by the assessee also delayed by 12 days since we have condoned the delay in CO no. 4 vide para 11 above since the reasons and arguments being similar we do not intend to repeat arguments and contention raised. Based this observation we condone the delay in filling the cross objection no. 5 by the assessee.

30. Succinctly, the fact as culled out from the records is that a search & seizure operation under section 132(1) of the Income Tax Act, 1961 was carried out on 15.11.2017 at the various premises of Banas Group, Jalawar to which the assessee belongs. A number of persons/ premises covered u/s 132 of the IT. Act, 1961. Cash, Jewellery and other documents found and seized from some persons residence and business premise. The case of the assessee was also covered under search proceedings. The search action was carried out on the assessee on 15.11.2017 at its business premises F-49 and F-51, Phase-III, RIICO Industrial Area, Jhalawar, Rajasthan. Consequent to search action, the case of the assessee was centralized to Central Circle-Kota by the Principal Commissioner of Income-tax, Kota vide his order No. Pr.CIT/ITO

(Tech.)/ KTA/S. 127/2017-18/3319 dated 20.12.2017. The assessee Company is engaged mining of Kota stone. Assessee company had filed his return of incense u/s 139 of the Act on 25.10.2018 at the total income of Rs. 3,50,12,160 and agricultural income of Rs. 5,33,083/-.

The case of the assessee was manually selected for scrutiny as per provisions of section 153B(1)(b) and manual selection guidelines & instructions issued by the CBDT. Notice u/s 143(2) of Act was issued on 29.01.2019 which was duly served. Further, notice under sub section (1) of Section 142 of the Act was issued on 29.01.2019 along with questionnaire / Annexure-A requiring certain details / information, which was served upon the assessee through Income Tax Inspector. In response to that, assessee furnished the desired details information documents/ which were examined with respect to claims made in the return of income. The case of the assessee was also selected for scrutiny for AY 2018-19 under CASS. Notice u/s 143(2) was issued on 22.09.2019. Since the proceeding u/s 143(3) r.ws 1538(1)(b) was pending, the assessment proceeding initiated based on CASS was abated vide order dated 18.11.2019. The reasons of selection in CASS are also covered during the assessment proceeding.

In this case the assessee Company has included excess stock of Rs. 1,52,83,105 in its stock which was found excessive and offered for taxation during post search proceedings. Ld. AO noted that the assessee Company has paid taxes at normal rate whereas excess stock is covered under section 69B of the Act because this excessive stock is not recorded in the books of accounts. Assessee Company has entered undisclosed excessive stock of Rs. 1,52,83,105/- in books of accounts on dated 21.12.2017. This income is not directly offered for taxation but included in stock. Assessee Company has filed reply regarding taxability under section 115BBE of the Act which is not found in order. This unexplained income is liable to tax under section 115BBE(1) of the Act. This income is detected due to search action on the assessee. So, Assessee is liable for penalty proceedings u/s 271AAB(IA) of the Act on such undisclosed income of Rs. 1,52,83,105/- because above undisclosed income has not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year.

31. Aggrieved from the above finding so recorded in the order of Assessing Officer, assessee preferred an appeal before the Id.

CIT(A). Apropos to the grounds so raised the relevant finding of the

Id. CIT(A) is reiterated here in below:

“4.6. I have considered assessment order, arguments as well as the submissions made by the appellant in this regard and also perused the relevant documents and records in the case for the assessment year.

The AO noted in this case that during the course of assessment proceedings, it is noticed that the assessee company had included excess stock of Rs.1,52,83,105/- in its stock which was found excessive and offered for taxation during the post search proceedings. The assessee company has paid taxes at normal rate whereas excess stock is covered under section 69B of the Act because this excessive stock is not recorded in the books of accounts. Assessee Company has entered undisclosed excessive stock of Rs. 1,52,83,105/- in books of accounts on dated 21.12.2017. This income is not directly offered for taxation but included in stock in the books of accounts.

Only issue in this ground of appeal is with regard to addition made by the AO u/s 69B. The appellant argued in this regard that the AO has accepted the income as declared by the assessee on account of excess stock. However, he added the said income separately u/s 69B of the Act and charged the tax by applying provisions of section 115BBE of the Act.

It is argued that the assessee is engaged in mining of Kota stone. In the return of income, the same has been offered to tax by the appellant-assessee under the head "business income" and the return of income so filed has been accepted by the Id. AO without making any adjustment/ variation either in the quantum or nature of income so offered by the assessee. The assessee, being a company, has offered the same to tax applying the rate of taxation as applicable to the domestic company.

The assessee company has shown regular business income as per above NP for the year under consideration along with unexplained income found during the course of survey on account of stock and the same was offered Income From Business or Profession. In support of the claim, the assessee has relied upon decision of Hon'ble High Court of Rajasthan in the case of Pr. CIT, Alwar Vs. Bajargan Traders (D.B

Appeal No.258/2017 dated 12.09.2017) wherein the Hon'ble High Court has confirmed the view of the Tribunal which is reproduced as under-

"Having said that, the next issue that arises for consideration is whether the amount surrendered by way of investment in the unrecorded stock of rice has to be brought to tax under the head "business income" or "income from other sources". In the present case, the assessee is dealing in sale of foodgrains, rice and oil seeds, and the excess stock which has been found during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. The decision of the Co-ordinate Bench in case of Shri Ramnarayan Birla (supra) supports the case of the assessee in this regard. Therefore, the investment in the excess stock has to be brought to tax under the head "business income" and not under the head income from other sources"

Applying the proposition of law laid down in the judicial pronouncements as discussed above, I am of the opinion that the AO has not dealt with the matter properly regarding taxing the surrender made on account of excess stock u/s 69B of the Act. Further, there appears no adverse point which could lead to tax on surrender income u/s 115BBE of the Act, 1961 in the assessment order u/s 143(3) passed by the AO. Therefore, the addition made by the AO is not found to be sustainable. The excess stock found is to be treated as income from business of the assessee as held by the Hon'ble Jurisdictional High Court.

Another issue in this ground is initiation of the penalty u/s 271AAB(1A) of the Income Tax Act, 1961.

No prejudice is caused only because of initiation of penalty proceedings u/s 271AAB (1A) of the Income Tax Act, 1961. The issue raised by the appellant is premature. Hence, this issue raised in appeal is treated as dismissed.

This ground of appeal is treated as partly allowed."

32. As the revenue feeling dissatisfied from the above finding of the Id. CIT(A) preferred the appeal in ITA no. 240/JP/2024 raising

four separate ground challenging finding of Id. CIT(A) on the applicability of the section 69B of the Act and thereby charging of tax as per provision of section 115BBE of the Act. The Id. DR representing revenue in support of the grounds so raised submitted that the in the search excess stock has been worked out and the assessee has not disputed the same therefore, said income of excess stock was made as per provision of section 69B of the Act the charging of tax at special rate is mandatory as per provision of section 115BBE of the Act. The Id. DR stated that in the search proceeding conducted on 21.12.2017 undisclosed excess stock as to colour the nature of that excess stock as business income while the very nature of the stock was undisclosed and unaccounted investment and therefore, the same is very much covered with the provision of section 69B of the Act.

33. Per contra, Id. AR of the assessee supported the order of Id. CIT(A) to the extent it favours to the case of the assessee. The Id. AR of the assessee also relied upon the following written submission filed before the Id. CIT(A) :

With reference to the captioned subject and on behalf of the appellant- assessee, we crave leave to submit herewith as under for favour of your kind and sympathetic consideration please:

STATEMENT OF FACTS:

01. A search & seizure operations u/s 132(1) of the Act was carried on 15.11.2017 at various premises of Banas Group, Jhalawar to which the appellant-assessee belongs and certain documents, loose papers, diaries, etc. were found and seized from the appellant-assessee and related parties. A Search was also conducted u/s 132 at the residence of Shri Devendra Singh Shekhawat, Accountant of the group entities by issue of separate independent warrant of authorisation.

02. The assessee-company filed its return of income u/s 139 of the Act on 25.10.2018 declaring total income of Rs.3,50,12,160/- and agriculture income of Rs.5,33,083/-. The case was manually selected for scrutiny u/s 143(2) by issuing notice u/s 143(2) of Income Tax Act, which was duly complied with. Accordingly, the Id. ACIT, Central Circle, Kota vide assessment order dated 23.12.2019 u/s 143(3) r/w 153(B)(1)(b) of the Act has accepted the returned income of Rs. 3,50,12,160/-. However, on the excess stock and labour expenses surrendered u/s 132(4) of the Act and declared in the ITR, he applied the higher tax rate as per provisions of section 115BBE of the Act.

03. That being aggrieved by the impugned assessment order, the appellant-assessee has filed the present appeal petition.

OUR SUBMISSIONS:

The grounds of defense are as follows:

Ground No.1 pertains to application of section 115BBE on the excess stock found and declared in the ITR.

01. Sir, in the present case, it is not in dispute that the appellant-assessee has not included such income in its return of income. During the course of search, the appellant-assessee had made additional disclosures on the basis of the excess stock, loose papers, diaries, etc. found and seized from searched group entities in which certain transactions relating to business were noted. The Id. AO has accepted the income as declared by the assessee on account of excess stock. However, he added the said income separately u/s 69B of the Act and charged the tax by applying provisions of section 115BBE of the Act.

02. In this connection, it is respectfully submitted that the assessee is engaged in mining of Kota stone. In the return of income, the same has been offered to tax by the appellant-assessee under the head "business income" and the return of income so filed has been accepted by the Id. AO without making any adjustment/ variation either in the quantum or nature of income so offered by the assessee. The assessee, being a company, has offered the same to tax applying the rate of taxation as applicable to the domestic company. During the course of assessment proceedings, the Id. AO confronted the assessee regarding taxability of income u/s 115BBE(1) of the Act. In response, the assessee brought on

record that it had already surrendered such income on account of excess stock found and it is not the investment, therefore, the provisions of section 115BBE of the Act are not applicable on the said income.

03. It was duly explained to the Id. AO that the appellant-assessee is engaged in mining of Kota stone and the inventory of stock is being physically taken and valued by the assessee at the year end and the variation in stock, if any on account of reclaiming of broken slabs, size variation, thickness, cracks, quality, etc. are duly accounted for at the year-end and the accounts are got audited. It is not the case where the assessee has purchased stock from the market but the same is being excavated from its own mines. Since the search was conducted in between the year, the only way of disclosing income, on the part of the assessee, was through filing of a return within stipulated time and, accordingly, there remains no undisclosed income signifying income not stated in the return filed. Such inclusion results into the disclosure of the said income assessable under the head income from business and chargeable to tax at normal rate.

04. It is respectfully & humbly submitted that the said stock has been included in the current year's income of the assessee by crediting to the profit & loss account and the same has duly been declared in the ITR filed for the AY 2018-19 and taxes have also been paid as per the normal rates applicable to the domestic company. It is reiterated that the stock forms part of assessee's business income and as such, the provisions of section 115BBE of the Act are not applicable to the assessee.

05. That the assessee is engaged in mining business and excavating stones for sale. There is no purchase of stock from any outside party so there is no question of making payment for purchases of stock. It pertains to self-mining. Such discrepancy in stock cannot be said as unexplained investment and it may at the most, be described as understatement of production. It is further stated that the assessee is a company and the only source of its income is business income. The assessee is regularly showing its income as business income in the ITRs furnished in the past, which is being regularly accepted by the Department. It has no other source of income. Even during the course of search, no incriminating document has been found which proves that the appellant-company is engaged in any other activity. Since the assessee has declared the same under the income head 'income from business or profession' looking to its nature, character and business of the assessee, section 115BBE will not apply.

06. The Hon'ble Gujarat High Court in the case of *J.K.Chokshi vs. ACIT (T.A. No.149 of 2003)* order dated 22/12/2014 held as under:-

"7. Once it is established that the assessee had no other source of income at the relevant time or in the past, it can be safely concluded that

the assessee had no other income other than income from business. Now, when the business activity of the assessee has been accepted and no other source of income is found, then there was no justification for disallowing the salary paid to Partners at Rs.4.50 Lacs. Therefore, the disallowance of Rs.4.50 Lacs granted by the A.O and confirmed by the Tribunal is erroneous and deserves to be quashed and set aside. Our view is buttressed by the principle rendered by the Calcutta High Court in the case of Md. Serajuddin & Bros.v.CIT [2012] 24 taxmann.com 46 (Cal.).”

07. The assessee declared its income u/s 132(4) of the Act and disclosed the same in the return of income filed. The assessee explained that nature and source is of business nature. The said explanation given by the assessee to the Id. AO has not been rebutted; therefore, the provisions of section 69B of the Act as considered by the Id. AO are not applicable as the same is business transactions. The income earned from the business transactions has been utilized for building stock from self-mining. Therefore, the Id. AO is not justified in taxing the aforesaid income separately as understatement of investment. In fact, the assessment order so passed by the Id. AO is silent as to why the explanation of the assessee is not acceptable. It is respectfully stated that section 115BBE cannot be applied in routine and ordinary manner.

08. The jurisdictional Hon'ble Rajasthan High Court in case of *CIT vs. Bajargan Traders in ITA No. 258/2017 dated 12/09/2017* has held that when the assessee is dealing in sale of food grains, rice and oil seeds and the excess stock which is found during survey is stock of rice then, it can be said that investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. Therefore, the investment in the excess stock is to be brought to tax under head “business income” and not under the head income from other sources.

09. Similarly, the jurisdictional Jodhpur Tribunal in case of *Shri Lovish Singhal vs. ITO in ITA No. 142 to 146/Jodh/2018* vide order dated 25 May 2018 held that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found u/s 69 of the Act and accordingly, held that there is no justification for taxing such income u/s 115BBE of the Act.

10. The Hon'ble Chandigarh Tribunal in case of *M/s Bajaj Sons Ltd vs. DCIT in ITA No. 1127/CHD/2019 AY 2017-18 dated 25 May 2021* was concerned with the question of invoking the provision of section 115BBE of the Act on the surrendered income to cover any discrepancy and thereby assessing such income at higher rate of tax as against the normal rate of tax applicable to the business income. Given that no discrepancy was pointed by the AO, it was held that the provisions of

sections 68, 69, 69A, 69B, 69C or 69D are not attracted to levy tax u/s 115BBE.

11. Like-wise, in case of *DCIT vs. Ram Narayan Birla in ITA No. 482/JPR/2015 dated 30 September 2019* also on the surrendered stock during search, seizure and survey action, it was held that the Revenue had not pointed out that the excess stock had any nexus with any other receipts found. Hence, the surrendered excess stock considered at par with the other business stock.

12. Further, it is respectfully submitted that the excess stock found is a mixed part of overall stock and does not have any independent identity as asset so as to attract the provisions of section 69B of the Act. In the below mentioned judicial precedents also, it was held that if excess stock found during the course of survey or search and does not have any independent identity as an asset but as mixed part of overall stock found in the survey/search then such excess stock would represent business income:

(i) *Fashion World vs. ACIT (ITA No. 1634/Ahd/2006)*

(ii) *DCIT vs. Ramnarayan Birla (482/JP/2015 dated 30.09.2016)*

13. Reliance is also placed on the Judgement of the Income Tax Appellate Tribunal, Jaipur Bench in the case of *The Assistant Commissioner of Income Tax, Central Circle-2, Jaipur vs. M/s Sanjay Bairathi Gems Limited in ITA No. 157/JP/2017* wherein it is held that the excess stock found during the course of survey is a part of the business income and the case laws relied upon by the AO is not applicable and the additional income declared by the assessee is not liable to tax as per the provisions of section 155BBE of the Act.

14. It is further stated that in *Lakhmichand Bajinath vs. CIT 35 ITR 416*, the Hon'ble Supreme Court has observed that when an amount is credited in the business books, it is not an unreasonable inference to draw that it is a receipt from business. Similar views have been taken in *Daulatram Rawatmull vs. CIT 64 ITR 593*, *Mansfield & Sons vs. CIT [1963] 48 ITR 254*, besides others. It is submitted that the unexplained stock in trade is not covered by section 69B. Reference is also invited to *Addl. CIT v. Danyabhai Pitamberdas & Co. [1974] Taxation 36(1) 25-26 (Guj.)*.

15. It is respectfully submitted that *sans* section 68 to section 69D, section 115BBE cannot be invoked. The assessee is in the business of Kota stones mining trade and such stock is part of the business affairs of the assessee-company. Therefore, since income declared is in the nature of business income, the same is not taxable under the section referred above and accordingly, section 115BBE has no application in the present case. When business income is substantiated by

surrounding circumstances and material available on record like assessee's business of generating stock by self-mining, regularly and consistent showing of business income, registered with VAT/GST authorities showing business receipts, object clause of the Company's Articles & MOA etc., then no adverse inference u/s 115BBE may be possible. This is further fortified from various judicial pronouncements including jurisdictional Tribunal and High Court as cited above.

16. It is also submitted that the assessee disclosed it in the return filed income from business as the same falls under purview of section 28 of the Act. In any case, this amount is no longer unexplained considering the assessee has already explained and offered it to tax. Therefore, it is submitted that section 69B has no application whatsoever as it being the current year's business income and under no circumstances could be treated as deemed income. Once an income falls under a particular head of income as given in section 14 of the Act, the same cannot be taken in residuary category.

17. It is respectfully submitted that the additional amount declared on account of difference in stock itself is not correct for the reason of variation already explained but the declaration was made by the assessee only to buy peace with the department. During the search the learned search officials on the day of search had in fact did not appreciate that the appellant-assessee is in the business of mining of stock and in mines, it is very difficult to segregate and differentiate between various stages of stone mining. There remains rate difference depending on size, quality and thickness but valuation has been made by the searched team taking an average rate. The search happened before the end of the financial year and therefore, the assessee adjusted the inventory in its books to the extent of allegation made by the search officials and resultant increase in the profit of the assessee has also been declared in the computation of total income under the head business income. The assessee has in fact declared the additional income in its profit and loss account and thus, the provision of section 115BBE of the Act is not at all applicable to the facts of the present case.

Therefore, this ground of appeal may kindly be allowed.

Ground No.2 relates to application of section 115BBE on the excess stock found and declared in the ITR.

01. It is respectfully submitted that the Id. AO has described the same as bogus labour expenses whereas the same are labour payable as per balance sheet of the company as on the date of search. This is explicitly clear from question no. 37 asked to Shri Ashad Anwar Khan by the ADIT (Inv) while recording his statement on 26.12.2017 that these were labour expenses payable. Otherwise also, the very first condition for invoking the provisions of section 69C is that there should be actual incurring of

expenditure and if according to Id. AO it is bogus then provisions of section 69C are not applicable.

02. In the present case, the assessee has surrendered the same just to buy peace and avoid unnecessary litigation with the department on the basis of financial statements. It may kindly be appreciated that such expenses have been declared in the ITR filed for the AY 2018-19 and accepted by the Id. AO as the current year's expenditure but taxes have been levied by invoking the provisions of section 115BBE of the Act.

03. In reply to question no.37, the director of the assessee-company Shri Asad Anwar Khan has duly explained the source of such payment of labour as sale of rough Kota stone, which is nothing but unaccounted business receipts. He explained that such cash sales were utilized for payments of labour charges shown as payable in the books. Thus, the source of such labour expenses remains explained as business income. Under this fact, the true nature of disclosure is in the nature of business transaction and it falls under specific heads of income given under section 14 of the Act as 'Income from business or Profession'.

04. The Hon'ble ITAT Jaipur in the case of *Hari Narain Gattani [2021] 123 taxmann.com 8 (Jaipur-Trib.)* held that where assessee surrenders undisclosed income during search action for relevant year, it is not necessary that tax rate has to be charged as per provision of section 115BBE.

05. It is submitted that the assessee is a company and the only source of its income is business income. The assessee is regularly showing its income as business income in the ITRs in the past, which is being accepted by the Department. It has no other source of income. Even during the course of search, no incriminating document has been found which proves that the appellant-company is engaged in any other activity. The additional income declared in the course of search was from business activities and therefore, needs to be taxed at the normal rate.

06. In the case of *J.K.Chokshi vs. ACIT (I.T.A. No.149 of 2003) order dated 22/12/2014*, it is held that once the assessee had no other source of income at the relevant time or in the past, it can be safely concluded that the assessee had no other income other than income from business.

07. It is respectfully submitted that the invocation of provisions of section 115BBE of the Act in the case of labour expenses surrendered during the course of search is an incorrect application of law inasmuch as the income surrendered on account of the same is in the nature of business transaction of the assessee and the same relates to the business of the assessee. The source of such payment is business income. It is stated that the expenses incurred only from the

unaccounted business receipts of the assessee and as already submitted, *supra* the assessee had no other source of income except business which would have generated income for the purpose of such expenses. It is submitted that, therefore, the income as declared should be accepted as business income and the same should not be treated as deemed income u/s 69C of the Act and, thus, the provisions of section 115BBE would not apply in the case of the assessee. Reliance is placed on numerous judicial precedents in support of the contention that provisions of section 115BBE would not be attracted in cases where no new source of income has been discovered during the course of search.

08. It is a proposition of law that business activity related income may not ordinarily get placed u/s 68 to section 69D of the Act. It is respectfully stated that nowhere in the body of the assessment order, the Id. AO has contradicted this explanation. The Id. AO has not brought on record any *iota* of evidence to demonstrate that the assessee had any other source of income except income from business. Without going into factual matrix of the case and true nature of the disclosure, merely on account of disclosure in schedule attached to financial statements the Id. AO has treated the expenses as unaccounted bogus expenses and covered u/s 69C of the Act so as to attract section 115BBE of the Act. Therefore, it is humbly submitted that the Id. AO could not have legally and validly resorted to taxing the income of the assessee at the higher rate in terms of provisions of section 115BBE of the Act. It is reiterated that such expenses are business expenditure, source of payment of which is also business receipt and as such, the provisions of section 115BBE of the Act are not applicable in the present case. It is equally well settled that a legal fiction is created only for a definite purpose and is limited to that purpose and should not be extended beyond it. It is further submitted that deeming income cannot represent real income and only real income could be declared by an assessee u/s 132(4) of the Act.

09. It is further stated that there is no physical distinction between the accounted and unaccounted labour expenditure, except value. Such expenses had no independent identity of its own and it is part and parcel of entire labour expenses claimed. No such physical distinction has been made by the Id. AO either by pointing out person wise and date wise labour expenses. The assessee's claim is that unaccounted business income is utilized for such expenses and there is no amount separately taxable u/s 69C of the Act. Such expenses had no independent identity of its own and it is part and parcel of entire expenses claimed. It is a settled proposition that first the business receipt has to be considered and then expenses should be treated as coming out of such unaccounted income. The difference between expenses in the books and what is declared is only a mathematical expression in terms of value and not in its nature

10. The jurisdictional Jodhpur ITAT Bench in case of *Satya Narayan Choudhary vs. Asstt. Commissioner of Income Tax reported at (2020) 207 TTJ (Jd) 453 : (2020) 193 DTR_Trib (Jd)(Trib) 353* held as under: (catch notes)

“Income from undisclosed sources—Addition under ss. 69 and 69A—Vis-a-vis income from business—Assessee is engaged in the business of real estate—Thus, the impugned income from property transaction is in the nature of business income—Hence, provisions of s. 69 or s. 69A are not applicable—Even otherwise, the provisions of s. 69 or s. 69A are applicable in case of unrecorded transaction or investment, whose nature and source is not explained—In the present case, assessee has duly explained the nature and source of the transaction and duly declared the same in its return of income—Therefore, there is no question of any income from undisclosed source—Accordingly, the AO is directed to treat the said income as income from business”. (Paras 5 & 6).

12. It is respectfully submitted that the perusal of answer to question no. 37 of the statement dated 26.12.2017 of Shri Asad Anwar Khan recorded would reveal that the assessee explained that the income earned from sale of rough Kota stones have been utilized to pay such labour expenses and was offered to tax as income for the assessment year under consideration, which demonstrates that the activities conducted by the assessee are in the nature of business. It is a settled proposition of law that such statement has evidentiary value and the same needs to be accepted and income offered during the course of search as income from business because the same falls under purview of section 28 of the Act. It is also submitted that if the amount is to be believed then the description and nature is also to be believed.

13. It is respectfully further submitted that the provisions of section 69C of the Act would not apply to the income offered under section 132(4) of the Act as the income from business, which is the current year's business income and under no circumstances could be treated as deemed income. Thus, once the nature of income has been accepted by the department at one point of time while recording the statements, then the same income cannot be treated/ assessed by treating the same with different nature of income. After his statements were recorded, the assessee has honoured the surrender made of the business income and paid the legitimate taxes on this income and now invoking the provisions of section 69C read with 115BBE of the Act, by not accepting these statements made during the course of search is not justified.

14. It is also submitted that the explanation given by the assessee has not been rebutted, therefore the provisions of section 69C of the Act are not applicable as the assessee had business receipt, which is claimed to be utilized for making the payment to labourers. It is not a matter of

record that the said income was utilized by the assessee elsewhere and not in payment of labour charges.

Therefore, this ground of appeal may also kindly be allowed.”

34. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particulars	Page No.
01	The Hon'ble ITAT, Amritsar Bench in the case of Nandini Sharma v/s ACIT/DCIT in ITA No. 148/Asr/2019 dt. 10/10/2022.	1 - 14
02	The Hon'ble, Jodhpur Bench in the case of Lovish Singhal v/s ITO in in ITA No. 143/Jodh/2018 dt. 23/05/2018.	15 - 33
03	The Hon'ble ITAT, Delhi Bench in the case of DCIT v/s Tapeshe Tyagi in ITA No. 1344/De ¹ / ₂ 021 dt. 27/10/2023.	34 - 40
04	The written submission before the Ld CIT(A).	41 - 52

- **Case laws relied upon:**

S. No.	Particulars	Page No.
01	The Hon'ble ITAT, Delhi Bench in the case of Bijendra Singh Lohia v/s JCIT(OSD) in ITA No. 1528 & 1529/De1/2022 dt. 16/04/2024.	1 - 14
02	The Hon'ble ITAT, Ahmedabad Bench in the case of Real Marketing Pvt Ltd v/s ACIT in ITA No. 128 to 133/Ahd/2021 dt. 19/05/2023.	15 - 66
03	The Hon'ble ITAT, Delhi Bench in the case of Rukneek Bawa v/s ACIT in ITA No. 3083/Del/2012 dt. 23/10/2023.	67 - 74
04	Copy of decision of Hon'ble Delhi High Court in the case of PCIT v/s Anand Kumar Jain(HUF) & Satish Dev Jain ITA No. 23, 26 to 31 of 2021 dt. 12/02/2021.	75 - 85
05	The Hon'ble ITAT, Delhi Bench in the case of Atul Kumar Gupta & Rajiv Gupta v/s ACIT in ITA No. 1931 & 1164/De1/2020 and 205, 206 & 1395/De1/2021 dt. 17/02/2023.	86 - 115
06	The Hon'ble ITAT, Jaipur Bench in the case of Virendra Singh Ratnawat v/s ACIT in ITA No. 179 to 181/Jp/2022 dt. 01/01/2024.	116 - 139
07	The Hon'ble ITAT, Kolkata Bench in the case of Atul Tantia v/s DCIT in ITA No. 492/Kol/2021 dt. 28/03/2023.	140 - 151
08	The Hon'ble ITAT, Delhi Bench in the case of Feather Infotech Pvt Ltd v/s DCIT in ITA No. 977 & 891/Del/2022 dt. 13/02/2024.	152 - 161

09	The Hon'ble ITAT, Ahmedabad Bench in the case of Rajesh Sajjanraj Bafna & Mihir P. Panchal v/s DCIT in ITA No. 110 & 112/Ahd/2018 dt. 30/03/2022.	162	-	174
10	The Hon'ble, Jodhpur Bench in the case of SDPL Land & Builders Pvt Ltd v/s ACIT/DCIT in ITA No. 375/Jodh/2023 dt. 15/04/2024.	175	-	189
11	Copy of rejoinder and written submission before CIT(A).	190	-	214
12	Copy of punchnama and affidavit of Devendra Singh Shekhawat.	215	-	219

35. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee since the assessee is engaged in the mining of kota stone and the same was offered as business income only. Even the expenditure incurred considered as bogus expenditure which will not fall in the provision of section 69C and r.w.s. 115BBE of the Act.

36. We have heard the rival contentions and perused the material placed on record. The bench noted that all the four grounds raised by the revenue deal with whether the excess stock amount computed and found at the time of search which the assessee has offered while filling the return is unexplained investment u/s. 69B of the Act thereby charging that income as per provision of section 115BBE of the Act because as on the date of search the same was not accounted in the books of account. As the assessee has offered that income therefore, the only dispute is about the chargeability of rate of tax on the amount of excess

stock. When the matter carried to Id. CIT(A), the assessee filed additional evidence which was send to AO for the report in the remand proceedings and AO submitted remand report dated 23.12.2022 and rejoinder of the assessee dated 31.01.2023. The main arguments advanced before the Id. CIT(A) that the assessee is engaged in mining business and excavating stones for sales. It is not the case where the assessee has purchased stock from the market bu the same is being excavated from its own mines and it pertains to self mining. The assessee has explained the reasons for variation in stock and such discrepancy cannot be said as unexplained investment and it may at the most, be described as understatement of the production. Since the search conduction in between the year the only way of disclosing income, on the part of the assessee, was through filling of a return which is not under dispute and accordingly the income is not undisclosed income. In the business the assessee deals the stock physically taken and valued at the year end and there is no finding that the stock is not excavated stock and purchased one thereby unexplained investment. Thus, when the income is offered by the assessee as business income while filling the return of income and the same has been accepted by the Id. AO without comments on the source

of that income the income offered cannot be considered as unexplained. The Hon'ble Gujarat High Court in the case of Principal Commissioner of Income-tax v. Dharti Estate [163 taxmann.com 179 (Gujarat)] held that;

4. As observed by the Tribunal, the Assessing Officer has made sufficient inquiry and as such during the course of regular assessment under section 143(3) of the Act, by assessing the income of Rs. 41.78 lakhs which included the income surrendered pursuant to the search of Rs. 22.19 lakhs as current year's business income offered to tax by charging tax and interest at normal rates and raised new demand. Notice was also issued by the Assessing Officer under section 154 of the Act on the ground that the tax rate on the surrendered income was to be charged as per Section 115BBE, however it was found that there was nothing stated in either pre-amended or post-amended provision of Section 115BBE that when the assessee surrendered undisclosed income during the search action for the relevant years, higher tax rate is required to be charged.

5. In the facts of the case, during the course of assessment proceedings, as the Assessing Officer had made due inquiries and was aware of the fact that the assessee had disclosed the income as business income in his return of income in respect of which it had claimed expenditure in relation to interest and remuneration paid to partners and after making inquiries, Assessing Officer allowed the claim of the assessee by treating undisclosed income found during the survey as assessee's business income and in view such finding of facts arrived at by the Tribunal, we are of the opinion that no substantial question of law arises from the impugned order of the Tribunal.

6. The Appeal being devoid of any merit, is accordingly dismissed.

So for the chargeability of section 115BBE we get support from the above judgment and as regards the income to be considered as unexplained or not the same is get supported from the decision of our own Jurisdictional High Court in the case of PCIT Vs. Bajargan Traders [DB Appeal No. 258/2017 dated 12.09.2017] wherein the

Hon'ble High Court held that "Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee". Here based on the fact the stock found is excavated stock and the expenditure for making the excavation activity is not under question. Considering the discussion recorded we do not find any infirmity in the finding so recorded by the Id. CIT(A) and therefore, ground no. 1 to 4 raised by the revenue stands dismissed. Ground no. 5 being general does not require any adjudication.

37. Now we take up the cross objection no. 5 filed by the assessee. The brief facts related to the disputes is that the during the course of search, certain incriminating documents, vouchers were found and seized / impounded vide exhibit 1 to 27 of the Annexure AS by party no A-5 and Exhibit 1 to 63 of Annexure AS by party no. 6. The key person Shri Asad anwar Khan has admitted undisclosed income of Rs. 49,13,738/- & Rs. 74,15,891/- on account of bogus expenditure in the case of Banas Stone P. Ltd., and Banas Minerals P. Ltd., respectively for the A. Y. 2018-19. The assessee company has included above income of Rs. 74,15,891/- in head other income Audit Report note no 2.17 which was unearthed during the search proceeding. The Id. AO noted

that the assessee has paid taxes at normal rate whereas labour expenses covered u/s. 69C of the Act because this expenses were not recorded in the books of accounts While filling the ITR the assessee company has paid tax at normal rate whereas the same in the opinion of the Id. AO is subjected to tax as per provision of section 115BBE of the Act. When the matter carried to Id. CIT(A) he has confirmed the levy of tax at higher rate considering that the assessee-appellant has accepted out of books expenditure in the statement recorded u/s. 132(4) of the Act. The source of these expenses is unaccounted sales. However, in the books of accounts such unaccounted sales not included.

Before us the Id. AR of the assessee drawn our attention to the fact that the Id. AO has described expenses payable as bogus labour expenses whereas the same are not bogus but as payable in the books of account. For that question no. 37 was asked to Shri Ashad Anwar Khan by ADIT on 26.12.2017. In reply to this question no 37 the director Shri Asad Anwar Khan explained the source of such payment of labour as sales of rough Kota Stone, which is nothing but unaccounted business receipts. He further explained that rough kota stone cash sales were utilized for payment of labour charges as shown as payable in the books of

account and thereby though this expenses shown as payable but the source of such amount paid is cash sales of the assesses company. The Id. AR of the assessee relying on the decision of Jaipur bench in the case of Hari Narain Gattani 123 taxmann.com 8 wherein it has been held that it not necessary that tax rate has to be charged as per provision of section 115BBE of the Act. It has also been submitted that the Id. AO no wherein the body of assessment retracted / proved the explanation of the assessee as not correct. As the Id. AO invoked the provision of section 69C and that of the Id. CIT(A) has confirmed that we would like to go through the provision of section 69C of the Act. The section reads as under :

Unexplained expenditure, etc.

69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

Here we note that the assessee vide reply to question no 37 the director Shri Asad Anwar Khan explained the source of such

payment of labour expenses of Rs. 74,15,891/- as sales of rough Kota Stone, which is nothing but unaccounted business receipts. He further explained that rough kota stone cash sales were utilized for payment of labour charges as shown as payable in the books of account. Thus, though this expenses shown as payable but the source of such amount paid is cash sales of the assessee company which the assessee has reversed and included as other income of Rs. 74,15,891/- in the audit report under note no. 2.17. Thus, the assessee has reversed the amount payable on account labour and offered that income under the other income head. Thus, the expenditure incurred by the assessee cannot be considered as unexplained but the same was not paid in the books and in fact the same was paid by the unaccounted cash sales made by the assessee. Thus, first in the facts and circumstances of the cash this is not a cash of unexplained expenditure but recording the cash sales which was made out of books by the assessee so invoking the provision of section 69C in this facts and circumstances is not correct and the assessee has explained the source of cash sales offered in the income and therefore, invoking the provision of section 69C in the present set of facts is incorrect. Based on these discussion ground no. 1 to 5 raised in the cross

objection filed is allowed. Ground no. 6 & 7 being general does not require our adjudication.

In the result the appeal of the revenue in ITA no. 240/Jp/2024 stands dismissed and the cross objection no. 5/Jp/2024 stands allowed.

Order pronounced in the open court on 03/12/2024.

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:- 03/12/2024

*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant-ACIT, Central Circle, Kota/ Banas Minerals Private Ltd., Jhalawar
2. प्रत्यर्थी / The Respondent- Banas Builders and Developers LLP, Jhalawar
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. 239 to 240 & 269/Jp/2024 & CO Nos. 4 & 5/Jp/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar