

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य

BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 726 /Chd/2019

निर्धारण वर्ष / Assessment Years : 2010-11

Naresh Chauhan Anandam Villa, near Sarkaik Niwas, Horticulture Road, Navbahar, Shimla	बनाम	The DCIT, Circle-II, Chandigarh
स्थायी लेखा सं. / PAN NO: ABPPC2719N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 728 /Chd/2019

निर्धारण वर्ष / Assessment Years : 2014-15

Naresh Chauhan Anandam Villa, near Sarkaik Niwas, Horticulture Road, Navbahar, Shimla	बनाम	The ACIT, Circle-II, Chandigarh
स्थायी लेखा सं. / PAN NO: ABPPC2719N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vishal Mohan, Sr. Advocate with

Shri Manoj Gupta, C.A

राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR

सुनवाई की तारीख/ Date of Hearing : 09/09/2024

उदघोषणा की तारीख/ Date of Pronouncement : 06/12/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

These are appeals filed by the Assessee against the separate orders of Ld CIT(A)-3 Gurgaon each dt. 08/02/2019 pertaining to Assessment Years 2010-11 & 2014-15 respectively.

2. Since both the appeals were heard together, they are being disposed of by this consolidated order for the sake of convenience and brevity.

3. Firstly, we shall deal with the appeal of the Assessee in ITA No. 726/Chd/2019 for the A.Y. 2010-11 wherein Assessee has raised the following grounds of appeal:

1. *"That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in upholding an addition of Rs. 75,57,804/- made on the basis of the entries in the records seized during the course of search and seizure operations on the basis of test entries. The addition so made is absolutely illegal and not sustainable in the eyes of law.*

2. *That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in upholding the addition of Rs. 1,72,986/- made as an unexplained expenditure. The addition so made is not sustainable in the eyes of law.*

3. *That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in upholding an addition of Rs. 56,674/- under section 68 of the Income Tax Act, 1961. The said addition is bad in law and not sustainable in the eyes of law."*

4. At the outset, it is noted that this is the second round of appellate proceeding before this Tribunal. In the first round, pursuant to search and seizure operation under 132(1), the assessment order was passed under section 153A(1)(b) r.w.s. 143(3) dt. 28/02/2013 at an assessed income of Rs. 1,34,01,200/- against the returned income of Rs. 22,44,680/-. Thereafter, Ld. CIT(A) allowed part relief to the assessee. On further appeal, the Coordinate Bench vide its order dt. 03/08/2016 set aside the matter to the file of the AO for assessment afresh and the AO was also directed to allow the assessee to produce the additional evidence and to decide the issue afresh in accordance with law.

5. Thereafter, in the set aside proceedings, the AO issued notice under section 142(1) calling for the necessary information and documentation and addition of Rs. 75,57,804/- originally made under section 69C was reiterated. Further addition of Rs. 1,72,986/- on account of unexplained expenditure as against original addition of Rs. 32,02,047/- was reiterated. Further, addition of Rs. 56,674/- under section 68 was reiterated by the AO and as against the returned income of Rs. 22,44,680/-, the assessed income was determined at Rs. 1,00,32,140/- which on appeal has been sustained by the Ld. CIT(A).

6. Against the said findings and direction, the assessee is again in appeal before us.

7. In Ground No. 1, the assessee has challenged the sustenance of addition of Rs. 75,57,804/- made under section 69C of the Act.

8. In this regard, the AO in the set aside proceedings observed that the assessee has not furnished any evidence pursuant to the order passed by the Tribunal but has only reiterated the submissions already made before the AO during the original assessment proceedings and in view of the same, the AO held that the addition made originally under section 153A (1)(b) r.w.s 143(3) vide order dt. 28/02/2013 is not disturbed and was reiterated due to lack of additional evidence on this account. In terms of para 4 of the original assessment order dt. 28/02/2013, where the matter has been discussed in detail, we find that the AO referred to the document marked as Annexure A-1 page 43- 65 which was the cash book impounded from the office of Shri Manoj Gupta, Chartered Accountant of the assessee and stated that the said cash book reveals opening balance as on 01/04/2009 of Rs. 1,01,280/- but the assessee has made payment of Rs. 14,82,546/- and Rs. 60,75,258/- to XYZ and labour respectively on the same day which implies that that there were negative cash balance as on 01/04/2009 and unaccounted cash not reflected in the books of account was spent by the assessee and a show cause was issued to the assessee. In response to the show cause, the assessee submitted that the soft copy of these books of accounts were only in raw shape and entered / booked by the accountant Mr. Dinesh Sharma. It was submitted that labour payable and sundry creditor for sand, stone and grit amounting to Rs. 60,75,258/- and Rs. 14,82,546/- respectively were previous years liability payable as on 31/03/2009 and these entries were reversed on 01/04/2009. It was submitted that these were merely reversal entries which were duly reconciled with register /work sheet and other documentary evidence. It was submitted that there were no payment as such which were made on 01/04/2009 and these were merely reversal entries. The submissions so filed by the assessee were considered but not found acceptable to the AO. As per AO, on perusal of the audited accounts of the assessee for the year ended 31/03/2009, it shows that sundry creditors and labour charges payable as on 31/03/2009 were Rs. 19,07,910/- and Rs. 60,95,258/- therefore, the submissions filed by the assessee is not in conformity with the information available on the record. It was further stated by the AO

that the entries recorded on this document had been owned up by the assessee and therefore, it is responsibility of the assessee to explain source of expenses of Rs. 75,57,804/- and since the assessee has failed to explain the source of the expenditure, the same was treated as unexplained expenditure under section 69C of the Act.

9. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who again referred to the order and findings of his predecessor vide order dated 08/01/2015 and confirmed the findings of the AO stating that the assessee has not produced any evidence to rebut the findings of the AO and the addition so made were confirmed. In para 6.2 of the order dt. 08/01/2015 passed by his predecessor CIT (A), the relevant findings read as under:

"6.2 I have considered the submission of the assessee and the impugned order. A document marked A-1 (page 65, scanned), impounded in the course of survey on 08.10.2012 from the office of Shri Manoj Gupta, the chartered accountant of the assessee was admittedly the cash book of the assessee for the year. The opening balance as on 1.4.20.09 was Rs.1,01,280/- but huge payments of Rs.14,82,546/- to XYZ and Rs: 60,75,258/- towards labour have been shown made which implies that there was negative cash balance. As explanation to the source of these two payments, assessee submitted that the same pertained to previous year's liabilities payable and were mere reversal entries, apart from stating that the impounded document was not the final books of accounts. However the AO observed that the sundry creditors and labour payable as on 31.3.2009 were Rs.19,07,910/- and Rs.60,95,258/- respectively. In other words, the figures aggregating Rs. 75,57,864/- did not tally and having owned up to the document, the onus was on the assessee to cogently substantiate his case, which he failed to do.

In the written submissions, the assessee has argued that the documents seized were not the final books of accounts. He sought to clarify the entry, stating that (to quote for ready reference)... the accountant of the assessee was transferring figures as payable on 31.03.2009 to the next books of the assessee of which payments were made in cash during the entire year and as such he inadvertently booked the same of the 1st day which were subsequently reversed. But however the same was not done in this file and separate file was opened and at the most this cash book could be termed as a mere scribbling and nothing more than that. It is pertinent to mention that books of account of the assessee were duly produced by the Id. A.O. and so was the labour account. This explanation is rather farfetched as it would mean that the previous year's payable of Rs.60,75,258/- towards labour was paid after spreading over, with aggregate payment of Rs.69,10,302/- in cash i.r.o AY 2010-11, despite a voucher (no:4) specified against such payment. Assessee has further contended that page 43 of the seized material would go to reveal that the closing cash in hand in raw cash book was Rs. 8, 33,057.18 whereas, the balance as per the books of account as on 31.03.2010 was Rs. 1,59,382.18.

The seized pages cover the complete financial year. As stated the voucher nos: have been mentioned serially from the first payment narrated and so on.

There is also no satisfactory explanation why the liability payable for labour as on 31.3.2010 should be disbursed by spreading it over the year. Clearly the cash was not available as per books and these pages no doubt represent the actual cash book of the assessee. Similarly placed is the case for the payment of Rs.14,82,546/- to XYZ. In fact from the copy of audited accounts (placed by the assessee for each of the years under appeal) for the previous assessment year i.e AY 2009-10, it is clear that XYZ is a new creditor which was squared up in the first month of the relevant financial year. The labour payable liability and to the party XYZ are not in debate and as voucher nos have been made for these disbursements, the onus is on the assessee to furnish reasonable and convincing explanations to counter the findings as discussed above. In view of the same, I am inclined to confirm the addition made by the AO."

10. Against the aforesaid findings of the Id CIT(A), the assessee is again in appeal before us. During the course of hearing, the Ld. AR submitted that the Assessing Officer has endorsed the order of her Id Predecessor misrepresenting the orders of the Tribunal. It was submitted that the Tribunal had set aside the case entirely back to the file of the Id Assessing Officer for reconsideration as is apparent from para-6 of the order whereby it was mentioned that the case has been set aside for framing of fresh assessment after taking into account all material to have produced originally as well as additional evidence so led and accordingly, the Assessing officer as well as the Id CIT(A) were not justified in blindly following the orders of their predecessors.

11. On merits, the submissions made before the Id CIT(A) were reiterated and the contents thereof read as under:

"The said addition has been- made by the Id. AO on the pretext relying upon the seized documents being page No.65 of the party AC-1, document A-1 The Id. AO was of the view that total payment labour payments of Rs.6572258/- had been shown on the 1st day on April 2009. Similarly, a sum of Rs. 1482546/- had been paid in respect of XYZ account aggregating of the said payment amounted to Rs. 7557864/- whereas cash in hand as on the 1st day of April. 2009 amounted to just Rs 10128.28 which was insufficient to make said payment. Per the Assessing Officer the same was made out of the fund of the assessee and as such the same has been added back as unexplained income of the assessee for the assessment year under consideration attributing to an addition of Rs.75,47.804/- to the taxable income of the assessee-appellant.

In that regard, it is submitted that during the course of assessment proceedings it was made known to the Id. A.O that these were not books of accounts of the assessee In fact accountant of the assessee was transferring figures as payable on 31.03.2009 to the next books of the assessee But however the same was not done in this file and separate file was opened and at the most this page could be termed as scribbling and nothing more than that. It is pertinent to mention that books of account of the assessee were duly produced before the Id. A O and so was the labour account. Copy of the said labour account is also placed on record for the kind perusal and ready reference of this Hon'ble Forum. The said account has not been

disputed by the Id. A O meaning thereby that the payment of Rs.10,72,228/- has been accepted by him not to have been made on the 1st day of April 2009 and as such no addition could have been made on this account. You cannot blow hot and blow in the same breath, the same being trite law.

The main books of account have been accepted. No recourse has been made by the Id. A O to the provisions of Section 145(3) of the Income Tax Act, no addition per-se could have been made by the Id.A O without putting on record anything to substantiate that the said payments were actually made by the assessee Reliance in this regard is placed on the judgment of Hon'ble High Court of Delhi in case CIT versus looktech India Ltd. 311 ITR 175 page (Delhi) It is pertinent to mention that in this case the Lordship of the Hon'ble High Court was pleased to opine that until and unless the A O brings on record that such expenditure which the Id A O proposed to add as deemed income, same must have actually been incurred by the assessee. In the instant case no such finding has been recorded by the Id A O the basis which has been made for making addition is raw cash book found from the office of Chartered Accountant of the assessee. The expenses payable as on 31.03.2009 had been shown as paid on the very first day of the financial year which in fact is not the case. The true books of account depicting the payment have been placed on record before the Id. A.O, and the same are also being produced for the kind perusal of this Hon'ble forum. Just because of wrong entries have been punched by the accountant would not lead to the inference of having made any payment by the assessee It is common sense that no body would make payment in lacs of rupees without any cash in hand The Id A.O. has made the said addition for the sake of making addition without bothering to even consider the fact that one payment cannot be made twice Once as per the entries in the raw cash books and then as per the actual payments made vis-a-vis of the labour. The details of which are placed on record in the shape of enclosed labour account for the instant assessment year.

The making of such frivolous addition smacks of vindictiveness on the part of the Id A O and as such the addition is in fact not sustainable in the eyes of law

It is pertinent to mention that only payment amounting to Rs 8240.17 had been made by the assessee on 01.04 2009 as is evident from the enclosed copy of the cash book for that particular date The said entries have not been disputed by the Id.A.O.

Further, enclosed copy of labour payable account would go to reveal that first payment of the labour was made on 18.05.2009 which has also not disputed by the Id. A.O. If accusation of the Id A.O. is accepted for the sake of arguments then the debit balance of labour would amount to more than Rs.11,00,000/- which is in fact not at all possible as nobody pays migratory labour in advance.

It is, therefore, prayed that the said addition may kindly be deleted or any other relief be given which this Hon'ble forum deems fit and proper in the facts and circumstances of the case."

12. Per contra, the Ld. DR has relied on the findings of the lower authorities.
13. We have heard the rival contentions and perused the material available on record. The charge against the assessee is that he has made

payment of Rs. 14,82,546/- and Rs. 60,75,258/- to XYZ and labour respectively on 01/04/2009 and on the said date, there was negative cash balance as per cash book found during the course of survey and therefore, unaccounted cash not reflected in the books of account was spent by the assessee and which has been brought to tax u/s 69C of the Act. The same has been denied by the assessee for varied reasons in terms of reversal of entries pertaining to earlier year, wrong entry made by the accountant, rough cash book not actual cash book, insufficient cash balance, ledger accounts and books of accounts not been disputed and been accepted by the AO.

14. To begin with, one of the explanations offered by the assessee, which we found relevant to examine, relates to insufficient cash balance even as per the cash book so found during the course of survey and in absence of requisite cash in hand, the question of incurrence of the expenditure doesn't arise for consideration and that too, under the deeming provisions of Section 69C.

15. Section 69C provides that where in any financial year, an assessee has incurred any expenditure and he offers no explanation or the explanation so offered is not found satisfactory, the amount of expenditure so incurred may be deemed to be the income of the assessee for such financial year. The said provisions came up for consideration before the Hon'ble Delhi High Court in case of **CIT vs Lubtech India Ltd** (*supra*) wherein relevant facts were that basis two sheets recovered during the course of search, the Revenue held that the assessee has incurred expenditure mentioned in those sheets and which was challenged by the assessee and the matter, thereafter, reached before the Hon'ble Delhi High Court, on appeal by the Revenue, and on examination of provisions of section 69C, it was held by the Hon'ble High Court that what is postulated in section 69C is that the assessee must have incurred the expenditure and only then, in terms of explanation regarding source of such expenditure not found satisfactory, the addition can be made. It was held in that case that there was nothing to show that the expenditure was in fact incurred by the assessee, that the assessee had denied having incurred the expenditure and had contended that it did not

have that kind of money, that the Tribunal noted that the Assessing Officer had not made any enquiry whatsoever to find out whether such expenditure was actually incurred by the assessee and since a part of the expenditure related to advertisements in newspapers, it could have been easily verified by the Assessing Officer, but he did not do so and it was accordingly held that since there is nothing on record to show that the expenditure was actually incurred by the assessee nor did the Assessing Officer take any action to find out whether the expenditure was actually incurred or not, the order of the Tribunal was upheld.

16. In the instant case as well, the assessee has denied incurrance of such expenditure. It has been submitted that where as per the cash book, there is cash balance of Rs 101,280/- only as on 01/04/2009, the question of incurrance of expenditure of Rs 75,57,804/- doesn't arise for consideration and infact, no such expenditure has been incurred by the assessee. We find that other than entry in the cash book, which has been disputed by the assessee, there is no further investigation/examination that has been carried out by the AO to bring on record the factum of actual payment and incurrance of expenditure of Rs 75,57,804/-by the assessee. In view of the same, in absence of any material on record to demonstrate that the assessee has incurred the expenditure, we find that there is no justifiable basis to invoke the deeming provisions of section 69C and the addition so made is hereby directed to be deleted. In the result, the ground of appeal is allowed.

17. In Ground No. 2, the assessee has challenged the sustenance of addition of Rs. 1,72,986/- under Section 69C of the Act.

18. Briefly, the facts of the case are that during the course of original assessment proceedings, the AO, on the basis of seized document (pages 43-65 of the document marked as A-1), made an addition of Rs. 32,02,047/- u/s 69C of the Act on account of unexplained expenses incurred by the assessee in terms of payment made to various parties, which, on appeal, was confirmed by Id CIT(A) and thereafter, restored back to the file of the AO by

the Coordinate Bench to examine the additional evidences so submitted by the assessee.

19. In the set-aside proceedings, the AO analysed the seized document pertaining to the assessee so found during the course of search viz-a-viz payment made to the thirteen parties referred in the said document and the additional evidences so submitted by the assessee. It was noticed by the AO that the assessee did not have sufficient cash balance on 02.06.2009, 23.07.2009 and 23.09.2009 in its cash book to make the payments to the parties on these dates and as the assessee could not explain the source of cash with respect these payments totaling to Rs. 1,72,986/-, the additions were restricted to Rs. 1,72,986/- as against the original addition of Rs 32,02,047/- which was challenged in appeal before the Id CIT(A).

20. During the appellate proceedings, the Id CIT(A) held that the assessee did not give any plausible explanation to counter the arguments of AO and in view of the same, the addition of Rs. 1,72,986/- so made by the AO was confirmed.

21. Before us as well, nothing has been brought on record to explain the source of cash with respect these payments of Rs. 1,72,986/-. In view of the aforesaid facts and circumstances of the case, we don't see any infirmity in the action of the lower authorities as the factum of the expenditure having been incurred in cash has not been disputed by the assessee and in absence of adducing necessary evidence in support of source thereof, the addition so made is hereby confirmed. In the result, the ground of appeal is dismissed.

22. In Ground No. 3, the assessee has challenged the addition of Rs. 56,674/- under section 68 of the Act.

23. Briefly, the facts of the case are that during the course of original assessment proceedings, the AO observed that the assessee has shown receipt of Rs. 56,674/- in his capital account from Birla Sun Life and the assessee was asked to furnish documentary evidence to explain the nature and source of such receipt. However, the assessee failed to file any

documentary evidence and the addition was made under section 68 of the Act which on appeal, was restored by the Coordinate Bench to the file of the AO along with other matters for fresh consideration.

24. In the set-aside proceedings, the AO held that the assessee has failed to produce any additional evidence and addition of Rs 56,674/- was reiterated as per the original assessment order. Before the Id CIT(A), no submission were made nor any evidence produced and the addition of Rs. 56,674/- u/s 68 of the Act made by the AO is confirmed.

25. Before us as well, nothing has been brought on record to explain the nature of receipts from Birla Sun life in terms of maturity proceeds/surrender value of some insurance policy or mutual fund units initially bought by the assessee and how and under what provisions, the same are exempt in the hands of the assessee. In view of the aforesaid facts and circumstances of the case, we don't see any infirmity in the action of the lower authorities as the factum of the receipt has not been disputed by the assessee and in absence of adducing necessary evidence explaining the nature and non-taxability thereof, the addition so made is hereby confirmed. In the result, the ground of appeal is dismissed.

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

27. Now, we shall deal with ITA No. 728/Chd/2019 for the A.Y. 2014-15 wherein assessee has raised the following grounds of appeal:

1. *"That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in upholding an addition of Rs 19,78,901/- made by treating part of the purchases a bogus. The addition so made is absolutely illegal and not sustainable in the eyes of law.*
2. *That in the facts and circumstances of the case the Ld Commissioner of Income Tax (Appeals) is not justified in upholding the addition of Rs 32,700/- made on account of expenditure outside the books of accounts. The addition so made is not sustainable in the eyes of law.*
3. *That in the facts and circumstances of the case the Ld Commissioner of Income Tax (Appeals) is not justified in upholding an addition of Rs 1,00,00,000/- under section 68 of the Income tax Act."*

28. Briefly the facts of the case are that the assessee filed its return of income on 30/11/2014 declaring total income of Rs. 21,87,640/- which was selected for limited scrutiny under CASS for the reason that there were large increase in sundry creditors against reduction in business income as compared to preceding year and secondly, there were higher turnover reported in service tax return as compared to ITR. Thereafter, notice under section 143(2) and 142(1) were issued and after calling for necessary information/documentation, the assessment proceedings were completed at an income of Rs. 141,99,241/- as against the returned income of Rs 21,87,640/- which, on appeal, has been sustained by the Ld. CIT(A) and against which, the assessee is in appeal before us.

29. In Ground No. 1, the assessee has challenged the sustenance of addition of Rs. 19,78,901/- by the Ld. CIT(A).

30. In this regard, briefly the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has made purchases from Shri Sunil Kanwar, Prem Kapila and Yograj and the outstanding payments have been shown under sundry creditors in the books of account of the assessee. In this regard, after calling for the information/documentation from the assessee and issuance of notice under section 133(6) to these persons which remained un-complied with, the AO issued a show cause asking the assessee to file documentary evidence by way of purchase bills, M Forms, proof of delivery by vehicles and the assessee was asked to explain as to why the purchases made from these persons may not be treated as bogus purchases and addition of Rs. 15,32,480/- be not made.

31. In response, the assessee submitted that it had made purchases of Rs. 4,35,486/- from Sunil Kanwar, Rs. 4,67,535/- from Prem Kapila and Rs. 6,29,459/- from Yograj. It was further submitted that assessee has maintained a system wherein as and when the material is received from any of suppliers, it is entered in the register and payment is also made on the basis of such register. No other bills / voucher are being maintained in respect of material

sand, grit and stone. All these materials have been received at different construction sites and as such, no bogus purchases are made or entered in the purchase register which has already been submitted earlier.

32. The submissions so filed by the assessee were considered but not found acceptable to the AO. As per the AO, M Form is necessary in the state of Himachal Pradesh to affect of sale of sand, grit and stone which has not been submitted by the assessee. Further, merely depicting cash payment in the ledger will not prove that the expenses were actually incurred, the assessee has also not produced these persons/ supplied information, no confirmations has been submitted from these persons. The assessee was also required to prove the nature of work done and the end use of stone, grit etc. to which no submissions were filed by the assessee and it was accordingly held that the assessee has failed to discharge the onus cast on it with regard to the genuineness of the purchases so made from these parties and the purchases so claimed were treated as bogus purchases and addition of Rs. 19,78,901/- was made which, on appeal, has been confirmed by the Ld. CIT(A) and against which, the assessee is in appeal before us.

33. During the course of hearing, the Ld. AR submitted that from all the three parties under consideration, the assessee had purchased the grit, sand and stone. The modus operandi being followed by the assessee was that whenever such goods were received, the same were entered in the register kept for the said purpose and against the same, payments in cash were made to these people. The Id. Assessing officer disallowed the same on the basis that no bills, vouchers, M forms etc. were placed on record during the course of assessment proceedings which has been sustained by the Id CIT(A). It was submitted that the assessee is engaged in the business of construction of flats, etc and for execution of work contracts, sand, grit and stones are essential requirement. It was submitted that the assessee has duly disclosed revenues from sale of flats amounting to Rs 1,51,97,227/- and closing stock of material and work-in-progress of Rs 4,66,91,504/- and there are opening stock of material and work-in-progress of Rs 3,42,39,713/- and total purchases during the year totalling to Rs 1,62,92,289/- which has not been disputed by

the AO except for the purchases of Rs 15,32,480/- from the aforesaid three persons and even in respect of these purchases, the Id. A.O. has not disbelieved the quantum of expenditure incurred in respect of the purchase of sand, grit and stones. The only issue weighed with her for making the said disallowance was that supporting evidence in respect of bills, vouchers, M forms etc were not made available by the assessee. In that regard, it is pertinent to mention that these people are in fact truck drivers who get consignment on their way back and payment is accepted by them only in cash. If material is required, the same is made good, but the vouchers in respect of the same are not issued. Just because vouchers have not been issued, the same does not ipso facto lead to the conclusion that no purchases had been made from them. Perusal of the copies of accounts of all these three persons would go to reveal that throughout the year, purchases had been made and against which payments had also been made. It was submitted that the factum of transfer and user of the material has not been disputed and moreover, against the purchases of Rs. 15,32,480/- booked from them, disallowance of Rs. 19,78,901/- has been made which is absolutely illegal and uncalled for as detailed vide para 5.3 of the assessment order, total purchases of Rs. 15,32,480/- had been made from these persons. It was accordingly submitted that the necessary relief be provided to the assessee by deleting the addition so made and sustained by the Id CIT(A) and any other relief which the Bench deem fit and proper in the facts and circumstances of the case.

34. Per contra, the Ld. DR submitted that the assessee has failed to produce documentary evidence in support of these purchases coupled with the fact that the payments were made in cash lead to the conclusion that the assessee has failed to discharge the onus with regard to the genuineness of the purchases so made from these persons and just because these purchases related to the construction business of the appellant does not absolve him to satisfy the genuineness of the purchases which have been claimed as business expenses during the year. It was accordingly submitted

that addition have been rightly made by the AO and confirmed by the CIT(A).

35. We have heard the rival contentions and perused the material available on record. We find that the assessee has tried to explain that given the nature of its construction business, it maintains a purchase register and as and when the material is received, the same is recorded and the payment is generally made in cash. However, as rightly pointed out by the AO, we find that the entry in the purchase register is not sufficient and the assessee must come forward and submit appropriate documentation in terms of purchase bills, M Forms, proof of delivery by vehicles, confirmation, etc more so where the assessee is claiming regular purchases from these persons at regular intervals throughout the year as evident from the ledger placed on record. Therefore, we confirm the findings of the lower authorities as the assessee has failed to discharge the onus cast on it with regard to the genuineness of the purchases so made from these parties. However, the disallowance is restricted to the extent of purchases shown from these persons amounting to Rs 15,32,480/- as against the figure of Rs 19,78,901/- so considered by the AO. The ground of appeal is thus partly allowed.

36. In Ground No. 2, the assessee has challenged the sustenance of addition of Rs. 32,700/- under Section 69C of the Act.

37. In this regard, briefly the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has shown an amount of Rs. 32,700/- towards purchases made from M/s Khanna Brothers shown under the head "sundry creditors". On perusal of the purchase bill, it was noted that the payment has been made in cash and the assessee was directed to provide the necessary explanation as to why the said payment may not be treated as expenditure outside the books of account.

38. In response, the assessee submitted that he has made purchases amounting to Rs. 32,700/- from M/s Khanna Brothers and the amount has

been paid during the subsequent F.Y. 2014-15 relevant to A.Y. 2015-16 and the amount has been paid from day to day cash in hand and no payment is made out of the books. The reply so filed by the assessee was considered but not found acceptable to the AO. As per the AO, as the bill number 1766 of M/s Khanna Brothers dt. 26/03/2014, it shows that the cash payment has been made therefore, he made an addition of Rs. 32,700/- under Section 69C as unexplained expenditure outside the books of accounts which on appeal has been confirmed by the Ld. CIT(A) against which the assessee is in appeal before us.

39. During the course of hearing, the Ld. AR submitted a perusal of the copy of account of M/s Khanna Bros available on record would go to reveal that though, purchases had been made in the financial year relevant to impugned assessment year, no corresponding payment was made during the year and as such the same was standing as credit in the books of the assessee. It was submitted that the payment has been made in the subsequent financial year and that too, from known sources and mere fact that cash payment has been made cannot be a basis for disallowance even in the subsequent assessment year given the business expediency requiring the assessee to make such cash payment. As no payment was made, no question of treating the same as unexplained expenditure within the meaning of Section 69C of the Income Tax Act, 1961 arises for consideration and it was submitted that the addition so made may be ordered to be quashed or any other relief be given which the Bench deems fit and proper in the facts and circumstances of the case.

40. Per contra, the Ld. DR submitted that the assessee has failed to discharge the onus with regard to the genuineness of the purchases and further cash payment has been made as mentioned on the purchase bills and no source of the same was explained by the assessee. He accordingly supported the order and the findings of the lower authorities.

41. We have heard the rival contentions and perused the material available on record. The undisputed facts are that the assessee has made

certain purchases from M/s Khanna Brothers worth Rs 32,700/- as per the bill number 1766 dt. 26/03/2014 and the amount has been shown payable under the head "Sundry Creditors". The purchases so made are duly corroborated by the transaction documentation as placed on record and the transaction been duly recorded in the books of accounts, there is thus no basis for holding such transaction as unexplained transaction outside the books of accounts and invocation of provisions of section 69C of the Act. In the result, the addition so made is hereby directed to be deleted and the ground of appeal is allowed.

42. In Ground No. 3, the assessee has challenged the sustenance of addition of Rs. 1.00 Crores under Section 68 of the Act.

43. In this regard, briefly the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has disclosed advances to the tune of Rs. 1,00,00,000/- in its books of account as advances received from the customers under the head "Sundry Creditors". Thereafter, notice under section 133(6) was issued to Shri Jagdish Kumar from whom the assessee has stated to have received the said advance of Rs. 1.00 Crores, however no reply was received from Shri Jagdish Kumar. Thereafter, the assessee submitted that Rs. 25,00,000/- each has been received from four persons which belongs to the family of Shri Jagdish Kumar and thereafter, the assessee was asked to arrange for the personal disposition of these persons alongwith copies of their bank account and ITR. The assessee subsequently furnished copy of the sale deeds of sale affected during the subsequent F.Y. 2014-15 to Shri Jagdish Kumar and his family members Shri Jainender Singh, Davinder Singh, Rajinder Singh in support of his claim that Rs. 1.00 Crores has been received against the sale of the property to these persons. The AO referred to the sale deed and observed that the sale deed does not contain any details of payment received during the F.Y. 2013-14 from these persons and the assessee was accordingly asked to show cause as to why Rs. 1.00 Crores may not be treated as unexplained cash credit in its books of account.

44. In response the assessee submitted that he has sold four flats to these four persons and copy of the sale deeds have already been attached. It was further submitted that Service tax has already been deposited on the payment so received and the transactions are properly accounted for and duly recorded in the books of account and therefore cannot be treated as unexplained.

45. The reply so filed by the assessee were considered but not found acceptable to the AO. The AO stated that the sale deed submitted by the assessee dt. 25/08/2014 does not have any mention of the amount having been received in F.Y. 2013-14 and besides the sale deed, the assessee has not submitted any other evidence in support of its claim that the amount was received from these persons not has arranged for personal disposition of these persons and thereafter, the amount of Rs. 1.00 Crore received from these persons was treated as unexplained cash credit under section 68 of the Act and addition was made in the hands of the assessee, which, on appeal, has been confirmed by the Ld. CIT(A) and against which, the assessee is in appeal before us.

46. During the course of hearing, the Id AR submitted that the assessee being involved in construction and sale of properties has agreed to sell four flats to Sh. Jagdish Singh, Sh. Rajender Singh, Sh. Jainender Singh and Sh. Devinder Singh for agreed consideration of Rs. 1.20 Crores. All the four persons are real brothers and as such, apart from maintaining separate account of all the persons, joint ledger account depicting the receipt of payment of the same was maintained. This fact was duly made known to the Id. Assessing Officer and the same has been reproduced by her in para 6.2 of the assessment order. Not only that the assessee had placed on record bank statements of these persons and also the four sale deeds which were executed for a sum of Rs.1.20 Crore. It was submitted that along with the same, ledger account for the next year with the sale deeds executed and profit had been booked in the profit/loss account were also placed on record along with the balance sheet of the next financial year. However, the Id. A.O. did not concur with the submissions of the assessee only and only

because in that sale deeds, cheque numbers/details of the payment made were not given. It is pertinent to mention that each and every entry was explained and details of the same are being placed on record person-wise:-

Sr. No.	Name of the person(s)	Detail of the payments	Cheque No.	Amount	Total
i.	Jagdish Singh	11/07/2013	550779	5,00,000.00	30,00,000.00
		29/11/2013	550780	10,00,000.00	
		29/11/2013	550781	4,10,000.00	
		30/11/2013	792121	5,90,000.00	
		27/08/2014	792125	5,00,000.00	
ii.	Devinder Singh	05/07/2013	146002	5,00,000.00	30,00,000.00
		29/11/2013	146004	4,00,000.00	
		29/11/2013	146003	10,00,000.00	
		30/11/2013	796562	6,00,000.00	
		27/08/2014	146008	5,00,000.00	
iii	Janender Singh	05/07/2013	166953	5,00,000.00	30,00,000.00
		29/11/2013	166955	4,00,000.00	
		29/11/2013	166956	10,00,000.00	
		30/11/2013	687401	6,00,000.00	
		27/08/2014	166960	5,00,000.00	
iv	Rajender Singh	28/05/2013	090701	1,00,000.00	30,00,000.00
		28/05/2013	090702	1,00,000.00	
		28/05/2013	090703	1,00,000.00	
		28/05/2013	090704	1,00,000.00	
		28/05/2013	090705	1,00,000.00	
		29/11/2013	005353	3,05,000.00	
		29/11/2013	005354	10,00,000.00	
		30/11/2013	796301	6,95,000.00	
		27/08/2014	005357	5,00,000.00	

47. It was submitted that copies of the bank accounts of the all these persons till the date of execution of the sale deeds are also being placed on record along with the sale deed and a perusal of the same would go to reveal that each and every entry has been duly tallied and the addition has been made only for the sake of making addition. The assessee had received advances qua sale of four residential houses, registration for which had been done and the last payments made by these persons of Rs.5,00,000/- each duly reconciled with the date of registration of sale deeds. It was submitted that as the advance sale consideration has illegally been treated as unexplained cash credit, the same may kindly be deleted as profit has been booked and offered for taxation as is evident from the audited P & L Account of the subsequent financial year 2014-15 relevant to assessment year 2015-16.

48. Per contra, the Ld. DR submitted that the assessee has not filed any documentary evidence to prove that the amount of Rs 1 crores was received against sale of property as on 31/03/2014 from these four persons. Even

otherwise, the assessee has failed to prove the genuineness and credit worthiness of these four persons from whom the advances is said to have been received by the assessee. It was accordingly submitted that the addition has been rightly made by the AO and confirmed by the Ld. CIT(A).

49. We have heard the rival contentions and perused the material available on record. The assessee has explained that the amount has been received as advance during the year through normal banking channel against proposed sale of four flats to four persons, namely Mr Jagdish and three of his family members and that the sale deeds in respect of these flats have been executed (and placed on record) in the subsequent financial year on receipt of the remaining consideration. It has been explained that total consideration for each flat was agreed for Rs 30 lacs and Rs 25 lacs was received in advance during the year and remaining Rs 5 lacs was received in the subsequent financial year. In other words, the total consideration for all four flats was agreed at Rs 1.20 crores and Rs 1 crores was received in the current financial year and remaining Rs 20 lacs was received in the subsequent financial year. It has been explained that all transactions in the current financial year as well as in the subsequent financial year are through normal banking channels and details thereof have been placed on record along with copy of bank statements of these four persons as well as that of the assessee. In terms of accounting treatment, it has been explained that Rs 1 crores has been shown as advance received from the customers during the year and in the subsequent financial year, the advance so received has been adjusted against the sale consideration and the whole of the amount of Rs 1.20 crores has been shown as revenues in the profit/loss account and tax has been duly paid thereon and the ledger account for the current financial year as well as subsequent financial year showing the receipt of advance and adjustment thereof against sales effected in the subsequent financial year has been placed on record. Nothing has been brought on record to rebut the explanation and documentation placed on record. The sale deeds have been placed on record and examined by us and we find that it clearly talks about the consideration of Rs 30 lacs having been

discharged prior to execution of the sale deed. The mere fact that the details of individual payments have not been specified therein cannot be held against the assessee and bring effectively whole of the sale consideration to tax in the current year where the same has already been offered to tax in the subsequent year. In light of the aforesaid, we are of the considered opinion that there is no justifiable basis in making addition of Rs 1 crores invoking provisions of Section 68 in the instant case as we find the explanation of the assessee reasonable, being receipt of advance from specified customers against sales effected and offered to tax in the subsequent financial year, as duly explained and supported by corroborate documentation which has been placed on record and in absence of any contrary material brought on record. In the result, the addition so made is hereby directed to be deleted and the ground of appeal is allowed.

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

51. In the result, both the appeals filed by the assessee are partly allowed in light of aforesaid directions.

Order pronounced in the open Court on 06/12/2024.

Sd/-
परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar