

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

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

आयकर अपील सं./ITA. No. 721 to 727/JPR/2023
निर्धारण वर्ष/Assessment Years : 2015-16 to 2021-2022

Shri Chatru, Nimod, Malarana Dunger, Sawai Madhpur.	बनाम Vs.	The DCIT, Central Circle, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BUVPC 1977 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri Tarun Mittal, CA &
Shri Harshit Agarwal, CA
राजस्व की ओर से/ Revenue by : MS Alka Gautam , CIT

सुनवाई की तारीख/ Date of Hearing : 23/10/2024
उदघोषणा की तारीख/Date of Pronouncement : 26/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are seven appeals filed by the assessee which are filed against the respective order of the Learned Commissioner of Income Tax (Appeal)- 2, Udaipur [for short CIT(A)] passed on dates as mentioned here in below for the assessment years mentioned as tabulated here in below which in turn arises from the order passed by the ACIT, Central Circle, Kota under the provision

of Income tax Act, 1961 (in short 'Act') and dated referred here in below:

Asstt. Year	Appeal No.	Reference to the dated of order of the Id. CIT(A)	Reference to the order of the Id. AO date and section under which the order is passed	
2015-16	721/JPR/2023	29.09.2023	30.03.2022	153A
2016-17	722/JPR/2023	29.09.2023	29.03.2022	153A
2017-18	723/JPR/2023	29.09.2023	29.03.2022	153A
2018-19	724/JPR/2023	29.09.2023	29.03.2022	153A
2019-20	725/JPR/2023	29.09.2023	29.03.2022	153A
2020-21	726/JPR/2023	30.09.2023	29.03.2022	153A r.w.s 143(3)
2021-22	727/JPR/2023	30.09.2023	29.03.2022	143(3) r.w.s. 153B(1)(b)

2. As the issues involved in the present appeals are common and inextricably interlinked or in fact interwoven as is evident from the above chart. Both the parties heard together and are disposed off by this common order.

3.1 In ITA No. 721/JPR/2023 the assessee has raised following

grounds:-

“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the order u/s 153A of the IT Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 153A being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the Assessment Order u/s 153A without obtaining proper approval, as mandated u/s 153D of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. The entire assessment order deserves to be quashed on grounds of this infirmity of law.

3. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 68 of the IT Act, 1961 in respect of business income of Rs. 1,40,500/- declared by the assessee and invoking the provisions of section 115BBE for taxing the same. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

4. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO in not granting exemption of agricultural income to the extent of Rs. 1,21,500 out of the total agricultural income of Rs. 1,85,500 declared by the Assessee. The action of the Id. CIT(A) Is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 1,21,500.

5. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 115BBE of the IT Act, 1961 for levy of tax on the addition of Rs. 1,21,500. The action of the Id. Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

6. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.”

3.2 In ITA No. 722/JPR/2023 the assessee has raised following

grounds:-

"1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the order u/s 153A of the IT Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 153A being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the Assessment Order u/s 153A without obtaining proper approval, as mandated u/s 153D of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. The entire assessment order deserves to be quashed on grounds of this infirmity of law.

3. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 68 of the IT Act, 1961 in respect of business income of Rs. 1,42,500/- declared by the assessee and invoking the provisions of section 115BBE for taxing the same. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

4. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO in not granting exemption of agricultural income to the extent of Rs. 1,26,200 out of the total agricultural income of Rs. 1,90,500 declared by the Assessee. The action of the Id. CIT(A) Is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 1,26,500.

5. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 115BBE of the IT Act, 1961 for levy of tax on the addition of Rs. 1,26,500. The action of the Id. Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

6. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing."

3.3 In ITA No. 723/JPR/2023 the assessee has raised following grounds:-

“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the order u/s 153A of the IT Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 153A being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the Assessment Order u/s 153A without obtaining proper approval, as mandated u/s 153D of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. The entire assessment order deserves to be quashed on grounds of this infirmity of law.

3. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 68 of the IT Act, 1961 in respect of business income of Rs. 1,48,500 declared by the assessee and invoking the provisions of section 115BBE for taxing the same. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

4. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO in not granting exemption of agricultural income to the extent of Rs. 1,15,200 out of the total agricultural income of Rs. 1,95,200 declared by the Assessee. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 1,15,200.

5. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 115BBE of the IT Act, 1961 for levy of tax on the addition of Rs. 1,15,200. The action of the Id. Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

6. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.”

3.4 In ITA No. 724/JPR/2023 the assessee has raised following grounds:-

“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the order u/s 153A of the IT Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 153A being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the Assessment Order u/s 153A without obtaining proper approval, as mandated u/s 153D of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. The entire assessment order deserves to be quashed on grounds of this infirmity of law.

3. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 68 of the IT Act, 1961 in respect of business income of Rs. 1,49,500 declared by the assessee and invoking the provisions of section 115BBE for taxing the same. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

4. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO in not granting exemption of agricultural income to the extent of Rs. 1,18,200 out of the total agricultural income of Rs. 1,98,200 declared by the Assessee. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 1,18,200.

5. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of

section 115BBE of the IT Act, 1961 for levy of tax on the addition of Rs. 1,18,200. The action of the Id. Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

6. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.”

3.5 In ITA No. 725/JPR/2023 the assessee has raised following grounds:-

“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the order u/s 153A of the IT Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 153A being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the Assessment Order u/s 153A without obtaining proper approval, as mandated u/s 153D of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. The entire assessment order deserves to be quashed on grounds of this infirmity of law.

3. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 68 of the IT Act, 1961 in respect of business income of Rs. 1,10,500 declared by the assessee and invoking the provisions of section 115BBE for taxing the same. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

4. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO in not granting exemption of agricultural income to the extent of Rs. 3,09,700 out of the total agricultural income of Rs. 4,05,700 declared by the Assessee. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case Relief may please be granted by deleting the addition of Rs 3,09,700.

5. In the facts and circumstances of the case and in law, Id CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 115BBE of the IT Act 1961 for levy of tax on the addition of Rs 3,09,700. The action of the id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

6. In the facts and circumstances of the case, Id. CIT(A) has erred in confirming the action of the Id. AO who has made an addition of Rs. 20,699 u/s 56(2)(x) of Income Tax Act, 1961. The action of the Id. Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting such addition of Rs. 20,699.

7. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.”

3.6 In ITA No. 726/JPR/2023 the assessee has raised following grounds:-

“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the order u/s 153A of the IT Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 153A being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the assessment order u/s 153A without obtaining proper approval, as mandated u/s 153D of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. The entire assessment order deserves to be quashed on grounds of this infirmity of law.

3. In the facts and circumstances of the case and in law. Id. CIT(A) has erred in confirming the action of the Id. AO in passing the assessment order without having Document Identification Number (DIN) on the same. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire assessment order being invalid.

4. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in adding a sum of Rs. 95,89,000 as unexplained money invoking the provisions of section 69A of the IT Act. 1961. The action of the Id. CIT(A) is illegal, unjustified,

arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition of Rs. 95,89,000.

5. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in Invoking the provisions of section 115BBE of the IT Act, 1961 for levy of tax on the addition of Rs. 95,89,000. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 1158BE of the IT Act, 1961.

6. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in adding a sum of Rs. 25,481 being interest income on seized cash. The action of the Id. CIT(A) is illegal, unjustified, arbitrary. and against the facts of the case Relief may please be granted by deleting the addition of Rs. 25,481.

7. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 68 of the IT Act, 1961 in respect of business income of Rs. 1,55,400 declared by the assessee and invoking the provisions of section 115BBE for taxing the same. The action of the Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the action of the Id. AO in invoking the provisions of section 115BBE of the IT Act, 1961.

8. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO has not granted exemption of agricultural income to the extent of Rs. 2,92,500 out of the total agricultural income of Rs. 4,42,500 declared by the assessee. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 2,92,500.

9. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO has erred in invoking the provisions of section 115BBE of the IT Act, 1961 for levy of tax on the addition of Rs. 2,92,500. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the It Act, 1961.

10. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.”

3.7 In ITA No. 727/JPR/2023 the assessee has raised following

grounds:-

“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the order u/s 153A of the IT Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 153A being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in passing the Assessment Order u/s 153A without obtaining proper approval, as mandated u/s 153D of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. The entire assessment order deserves to be quashed on grounds of this infirmity of law.

3. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO of adding a sum of Rs. 2,54,810 being interest income on seized cash. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 2,54,810.

4. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 68 of the IT Act, 1961 in respect of business income of Rs. 1,83,300 declared by the assessee and invoking the provisions of section 115BBE for taxing the same. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

5. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO in not granting exemption of agricultural income to the extent of Rs. 2,35,400 out of the total agricultural income of Rs. 3,85,400 declared by the Assessee. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 2,35,400.

6. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 115BBE of the IT Act, 1961 for levy of tax on the addition of Rs. 2,35,400. The action of the Id. Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the provisions of section 115BBE of the IT Act, 1961.

7. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.”

First, we take the appeal of the assessee in ITA No. 726/JPR/2023

4. Succinctly, the fact as culled out from the records is that G.R.P Thana has seized cash amounting to Rs.95,89,000/- from train no. 14710 at platform no.4 of Kota railway station under section 102 of CRPC on 27.02.2020 from Shri Chatru Lal S/o Sh. Birbal Meena resident of Nimod, Tehsil- Malarna Dungar, District- Sawai Madhopur, Rajasthan and Shri Ramavatar S/o Sh. Ram Karan Meena, resident of Khat kalan, Tehsil & District - Sawai Madhopur, Rajasthan who were travelling on seat no.66 and 67 of coach no. S-7/Since Sh Chatru Lal Meena was unable to explain the source of cash found, the SHO, GRP Thana, Kota has intimated to IT Department.

4.1 Subsequently, warrant of authorization was obtained u/s 132A of the IT Act from the Pr. DIT (Inv.), Rajasthan, Jaipur and cash of Rs. 95,89,000/- was requisitioned from SHO, GRP Thana, Kota. Consequent to cash seizure action, the case of the assessee was centralized to Central Circle, Kota by the Principal

Commissioner of Income-tax, Udaipur vide his office dated 19.08.2021.

4.2 The assessee is an individual and derives income from sale of milk and agricultural income. Notice u/s 153A of the Act was issued to the assessee on 15.12.2021 which was duly served to the assessee through ITBA Portal. In compliance with notice issued u/s 153A, the assessee has furnished his return of income on 18.02.2022, declaring total income of Rs. 1,55,400/- and agricultural income of Rs. 4,42,500/-. Earlier the assessee had filed ITR u/s 139 on 31.12.2020 declaring total income of Rs. 1,55,400/ and agricultural income of Rs.4,42,500/- There is no difference between ITR filed u/s 153A & 139 of the Act.

4.3 As regards the seizure of cash amounting to Rs. 95,89,000/- from train no.14710 at platform no.4 of Kota railway station under section 102 of CRPC on 27.02.2020 from Shri Chatru Lal who were travelling on seat no.66 and 67 of coach no S-7. Since Shri Chatru Lal Meena was unable to explain the source of cash found, the SHO, GRP Thana, Kota has seized the cash of Rs. 95,89,000/- and intimated to IT Department.

4.4 In order to verify the source of cash seized by the GRP, Thana, summons u/s 131(1A) of the LT Act, 1961 were issued by

the ADIT(Inv.), Kota on 04.03.2020 fixing the date of hearing on 11.03.2019 to Shri Chatru Lal Meena and Shri Ramavtar Meena. In response to the summon Shri Chatru Lal Meena sought adjournment and the case was adjourned for 18.03.2020 and again for 25.03.2020. Subsequently, the office of department was closed on 22-March, 2020 due to declaration of complete lockdown by the Hon'ble Prime Minister. As per the direction of CBDT vide Central Action Plan for the first quarter of FY 2020-21 dated 08 May 2020, no communication could be made with the assessee. Hence, no enquiries could be made due to COVID lockdown interim action plan 2020-21. On 17.07.2020 Shri Chatru Lal Meena along with Shri Rain Avtar Meena appeared suo-motto and filed a written reply dated 17.07 2020 and statements of Shri Ram Avatar Meena and Shri Chatru Lal Meena was recorded on oath. Shri Ram Avtar Meena stated in his statement that the amount of Rs.95,89,000/- belongs to firm M/s Meena Construction Work in which he is a partner.

In that firm a total of 10 partners are there. The business of the firm M/s Meena Construction Work is to develop rural activities like Pond Constriction, Leveling of land, Medbandi and other construction related work. He has claimed that this amount is

contributed by different persons/partners of the firm M/s Meena Construction Work as capital introduction. He has further stated that Rs.96,00,000/- were carried for purchase of old machinery from Orissa which were required for carrying out execution of works of the firm. This is the contrary version Shri Ram Avtar Meena which was given before Police. He has stated before Police that the cash was brought from Bhubaneswar, Orissa. He further stated that the amount was contributed by the partners of the firm for the purchase of shovel machines like Hydraulic Excavator, JCB and Dumper.

As regards the purchase of machinery from Orissa, Shri Ram Avtar Meena has stated that the son of his brother-in-law, Shri Gulkesh Meena is a Garrison Engineer in Defense Account Services at Bhubaneswar and he assured to help in purchase of old and good quality machines. So, quotation was called from M/s Shree Mahavir Associates, Balasore, Odisha. On comparison of the rates of the machines available in Sawai Madhopur and Jaipur, it was found that the rates of machines at Odisha were reasonable. So, Shri Ram Avtar Meena along with Shri Chatru Lal Meena, Shri Hanuman Prasad Meena and Shri Tulsi Ram Meena planned to go to Odisha.

On 23.02.2020 daughter of Shri Hanuman Prasad Meena was admitted in the hospital. Shri Chatru Lal and Shri Ram Avtar Meena departed for Odisha on 23.02.2020 with an amount of Rs.96.00.000/-. It was further stated by Shri Ram Avtar Meena that after reaching Bhubaneswar, it was informed by Shri Gulkesh Meena, S/o Shri Chatru Lal Meena that the payment of machines cannot be made in cash. Therefore, the machinery could not be purchased, and they returned back with the amount and the amount was seized by G.R.P, Kota on 27.02.2020 while returning from Orissa.

During assessment proceedings, the assessee was asked to submit the details and explain source of the cash seized of Rs 95,89,000/- vide notice u/s 142(1) dated 26.02.2022. In response the assessee submitted his reply on 10.03.2022 but no information regarding the source of the above cash was submitted by the assessee. Further, show cause notice was issued to the assessee vide notice dated 17.03.2021 in compliance to this notice, the assessee submitted reply on 21.03.2022.

In that reply while explaining source of cash seized assessee stated that assessee is a partner in firm M/s Meena Construction Company. Assessee was travelling along with one his partner Ram

Avtar Meena for business purpose and GRP has found Rs. 95,89,000/-cash with assessee and his partner Shri Ram Avtar Meena. The assessee and his partner Shri Ram Avtar Meena have submitted complete details with ADI Kota and details is mentioned as under:-

Source of Cash found of Rs. 95.89 Lakh:

The money found and seized by GRP Kota is belonging to M/s Meena Construction works a partnership firm where there is total 9 partners namely:

1. Ram Avtar Meena
2. Tulsi Ram Meena
3. Hanuman Prasad Meena
4. Chatru Lal Meena
5. Choth Mal Meena
6. Manmohan Meena
7. Shiv Pratap Gadwal
8. Ram Chej Meena
9. Harkesh Meena

The Business of Firm M/s Meena Construction work is to develop rural activities like **पोण्ड निर्माण, भूमि समतलीकरण, मेडबंदी व अन्य कंस्ट्रक्शन वर्क इत्यादी**. Assessee Ram Avtar Meena and other partners have contributed their capital share into firm on different-different times.

The total capital contributed by all the partners in firm on different time is mentioned as under.

Sl no	Name	Amount (Rs.)
1	Ram Avtar Meenu	8,50,000
2	Tulsi Ram Meena	13,00,000
3	Hanuman Prasad Meena	12,00,000
4	Chatru Lal Meena	4,00,000
5	Choth Mal Meena	11,00,000
6	Man Mohan Meena	8,00,000
7	Shiv Pratap Gadwal	20,00,000
8	Ram Chej Meena	9,50,000
9	Harkesh Meena	12,00,000
	TOTAL	98,00,000

Out of above contributions Rs. 96, 00,000/ were carried for purchase of old Machinery,

The copy of partnership deed of firm M/s Meena Construction works is enclosed herewith for your ready reference.

The assessee also placed on record source of income and business activity of all the partners and that brief so submit is reiterated here in below :

1. Ram Avtar Meena: - The Partner is Agriculturist having agriculture land & Bigha situated at village Khat Kalan in which cultivation of Guava fruits and agriculture crops, also engaged in sale of milk & Milk products from own cattle's Copy of Agriculture Land Jamabendi & Khasra Girdowari is enclosed herewith. The amount contributed in the firm M/s Meena Construction Works out of his own accumulated capital and savings earned from agriculture & milk income

2. Tulsi Ram Meena The Partner is Agriculturist having agriculture land 15 Bighas situated at village Shyamoto, Dat Sawal Modhopur in which cultivation of Guava fruits and other agriculture crops, & also engaged in sale of milk and milk product from own cattle's Partner is having own Truck and doing transportation work. The partner is having supervisory work experience of digging of pond, earth work, land leveling etc. under the contractor firm with M/s Ram Babu Meena Contractor of Kheri Kala, Sawai Madhopur. Copy of Agriculture Land Jamabandi & Khasra Girdawari & work experience certificate are enclosed herewith.

The amount contributed in the firm M/s Meena Construction Works out of his own accumulated capital and savings earned from agriculture, transportation & milk income during the last 3 years. The copy of account in the firm is enclosed herewith.

3. Hanuman Prasad Meena: The Partner is Agriculturist having agriculture land 16 Bigha situated at village Dekwo in which cultivation of Guava fruits and other agriculture crops, and doing contractor ship work. The partner is having supervisory work experience of digging of pond, earth work, land leveling under the contractor firm with M/s Shiv Charan Gurjar Village & Post Talawada, Tehsil Khandar Dist Sawai Madhopur Copy of Agriculture Land Jamabandi & Khosra Girdawari & work experience certificate are enclosed herewith.

The amount contributed in the firm M/s Meena Construction Works out of his own accumulated capital and savings earned from agriculture, transportation, construction & milk income during the last 3 years

4. Chatru Lal Meena: The Partner is Agriculturist having agriculture land & Bigha situated of village Nimod Dist. Sawai Madhopur & 4.50 Bigha village Sangrampur Dist Sawai Madhopur and engaged in sale of milk & Milk products from own cattles. Copies of Agriculture Land Jamabandi are enclosed herewith. The amount contributed in the firm M/s Meena Construction Works out of this own accumulated capital and savings earned from agriculture & milk income during the last 3 years.

5. Choth Mal Meena: The Partner is Agriculturist having agriculture land 10 Bigha situated at village Jadawata & Koshall at Sawai Madhopura in which cultivation of Guava fruits and agriculture crops, also engaged in sale of milk & Milk products from own cattles. Copy of Agriculture Land Jamabandi & Khasra Girdawari is enclosed herewith. The amount contributed in the firm M/s Meena Construction Works out of his own accumulated capital and savings earned from agriculture & milk income during the last 3 years.

6. Manmohan Meena: The Partner is Agriculturist having agriculture land 12 Bigha situated at village Bharja Nadi at Sawai Madhopur in which cultivation of Guava fruits and agriculture crops, also engaged in sale of milk & Milk products from own cattles. Copy of Agriculture Land Jamabandi & Khasra Girdawari is enclosed herewith. The amount contributed in the firm M/s Meena Construction Works out of his own accumulated capital and savings earned from agriculture & milk income during the last 3 years.

7. Shiv Prutap Gadwal: - The partner is done graduation in computer application (BCA) in the year 2017. The amount contributed by him in the firm M/s Meena Construction Works out of the amount received from

his father on various occasions. The copy of bank statements of his father and his own bank accounts are enclosed herewith.

8. Ram Chej Meena: The Partner is Agriculturist having agriculture land 10 Bigha situated at village Bandha, Post Lorwara, Tehsil Sowai Madhopur in which cultivation of Guava fruits and agriculture crops, also engaged in sole of milk & Milk products from own cattle. Copy of Agriculture Land Jamabandi & Khusra Girdawari is enclosed herewith. The amount contributed in the firm M/s Meena Construction Works out of his own accumulated capital and savings earned from agriculture & milk income during the last 3 years,

9. Harkesh Meena: The Portner is Agriculturist having agriculture land 10 Bigha situated at village Jadawata & Khat Khurd Tehsil Sawai Madhopur in which cultivation of Guava fruits and agriculture crops, also engaged in sale of milk & Milk products from own cattles. Copy of Agriculture Land Jamabandi & Khasra Girdawari is enclosed herewith. The amount contributed in the firm M/s Meena Construction Works out of his own accumulated capital and savings earned from agriculture & milk income during the last 3 years.

As assessee belong to rural area and there is scarcity if irrigation facility including water for agriculture purpose. To develop the same assessee and his partners decided to join partnership firm. It was further submitted that all the partners of the firms **were ready on come on oath, if required at your end.**

4.5 As regards the contention of the Id. AO about the accrual interest on the said amount seized assessee submitted that he did not have any information /received the interest amount of Rs. 280291/- on the seized amount of its. 2,80,291/- by the GRP on 27/2/2020 hence it was not accounted for by the assessee.

4.6 Ld. AO noted that the reply and evidences filed by the assessee during the post search proceedings and assessment proceedings were not found reliable and he has given his finding which is reiterated herein below ;

i. The claim of purchase of machinery from Bhuwaneshwar looks like an afterthought because the quotation is found to be dated 18/12/2019 while the firm was formed on 17/01/2020, Secondly, the quotation was in the name of Shri Hanuman Meena and not in the name of so called firm M/s Meena Construction Work. The veracity of the quotation is doubtful as the assessee has not submitted any details about the contractor. The Firm has not fulfilled led the requirement of registration under GST, allotment of PAN, opening of bank accounts, which are the basic requirements to start any business. There has been no activity in the firm since inception. It is important to note that the partners of the firm went to purchase of machinery worth Rs. 100 Crore without completing the basic formalities of the firm like registration with the GST Department, allotment of PAN, and opening of Bank Account. The partners tip deed is also found simply notarized and not registered. The firm was formed only one month before the date of cash seizure. During the assessment proceedings, the assessee has not produced any details and documents e PAN, IT returns GST return, bank statements, regular books of accounts related to the firm M/s Meena Construction Works and its partners. Further, opportunity was given to the assessee vide notice also 142(1) dated 26.03.2022. In compliance to this notice also, assessee has failed to provide these details and documents till the time allowed to the assessee. In absence to these documentary evidence, the claim of the assessee that the cash seized of Rs. 95,89,000/- was belongs to the M/s Meena Construction is not reliable

ii. The seized cash was claimed to be contributed by Shri Chatru Lal Meena and other nine persons in cash in the short span of only one month despite the fact that all the alleged ten partners have bank accounts. Further all evidence clearly establishing that they cannot accumulate such huge cash.

iii. As discussed in above paras, all the ten persons failed to file any concrete evidence in support of income earned from agricultural activities as no supporting evidence in the form of sale of agricultural produce expenses incurred on agricultural activities have been filed. No evidence like evidence related to m purchase of cattle, sale of milk and milk products in support of income from sale of milk and milk products have been filed. This once again proves that they have cooked up a

story of partnership venture and that is why they could not produce evidence.

iv. No proper reason has been put forth by the partners in support of keeping heavy cash in hand despite the fact that all are having running bank accounts. No withdrawal from bank accounts prior to infusion of cash in the firm has been noticed.

v. In the first report of SHO, GRP Thana, Kota it was admitted that the amount was brought from Bhuwaneshwar from Sh. Gulkesh Meena, who is the son of Sh. Chatru Lal Meena. However, while giving the statement recorded in the I. T Department, Sh. Ram Avtar Meena told a different story that the money was taken from Sawai Madhopur only. The circumstantial evidence clearly shows that the cash was not moved from Sawai Madhopur but it was sourced from: Bhuwaneshwar.

In view of the above facts and the outcome of the verification of the statements recorded on oath under the Act, documents submitted by the assessee and non submission of complete details, Ld. AO hold that the source of the cash of Rs 95,89,000 which was seized by the GRP Police, remand unexplained in the hands of Shri Chatru Lal Meena and accordingly treated as unexplained money as per provision of section 69A and tax is charged as per provision of section 115BBE of the IT Act.

4.7 Ld. AO also noted that the seizure amount of Rs.95,89,000, as seized by the SHO, GR.P. Thana, was deposited into the SBI Chhawani Chouraba, Kota and a F.D. bearing No. 39220440498 was handed over to the department. The F.D. was submitted to the SBI Branch and D.D. was received from the branch manager on

06-01-2021 for an amount of Ra 98,69,291/- which was deposited into the PD. account on 08.01.2021. On perusal of same, it is noticed that an amount of Rs 2,80,2911- on account of interest was added to the seized amount of Rs.95,89,000 Thus, it is cleared that the assessee has earned interest of Rs.2,80,291/-. But the assessee has not shown this interest income in his total income in ITR filed for the relevant year. Accordingly, the assessee was asked to submit his explanation about why the amount of interest should not be included in his total income for the year under consideration vide notice u/s 142(1) dated 17.03.2022.

In reply thereto, the assessee has stated that he do not have any information on the interest amount of Rs.2,80,291/- on the seized amount of Rs.95,89,000/- by the GRP on 27.02.2020, hence it is not accounted by the assessee. As the assessee has not included the same interest amount of Rs.2,80,291 is treated as unaccounted income of the assessee and the same was calculated as under:-

Cash seized by the GRP & deposited on 27.02.2020 Rs. 95,89,000/-

Cash handed over to the department on 06.01.2021 Rs. 98,69,291/-

Interest for 11 month 27.02.2020 to 06-01/2021 for Rs. 2,80,291/-.

Thus, this interest pertains to two financial years, then the working of interest calculation in two financial years comes ;

Rs. 2,80,291/11=Rs. 25,481/- per month. Accordingly, it is cleared that an amount of Rs 25,481/-(25,481x1) is earned during the FY. 2019-20 relevant to A.Y. 2020-21 & Rs.2,54,810/-(25,481 x 10) is earned during the F.Y. 2020-21 relevant to A.Y. 2021-22.

In view of the above calculation, an amount of Rs. 25481/- was added to the total income of the assessee for the year under consideration.

4.8 For the year under consideration assessee has shown business income of Rs. 1,55,400/- earned from sale of milk. During the assessment proceedings, the assessee was asked to submit detailed evidence in this regard. But the assessee has not submitted any details and evidence which proves that the same income was earned from the sale of Milk. As, the assesses failed to submit details and evidence regarding source of income of Rs. 1,55,400/- the same was treated as unexplained income as per provision of section 68 of the IT Act and tax is charged as per provision of section 115BBE of the IT Act.

4.9 The assessee also offered agricultural income for an amount of Rs. 4,42,500/- when the assessee was asked to submit details of income & expenditure accounts and other relevant documents to justify the agricultural income vide notice u/s 142(1) on 17.03.2022. In response to this notice, the assessee has submitted his reply on 21.03.20/22. In his reply, assessee stated that he owns 12.50 Bighas agriculture land which is fully irrigated and submitted Vikray Parchies of agricultural produce of Rs.4,51,082/-. On perusal of such Vikaray parchee, it is noticed that some Vikaray parchee were not related to assessee. Further, the assessee has not produced any details regarding quantity of production of agricultural crops, expenditure related to agricultural activities, Income & Expenditure account etc to justify the agricultural income. In absence of these details and documentary evidence, the agricultural income shown by the assessee is remains unexplained. Further it is not possible that the assessee has earned such a huge agricultural income of Rs. 4,42,500/- from only 12.50 Bighas agricultural land. As the assessee has not submitted satisfactory reply and relevant documents about earning of agricultural income then the agricultural income is being estimated at the rate of Rs. 12000/- per bigha which comes to Rs. 1,50,000/-

(12000*12.5). Considering these fact, the agricultural income of the assessee was assessed at Rs 1,50,000/-, As, the assessee has shown agricultural income of Rs. 4,42,500/-. Therefore, the excess amount of Rs. 2,92,500/-(442500-150000) was added to the total income of the assessee as per provision of section 68 of the IT Act and tax is charged as per provision of section 115BBE of the IT Act.

4.10 Based on the aforesaid observation the income of the assessee was computed as detailed herein below:

Computation of total income

Total Income as per ITR filed u/s 153A of the Act	Rs.	1,55,400/-
Add: Unexplained money u/s 69A	Rs.	95,89,000/-
- Interest income	Rs.	25,481/-
-Disallowance of agricultural income	Rs.	2,92,500/-
Assessed Total Income	Rs.	1,00,62,381/-
R/o	Rs.	1,00,62,380/-

5. Aggrieved from the above order of the assessment made the 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:

Finding of Ld. CIT(A) on validity of assessment order passed u/s 153A of the Income Tax Act, 1961.

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

The appellant argued that the cash found and requisitioned was belonging to M/s MCW (Meena Construction Works). Therefore, the order passed u/s 153A in the name of the assessee appellant is wrong as there was no jurisdiction for the Id. AO to pass such order u/s 153A against the assessee appellant. The appellant argued that the assessment proceedings against the assessee alone are illegal and without jurisdiction. It is also submitted that warrant of authorisation u/s 132A issued by Pr. DIT-Inv., Jaipur on 11.12.2020 was also in the name of Shri Chatru Lal Meena alone which again is illegal and therefore consequential proceedings deserves to be quashed. The cash was found in the possession of both and therefore, the assessment should have made in the status of AOP.

The AO has discussed the issue in detail. The AO has concluded that the claim of the appellant is not acceptable. Therefore, the argument of the appellant with regard to cash belonging to others is not found to be acceptable. This appeal is not an appeal against the warrant of authorization issued by the Pr. DIT (Inv.). Therefore, the issue raised by the appellant is not relevant and hence cannot be considered. The assessment u/s 153A is to be completed in the case of person against whom the search was conducted. The order passed by the AO is found to be passed as per provisions of Income Tax Act. Therefore, the arguments raised by the appellant are not found to be acceptable.

This ground of appeal is treated as dismissed.”

Finding of CIT(A) on validity of order passed without obtaining proper approval u/s 153D of the Act.

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

The argument of the appellant is not found to be acceptable. Only because copy of approval given by the Addl. CIT / Joint CIT is not provided, existence of approval cannot be disbelieved. The AO has clearly mentioned in the assessment order that Assessment Order is passed after obtaining the approval as mandated u/s 153D of the Act, of the Commissioner of Income Tax(OSD), Central Range, Udaipur vide his office letter No. 1582 dated 29.03.2022. The letter no. and date of the Range Head is also provided in the assessment order. Therefore, the argument of the appellant is not found to be acceptable.

This ground of appeal is treated as dismissed.”

Finding of CIT(A) on addition of Rs. 95,89,000/- on account of unexplained money u/s 69A of the Income Tax Act, 1961.

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

In this case, cash was seized from the appellant and Sh. Ramavtar Meena. The appellant gave a different version before the Police with regard to source of cash and changed its stand before the AO. The AO has examined the claim made. The reply and evidences filed by the assessee during the post search proceedings and assessment proceedings are not found reliable. The reasons are as under

The cash was not belonging to the firm

The claim of purchase of machinery from Bhuvaneshwar was considered as an afterthought by AO because the quotation is found to be dated 18/12/2019 while the firm was formed on 17/01/2020. Secondly, the quotation was in the name of Shri Hanuman Meena and not in the name of so called firm M/s Meena Construction Work. The veracity of the quotation is doubtful as the assessee has not submitted any details about the contractor. The Firm has not fulfilled the requirement of registration under GST, allotment of PAN, opening of bank accounts, which are the basic requirements to start any business. There has been no activity in the firm since inception. It is important to note that the partners of the firm went to purchase of machinery worth Rs. 1.00 Crore without completing the basic formalities of the firm like

registration with the GST Department, allotment of PAN, and opening of a Bank Account. The partnership deed is also found simply notarized and not registered. The firm was formed only one month before the date of cash seizure. During the assessment proceedings, the assessee has not produced any details and documents. i.e PAN, IT return/GST return, bank statements, regular books of accounts related to the firm M/s Meena Construction Works and its partners. In absence to these documentary evidence, the claim of the assessee that the cash seized of Rs. 95,89,000/- was belongs to the M/s Meena Construction is not reliable.

The conclusions drawn by the AO is found to be correct on the facts of the case. Registering a partnership deed with the Registrar of Firms provides legal recognition to the partnership firm. The partnership firm becomes a separate legal entity from its partners and can enter into contracts, sue, or be sued in its own name. In this case, the partnership firm is not registered and hence, it cannot be recognized as a separate legal entity. Therefore, all the partners are directly responsible for their acts and the partnership firm is not considered as a legal entity because of non-registration. As per Income Tax Act also unless the firm gets PAN number of its own, the existence of a firm is not recognized. The AO was correct in drawing conclusion that in the absence of any evidences the cash cannot be considered as belonging to the firm.

In this regard the appellant claimed that with regard to having PAN number, the appellant stated that Section 139A prescribes the list of assesses for whom obtaining PAN are mandatory. The relevant provisions of section 139A are reproduced for ready reference:

139A. (1) Every person being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year, or

.....

who intends to enter into such transaction as may be prescribed by the Board in the interest of revenue, and who has not been allotted a permanent account number shall, within such time, as may be prescribed, apply to the Assessing Officer for the allotment of a permanent account number.

The appellant claimed that as per the above provisions, the firm "MCW is not falling under any of the sub-clauses and therefore, it is not mandatory for obtaining PAN just on entering into partnership.

The argument of the appellant are considered. In the section 139A itself it is mentioned that being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year is required to apply for a PAN number. The so called firm intended to purchase a machinery worth Rs. 95,89,000 which is well above the limit prescribed. Hence, the argument of the appellant in this regard is not found to be acceptable. Further, as discussed in the earlier paragraph the unregistered firm as per Indian Partnership Act does not have any legal recognition.

The appellant argued that "MCW" under the peculiar facts and circumstances, did not feel necessity, in its own wisdom, to open the bank account. Rural economy in India do not have banking priority. It is pertinent to note that all the partners were basically agriculturists. Therefore, adverse inference drawn by Id. AO, again, is unfounded.

The argument of the appellant are not found to be true. The so called partners were having their bank accounts and they decided for not having bank account in the name of firm is not acceptable explanation as in normal case, the partners will be more concerned about safety of amount contributed by them. In normal human probability the partner will be concerned about misappropriation of funds by other partners. Therefore, the explanation is against the human probability is not found to be acceptable. In these circumstances the conclusion drawn by the AO that the explanation furnished is an afterthought is found to be correct

The appellant argued that Ld. AO has alleged that the quotation for the purchase of the machinery was in the name of one of the partners and not in the name of the assessee firm. It is submitted that the enquiries were being made for the purchase of machinery and when the same looked feasible, the partnership firm was formed. It was stated that law nowhere prohibits such enquiry being made in the name of the partner. When the terms and conditions were mutually agreed upon by all the partners, then only further steps were taken for purchase of machinery. The "MCW" after making local enquiries and comparing the quotation received from Bhubaneshwar decided to buy the machinery from Bhubaneshwar. This is the business decision of the "MCW", Id. AO is not expected to interfere and draw adverse conclusions from the business decision of the firm. Reliance is placed on the following judicial pronouncement: S.A Builders Ltd. v. CIT [2007] 158 Taxman 230 (SC)

Once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the

Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximise its profit. The Income- tax Authorities must not look at the matter from their own viewpoint but that of a prudent businessman.

The argument of the appellant are considered and not found to be acceptable. First there is no evidence that the firm was into existence when the quotation was called from Orrisa. Therefore, in the absence of existence of firm, the quotation cannot be for the firm. Secondly, there is no evidence furnished by the appellant to prove that local enquiry was conducted as no evidence of any quotation received from local enquiry was furnished. The reliance by the appellant on the decision of decision of Supreme Court is misplaced as in that case, ownership of cash found was not being examined. The issue which was decided by the Supreme Court was reasonability of expenditure. Therefore, the decision relied upon by the appellant is not found to be acceptable.

The appellant argued that Ld. AO at Page-4 of assessment order has questioned why Shri Gulkesh Meena had not been consulted in advance for cash payment of machinery. He has also doubted the version and has mentioned that a prudent businessman will always ensure the availability of the person to whom they are going to meet. It is submitted that Shri Gulkesh Meena was not consulted because he had nothing to do with the firm and its transactions. Otherwise also, if partners had any doubt, then only, they would have consulted anyone but they were under a bonafide belief that the machinery could be purchased in cash and accordingly carried the cash for purchase of machinery. Apart from this, non-availability of vendor, Shri Ravi Jain, proprietor of Shree Mahaveer Associates is also questioned by Id. AO. It is submitted that Shri Ravi Jain had to leave the town due to last minute emergency on his part. Shri Chatru Lal Meena and Shri Ram Avatar Meena returned without waiting for the vendor to return because they came to know about one legal requirement of cash payment and therefore, there was no reason to wait for the vendor to return.

The appellant further argued that it has been alleged by Id. AO that the partners who had no or limited knowledge had travelled for purchase of the said machinery. It is submitted that the partners, the assessee and Shri Ram Avatar Meena had discussed. elaborately with all the partners of the firm, before going to Bhubaneshwar for purchase of the machinery. The partners which had more knowledge in this regard had also given their input.

It is seen that the AO has examined the arguments of the appellant on the human probability test. The claim of the appellant is not found to acceptable by the AO because of many inconsistencies in

the claim made. The appellant has tried to explain these inconsistencies but the same is not supported by any evidence. Therefore, the assertions made by the appellant are only assertion without any supporting evidence. Therefore, the arguments are not found to be acceptable. Further, for rejecting the claim of the appellant the AO has referred many reasons and these inconsistencies further strengthen the conclusion of the AO. Therefore, the arguments of the appellant are not found to be acceptable.

The seized cash was not found to be belonging to other nine persons-

The AO concluded that the seized cash was claimed to be contributed by Shri Chatru Lal Meena and other nine persons in cash in the short span of only one month despite the fact that all the alleged ten partners have bank accounts. Further all evidence clearly establishing that they cannot accumulate such huge cash.

The AO noted that all the ten persons failed to file any concrete evidence in support of income earned from agricultural activities as no supporting evidence in the form of sale of agricultural produce, expenses incurred on agricultural activities have been filed. No evidence like evidence related to purchase of cattle, sale of milk and milk products in support of income from sale of milk and milk products have been filed. This once again proves that they have cooked up a story of partnership venture and that is why they could not produce evidence.

The AO noted that no proper reason has been put forth by the partners in support of keeping heavy cash in hand despite the fact that all are having running bank accounts. No withdrawal from bank accounts prior to infusion of cash in the firm has been noticed.

The AO also noted that in the first report of SHO, GRP Thana, Kota it was admitted that the amount was brought from Bhuwaneshwar from Sh. Gulkesh Meena, who is the son of Sh. Chatru Lal Meena. However, while giving the statement recorded in the I. T Department, Sh. Ram Avtar Meena told a different story that the money was taken from Sawai Madhopur only. The circumstantial evidence clearly shows that the cash was not moved from Sawai Madhopur but it was sourced from Bhuwaneshwar.

On the basis of facts of the case, the conclusions drawn by the AO are found to be correct as no verifiable evidences furnished by the

appellant or other nine persons which can establish that the cash was generated through agriculture activity or through dairy business by these persons.

The appellant stated that the statements made by the assessee and his partner, Shri Ram Avatar Meena before Police u/s 161 of CrPC Act, 1973 have no evidentiary value. Reliance is placed on the following pronouncement by Hon'ble Supreme Court in the case of Parvat Singh & Ors. vs. State of Madhya Pradesh [Criminal Appeal No 374 of 2020] [PB 420-433].

The reliance placed by the appellant is not found to be relevant as the decision relied upon by the appellant was rendered with respect to criminal proceedings. In the income tax act the statement can be treated as circumstantial evidence. Attention is invited to the decision of Chuharmal v. CIT (1988) 172 ITR 250 (SC) where it was held that the Evidence Act does not apply to proceedings under the Income-tax Act. The Supreme Court pointed out that the rigours of rule of evidence contained in the Evidence Act were not applicable to the Income-tax Act. The appellant could have furnished evidence to prove that the statement recorded by Police was under pressure. However, no evidence is furnished by the appellant. Therefore, the statement can be referred as circumstantial evidence.

On the issue of rejection of evidences furnished with regard to source of cash with respect to agriculture income the appellant argued that evidence of ownership of land were given. With regard to dairy income the appellant stated that expecting formal record in this regard on part of the Id. AO shows his complete ignorance of the way of items sold in rural economy.

The arguments of the appellant were rejected by the AO as no verifiable evidences were provided by the appellant. For claiming agriculture income to be true only ownership of land is not sufficient. The evidences with regard to agricultural operations like seed, ploughing, fertilizers, sowing etc. has to be furnished. The receipt of sale of agriculture produce also need to be produced. However, the appellant has failed to furnish these evidence. The conclusions drawn by the AO with regard to rejecting the claim of agriculture income by these persons is found to be correct on the facts of the case.

The appellant has failed to furnish any evidence with regard to ownership of cattle, sale of milk etc. in support of dairy business income. The claim of the appellant is not acceptable that no evidence is generally kept in the rural economy. The appellant has made a certain claim. To prove the claim it is for the appellant to furnish evidences. Therefore, the claim of the appellant is rightly rejected by the AO with regard to claim of dairy income.

The AO has also discussed that the appellant or these other persons failed to explain reasons for keeping such huge amount of cash with them when they were having bank accounts. The appellant has not explained any justifiable explanation in this regard. Therefore, this the AO was justified in holding that the cash was not belonging to these persons.

The claim of the appellant that the cash was belonging to partnership firm or other nine partners is rejected by the AO. The decision of AO is found to be justified in this order. Further, the appellant has not furnished any evidence to prove that the cash was handed over by these persons to the appellant. In the absence of such evidence being furnished, the AO was justified in making the addition in the hands of the appellant as the cash was found from the possession of the appellant and the appellant failed to prove that the cash was belonging to other persons as claimed by him. Therefore, the arguments of the appellant are not found to be acceptable.

Ignorance of Law is no Excuse

The appellant also argued that because of lack of knowledge by partners the legal formalities as required could not be done by the firm. The argument of the appellant is not found to be acceptable as Ignorance of law is no excuse. The Hon'ble Supreme Court in the case of *The Swadeshi Cotton Mills Co. Ltd. v. Government of U.P.* [1975] 4 SCC 378, held as follows:-

".....But we are in agreement with the High Court on the other two grounds. As mentioned earlier, the impugned assessments were made in 1949. The writ petition was filed in 1956. The explanation given by the petitioner for this long delay is that he did not know the correct legal position and he came to know about the same after the decision of the Allahabad High Court in the Commissioner of Sales Tax, U.P. v. Modi Food Products Ltd. Every individual is deemed to know the law of the land. The courts merely interpret the law and do not make law. Ignorance of law is not an excuse for not taking appropriate steps within limitation. Therefore the argument that the

appellant did not know the true legal position is not one that can be accepted in law.....”.

In view of the above facts and the outcome of the verification of the statements recorded on oath under Income tax Act, documents submitted by the assessee, the AO concluded that the source of the cash of Rs.95,89,000/- which was seized by the GRP Police, remained unexplained in the hands of Sh. Chatru Lal Meena. Therefore, the addition made by the AO in the hands of the appellant is found to be justified and upheld. The appellant has failed to explain the source of cash found from his possession, therefore, the addition made u/s 69A is found to be justified.

This ground of appeal is treated as dismissed.”

Finding of Id. CIT(A) on invoking provisions of section 115BBE of the income tax Act, 1961 on Rs. 98,89,000/-.

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

The appellant argued that the assessee has offered a valid explanation for the cash seized by the Department and therefore, it cannot be termed as unexplained money of the assessee. Once the addition cannot be made u/s 69A, invoking the provisions of section 115BBE is also unjustified.

As discussed in the decision with respect to ground no. 3 of the appeal, the source of cash seized from the possession of the appellant is not found to be explained. Therefore, the addition made by the AO u/s 69A is upheld. The section 115BBE provides machinery of taxation for addition made u/s 68, 69, 69A etc. The AO has applied the section as per provisions of Income Tax Act. The appellant has not pointed out any specific issue with respect to charging of tax as per provisions of 115BBE of the Income Tax Act. Therefore, the decision of the AO in this regard is confirmed.

This ground of appeal is treated as dismissed.

Finding of Id. CIT(A) for the addition of Rs. 25,481/- on account of interest income on the cash seized of Rs. 95,89,000/-.

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

The appellant argued that the assessee has stated the cash seized amounting to Rs 95,89,000 does not belong to him and the same is of his firm, MCW. If the cash does not belong to him, the interest earned on the same amounting to Rs 25,481 is also not related to him and therefore, cannot be taxed in the hands of the assessee.

As discussed while deciding ground no. 3 of this appeal, it is held that the appellant failed to prove that the cash was belonging to the firm. Therefore, the appellant is held to be owner of the cash found. In view of this the appellant is also liable to be taxed on the interest earned from Fix Deposit which is made from the cash found. The argument of the appellant are not found to be acceptable in this regard and rejected.

This ground of appeal is treated as dismissed.”

Finding of Id. CIT(A) on the addition of Rs. 1,55,400/- u/s 68 and invoking provisions of section 115BBE of the Income Tax Act. 1961.

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

In this case, the AO noted that during the year, the assessee has shown business income of Rs. 1,55,400/- earned from sale of milk. During the assessment proceedings, the assessee was asked to submit details/evidences in this regard. But, the assessee has not submitted any details and evidences which proves that the same income was earned from sale of milk. As, the assessee has failed to submit details and evidences regarding source of income of Rs. 1,55,400/- the same is treated as unexplained income of the assessee as per provision of section 68 of the IT Act for the year under consideration.

The appellant argued that that there can be no evidence of owning cattle as in the rural economy, livestock is sold/purchased without

formal bills. Any subsequent addition to livestock by breeding cannot be made available. In addition to the same. there are no bills for selling the milk and other related products.

The appellant has accepted that no evidences were furnished by the appellant for owning of cattle and sale of milk. Any claim made in the return of income is required to be substantiated with the help of supporting evidences. However, the appellant has failed to furnish any evidence with regard to purchase of cattle, evidence of expenditure on maintaining the cattle and also in support of sale of milk. In the absence of any supporting evidences with the appellant with respect to owning of Cattle and sale of milk, the AO was justified in treating the income offered by the appellant from sale of milk as unaccounted income of the appellant.

It is also argued that the said income is already offered for taxation in the return of income by way of sales. Hence, Section 68 per se cannot be invoked.

The income offered in return under a particular head of income needs to be established that the income is belonging to that particular head of income. However, in this case, the claim of the appellant with respect to business income is found to be without any evidence. Therefore, the income cannot be treated as business income. In the facts of the case, the AO was justified in making addition u/s 68 of the Act.

The appellant argued that Section 68 can be invoked where any sum is found credited in the books of accounts maintained by the assessee. In the present case, books of accounts are not maintained by the assessee and accordingly nothing is found credited in the books. Therefore, the very invoking the provisions of section 68 per se is illegal.

The appellant has credited the amount in the return of Income. In this case, the amount is found to be credited in the return of Income. The return of Income is also part of books of account prepared by the appellant. The appellant has failed to explain the source and nature of credit in the books of accounts. Therefore, the AO has rightly made the addition u/s 68 of the Act.

Once the addition u/s 68 is not justified, the very invoking of provisions of section 115BBE is illegal and justified.

In this case, as discussed above, the addition made by the AO is found to be justified u/s 68. The section 115BBE provides machinery to charge tax on the income which is added u/s 68 in the total income of a person. Therefore, invoking of provisions of section 115BBE is found to be as per provisions of Income Tax Act.

The appellant argued that Explanation given by the assessee should be considered objectively before any officer takes a decision to accept it or reject it. The Department cannot act unreasonably and reject the explanation. Before the Department rejects any explanation, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The Department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof. In the absence of something which showed that the "explanation was inherently improbable" the explanation deserves to be accepted. If the explanation was "fairly satisfactory the same deserves to be accepted. All these legal propositions have been propounded by the Hon'ble Apex Court in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112 [PB 29-38].

It is true that before the department rejects any explanation, it must either show an inherent weakness in the explanation or rebut it. As discussed in the aforesaid paragraphs, the inherent weakness in the explanation of the appellant has been pointed out. The appellant's claim of income from dairy is found to be without any evidence. The appellant also accepted the fact that he does not have any evidence. The onus was on the appellant to prove that the claim made in the return of income was correct with the help of evidences. However, no evidence was furnished. Therefore, the AO was found to be justified in rejecting the claim of the appellant with regard to dairy income. In view of these facts, the decision relied upon by the appellant is not found to be applicable on the facts of the case.

In view of the above discussion, this ground of appeal is treated as dismissed."

Finding of Id. CIT(A) for the addition of Rs. 2,92,500/- u/s 68 and invoking provisions of section 115BBE of the Income Tax Act, 1961.

"10.3 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The

contentions/submissions of the appellant are being discussed and decided as under:-

In this case, the AO noted that the assessee has not submitted relevant documents regarding earning of agricultural income. The AO has estimated the agricultural income at the rate of Rs. 12000/- per bigha which comes to Rs. 1,50,000/- (12000 12.5). The assessee has shown agricultural income of Rs. 4,42,500/-. Therefore, the excess amount of Rs. 2,92,500/-(4,42,500-1,50,000) added to the total income of the assessee.

The appellant argued that the ownership of land itself is enough to prove that the assessee earns agricultural income.

For earning agriculture income agriculture operations is equally important in addition to ownership of the land. The appellant has failed to furnish any evidence in support of sale of agricultural produce and expenditure on agriculture operations as noted by the AO. In the absence of any supporting evidences, the AO was justified in estimation of Agriculture Income. The argument of the appellant is not found to be acceptable.

The appellant argued that the area where land of the assessee is situated is a very fertile area and yield is much higher as compared to the other parts of Rajasthan. The agricultural income offered by the assessee is the most reasonable and deserves to be accepted.

The appellant has not furnished any evidence to establish that agriculture income earned by him was more than the estimation made by the AO. In the absence of any supporting documents, the estimation made by the AO is found to be reasonable.

It is argued that provisions of section 68 deems non income to be income. The said income is already offered for taxation in the return of income. Hence, Section 68 per se cannot be invoked.

The income offered in return under a particular head of income needs to be established that the income is belonging to that particular head of income. However, in this case, the claim of the appellant with respect to agricultural income is found to be without any evidence. The AO has partly accepted the claim of the appellant with respect to agriculture income considering the fact that the appellant is owning agriculture land. Therefore, the agriculture income over and above the estimation by the AO cannot be treated as agriculture income. The

remaining amount remains as credited in the return of income whose source and nature of income remain unexplained. In the facts of the case, the AO was justified in making addition u/s 68 of the Act.

It is argued that Section 68 can be invoked where any sum is found credited in the books of accounts maintained by the assessee, in the present case, books of accounts are not maintained by the assessee and accordingly nothing is found credited in the books. Therefore, the very invoking the provision of section 68 per se is illegal.

The appellant has credited the amount in the return of Income. In this case, the amount is found to be credited in the return of Income. The return of Income is also part of books of account prepared by the appellant. The appellant has failed to explain the source and nature of credit in the books of accounts. Therefore, the AO has rightly made the addition u/s 68 of the Act.

Once the addition u/s 68 is not justified, the very invoking of provisions of section 115BBE is illegal and justified.

In this case, as discussed above, the addition made by the AO is found to be justified u/s 68. The section 115BBE provides machinery to charge tax on the income which is added u/s 68 in the total income of a person. Therefore, Invoking of provisions of section 115BBE is found to be as per provisions of Income Tax Act.

In view of the above discussion, these grounds of appeal are treated as dismissed.”

6. As the assessee did not find any favor, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, has filed a detailed written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

“Brief facts of the case are that assessee is a 60 years old individual and is based in Sawai Madhopur, Rajasthan and derives income from sale of milk and agricultural activities. During the year under consideration, the assessee filed his return of income on 31.12.2020 declaring total income of Rs.1,55,400 and agricultural income amounting to Rs 4,42,500 [APB 1]. Assessee is also a partner in the partnership firm, M/s Meena Construction Works. Meena Construction works was formed with an object to carry out rural development activities such as Pond Construction, Levelling of Land, Medbandi and other similar works. For carrying out such construction activities, it was decided to purchase certain machineries, for which enquiry was made and also quotation was received from few firms, of which a firm in Orissa provided most competitive price. Therefore, all the partners of Meena Construction Works contributed their shares of money as mutually agreed upon (which aggregated Rs.95,89,000/-) and assessee and Sh. Ramavtar Meena (another partner of Meena Construction Works) went to Orissa to purchase Machinery. However, after reaching there, it came to their knowledge that the party sending quotation was not available as due to certain last minute emergency he has to move out and that machinery could not be purchased in cash. Therefore, they decided to come back to Sawai Madhopur. On their way back, they were intercepted by GRP at Kota Railway Station and entire Cash of Rs.95,89,000/- as available with assessee and Sh. Ramavtar Meena in two bags was seized by GRP Thana. Also, statements of assessee were recorded. Simultaneously, SHO, GRP Thana, Kota intimated to Income Tax department. Consequently, warrant was issued u/s 132A by Pr. DIT (Inv.), Rajasthan, Jaipur only in the name of assessee (*and not in the name of both persons*) and case of assessee was centralized with Central Circle, Kota. Notices u/s 153A were issued in the name of assessee only. In response to such notices, assessee filed return of Income declaring the income same as Return filed u/s 139. Various details and information as called upon by Id.AO were furnished and assessment was completed after making following additions:

1. Cash found alleged as Unexplained Money u/s 69A	Rs.95,89,000/-
2. Interest Income	Rs.25,481/-
3. Disallowance of Agriculture Income	<u>Rs.2,92,500/-</u>
	<u>Rs.99,06,981/-</u>

Aggrieved of the additions so made, assessee preferred appeal, which was rejected by Id. CIT(A). Present appeal has been filed against order so passed by Id. CIT(A).

With this background, ground-wise submission is made as under:

Ground of Appeal No.1

In this ground of appeal, assessee has challenged the action of Id. CIT(A) in confirming the order passed by Id.AO u/s 153A in the case of assessee.

In this regard, at the outset, as stated above, it is reiterated that assessee is partner in Meena Construction Works, which has in all 10 partners, details of which are as under:

S.No	Name of the Partner
1.	Ram Avatar Meena
2.	Tulsi Ram Meena
3.	Hanuman Prasad Meena
4.	Chatru Lal Meena (Assessee)
5.	Choth Mal Meena s/o Puni Ram Meena
6.	Man Mohan Meena
7.	Radhakishan Meena
8.	Choth Mal Meena s/o Rati Ram Meena
9.	Ram Chej Meena
10	Harikesh Meena

The above partners decided to buy some construction machinery as the first step of starting the business and in the process, through their contacts in Bhubaneswar, they came to know that old second hand Machineries suitable to their purpose was available with certain vendor and quotations were obtained for the purchase of the said machineries. The assessee and one other partner in the firm, Shri Ramavatar Meena took cash from all the partners, being contribution by them as capital and travelled to Bhubaneswar for the purchase of said machinery. Due to non-availability of the vendor from whom the machinery had to be purchased on account of last minute emergency at his end, they had to return back with the cash.

While they were travelling back from Bhubaneswar to Sawai Madhopur, GRP Thana, on 27.02.2020, seized cash amounting to Rs 95,89,000 from both the partners and also intimated to the Income Tax Department. During the course of assessment proceedings, statements of some of the partners were recorded as well notices u/s 133(6) were issued to all of them, who admitted having contributed their share in Meena Construction Works. Still, Id.AO without having any other concrete reason and merely for the reason that formal partnership deed was executed on 17.01.2020 (i.e. just about one

month before the date of seizure of cash) and due certain technical issues (such as not obtaining PAN / not opening of bank account etc.) disbelieved the submission of assessee and treated entire cash found as Unexplained Money of assessee. Your honours would appreciate that a partnership firm can come into existence even with oral understanding between the partners. It is just that in the event of any disputes in future, it becomes difficult to settle the issues in absence of partnership deed that the oral understanding is reduced in writing by way of partnership deed document. In the present case, so far as all the partners admitted being into partnership and admitted having contributed money for purchase of machinery, entire sum of money cannot be treated as belonging to assessee.

It is also a fact noted by GRP itself that there were two separate bags carried by each one. IN the scenario, issuance warrant of authorization u/s 132A by Pr. DIT-Inv., Jaipur in the name of Shri Chatru Lal Meena alone is not in accordance with law and therefore consequential proceedings deserves to be quashed.

Ground of Appeal No.2

In this ground of appeal, assessee has challenged the action of Id.CIT(A) in completing assessment u/s 153A without obtaining approval from appropriate authority as required u/s 153D of the Income Tax Act.

In this regard, at the outset, provisions of section 153D are reproduced for the sake of convenience:

Prior approval necessary for assessment in cases of search or requisition.

153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of [section 153A](#) or the assessment year referred to in clause (b) of sub-section (1) of [section 153B](#), except with the prior approval of the Joint Commissioner:

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner under sub-section (12) of [section 144BA](#).

Thus, as per section 153D, an assessment in search cases is not to be passed by the officer below the rank of Joint Commissioner except with the prior approval of Joint Commissioner. Proviso to this section does provides exception where assessment is to be completed with prior approval of Principal Commissioner or Commissioner u/s 144BA(12). Orders u/s

144BA(12) refer to cases where tax consequences have been determined under the provisions of section XA, i.e. General Anti Avoidance Rules.

It is thus clear that assessment in the present case was to be completed by ACIT after obtaining approval of Joint Commissioner. Whereas, from perusal of Assessment order, it is observed that Id.AO has referred approval as under:

“This Assessment order is passed after obtaining the approval as mandated u/s 153D of the Act, of the Commissioner of Income Tax (OSD), Central Range, Udaipur vide his office letter No. 1582 dated 29.03.2022.”

Since, approval was apparently obtained from Commissioner of Income Tax (OSD) and not from Joint Commissioner as specified u/s 153D. In order to ensure that approval was obtained from appropriate authority, an application was filed by assessee vide letter dated 21.9.2022 (APB 1171-1172) that a copy of approval u/s 153D may be provided. However, no such copy was provided, which only implies that no appropriate approval was obtained by Id.AO. On appeal, when this issue was brought to the notice of Id. CIT(A), he simply relied upon the remarks as available in assessment order that order was passed after due approval.

It is also a settled position of law that mere existence of approval would not suffice, the same has to be after due application of mind and approval granted mechanically vitiates entire assessment proceedings. In this regard, reliance is placed on:

Hon'ble Gujarat High Court in case of The Principal Commissioner of Income Tax vs. Sunrise Finlease (P.) Ltd. vide Tax (Appeal) nos. 936 & 937 OF 2017 [28-11-2017]

Section 153D, read with section 153A of the Income-tax Act, 1961 - Search and seizure – Prior approval - Assessment year 2007-08 - Whether an assessment order under section 153C can be passed by Income Tax Officer only after obtaining prior approval under section 153D of Joint Commissioner in as much as compliance of section 153D requirement is absolute – Held, yes [Paras 9 and 11] [In favour of assessee].

Hon'ble Income Tax Appellate Tribunal, Pune Bench 'B' in case of Akil Gulamali Somji vs. Income-tax Officer, Ward 4(5), Pune vide ITA nos. 455 to 458 (Pune) OF 2010 [30-03-2012]

Section 153D, read with sections 153A, 153B and 153C of the Income-tax Act, 1961 – Search and seizure - Prior approval necessary for assessment - Assessment years 2001-02 to 2004-05- Whether an assessment order under section 153C can be passed by Assessing Officer only after obtaining prior approval under section 153D of

Joint Commissioner inasmuch as compliance of section 153D requirement is mandatory - Held, yes [In favour of assessee]

Ground of Appeal No.3 & 4

In these grounds of appeal, assessee has challenged the action of Id.CIT(A) in confirming the addition of Rs.95,89,000/- made by Id.AO by alleging the cash found from the possession of assessee as his Unexplained Money u/s 69A of the Income tax Act.

In this regard, as stated above, it is reiterated that the assessee, mainly derives income from agricultural activities and selling of milk. The assessee, along with other partners, decided to constitute a partnership firm, M/s Meena Construction Works (MCW). The said partnership firm was formed on 17.01. 2020. Copy of partnership deed enclosed [APB 3-8]

Details of all the partners and their capital contribution in the said firm is as under:

S. No.	Name of the Partner	Amount In Rs	PAN	Address
1.	Ram Avatar Meena	8,50,000	GEXPM4336G	Khat Kalan, Sawai Madhopur, Pa dana, Rajasthan, 322034
2.	Tulsi Ram Meena	13,00,000	ASOPR6320E	Shyamota, Sawai Madhopur, Manipura, Rajasthan, 322027
3.	Hanuman Prasad Meena	12,00,000	ALUPM1369D	Dehakwa, Sawai Madhopur, Rajasthan, 322001
4.	Chatru Lal Meena (Assessee)	4,00,000	BUVPC1977N	Gram Nimod Teh Malarana Dunger, Neemod, Sawai Madhopur, Rajasthan, 322030
5.	Choth Mal Meena s/o Puni Ram Meena	11,00,000	GEXPM4350G	Chota Pada, Jarawata, Sawai Madhopur, Raasthan, 322027
6.	Man Mohan Meena	8,00,000	FPRPM7123D	Bharja Nadi, Sawai Madhopur, Rajasthan, 322024
7.	Radha Kishan Meena	12,00,000	DHBPM5327M	Jola, Sawai Madhopur, Rajasthan,

				322701
8.	Choth Mal Meena s/o Rati Ram Meena	8,00,000	EOEPM7468L	Bagavda, Khijoori, Sawai Modhopur, Rajasthan, 322001
9.	Ramchej Meena	9,50,000	DXGPR3040P	Bandha, Lorwara, Sawai Madhopur, Lorwara, Rajasthan, 322701
10	Harikesh Meena	12,00,000	GEXPM4395M	Bhagwan Shanakar ke Mandir ke paas, Jarawata, Sawai Madhopur, Rajasthan, 322027
	Total	98,00,000		

“MCW’ decided to purchase the old second-hand construction machineries and for the same, the partners of the firm started making enquiries for the purchase of the machineries. Since the partners had good contacts in Odisha, one of the partners, Shri Hanuman Prasad Meena also obtained quotation from Shri Mahaveer Associates situated at Chaudhary Market Complex, Proof Road, Balasore, Odisha for the purchase of machineries like Hydraulic Excavator, JCB and Dumper. Copy of quotation dated 18.12.2019 is enclosed at (APB 9).

It is submitted that the partners of the firm were intending to carry out the business in partnership and were in discussion for the same well before the formal execution of the Partnership Deed. The initial due diligence was started and quotation for machinery was obtained in the second half of Dec-2019. After the initial due diligence, the partners found it a viable proposition and accordingly entered into a partnership *vide* Partnership Deed dated 17.01.2020.

The assessee and one more partner, Shri Ram Avatar Meena decided to travel to Bhubaneshwar. Unfortunately, upon reaching Bhubaneshwar it was discovered that the vendor, Shri Ravi Jain proprietor of Shri Mahaveer Associates from whom the said old second-hand machineries was to be purchased was not available due to last minute emergency. Since the transaction of purchase of machinery did not materialize, the assessee along with other partner, Shri Ram Avatar Meena travelled back on the next day i.e., 26.02.2020. While returning back to Sawai Madhopur, GRP Thana seized cash amounting to Rs 95,89,000 from train no 14710 at platform no 4 from the assessee and other partner, Shri Ram Avatar Meena. GRP Thana after recording the statements on 27.02.2020 [APB 10] and intimated to Income

Tax Department. Thereafter, summons u/s 131(1A) were issued to the assessee by ADIT(Inv.) Kota on 4.3.2020 fixing the date of hearing on 11.3.2020 (erroneously mentioned as 11.3.1019 in Assessment Order). However, adjournment was filed by assessee in response to such summons, which was given upto 25.3.2020. Thereafter, due to COVID breakdown, there was a countrywide lockdown w.e.f. 22.3.2020. On 17.7.2020, assessee suo moto appeared and filed Reply dated 17.7.2020. Also, statements of assessee as well as Sh. Ramavtar Meena were recorded on oath. In such statements complete facts were duly explained by Sh. Ramavtar Meena and it was also clarified that there was no contradiction in statements as given before GRP and before ADIT and basically, their statements were misinterpreted. Also, complete details w.r.t. source of making investment in Meena Construction firm were also furnished. In fact, during assessment proceedings also, it was stated that if Id.AO was not satisfied with the submission made and statement recorded by ADIT (Inv.), direct enquiries may be conducted from all the partners. However, Id.AO did not conduct any single enquiry from any of the partner nor recorded any statements and solely relied upon the statements recorded by GRP and ADIT(Inv.). Your honours would appreciate that before presuming that there was contradiction in the statements (that too without any basis), Id.AO was duty bound to record statements on his own, however no such effort was made by Id.AO and entire assessment was completed within a short span of 1 month, i.e. notice u/s 143(2) was issued on 21.2.2022 and notice u/s 142(1) was issued on 26.2.2022, which was duly complied with. Thereafter show cause notice was issued on 17.3.2022, which was complied with assessee on 21.3.2022 and Assessment order was passed on 29.3.2022.

It is important to note here that Ld.AO, without considering the explanation offered by assessee and without cross verifying the details furnished, assumed the cash as the unexplained money that too only of the assessee whereas money belonged to all the ten partners as per their respective capital contribution and made the additions of entire cash found in the hands of the assessee. On appeal, Id.CIT(A) also confirmed the addition by relying upon the observations of Id.AO. With this background, allegations of Id.AO are dealt with as under:

1. Contrary version in Statements:

It is alleged by Id.AO that statements of assessee as recorded before GRP are in contradiction to the statements recorded during departmental proceedings. In this regard, it is submitted that the assessee and his partner, Shri Ram Avatar Meena were coerced by the GRP. Moreover, assessee being an aged person, could not immediately understood as to why such

sudden action was being taken against them and when it was asked as to from where they were coming with cash, it was simply stated that they were coming from Bhuwneswar. Such statements of assessee were misinterpreted and it was inferred that cash was being brought from Bhuwneswar.

Subsequently, statements of both assessee and Sh. Ramavtar Meena were recorded before the ADIT- Investigation, on oath, wherein it was clarified that the cash they were carrying was taken from Sawai Madhopur only and since deal for purchase of machinery could not be materialize, it was being brought back. It was also explained as to under what circumstances, the statements were given to GRP Police and how they were not interpreted in its true sense. Also, these statements before ADIT- Inv. [APB 11-34] were given on oath by both the partners which have vital evidentiary value. The relevant part of statements of both the partners are as under:

Shri Ram Avatar Meena (Page-5, Question 8)

प्रश्न 8. आपने दिनांक 27.02.2020 को G.R.P. को बताया कि आप यह नकदी bhuvenshwar से लेकर आ रहे हैं। यही तथ्य G.R.P. थाना ने Letter द्वारा हमें बताया है। जबकि अब आप यह बता रहे हैं कि यह राशि आप सवाई माधोपुर से लेकर गये थे। अभी दिये जवाब में और G.R.P. थाना में दिये गये जवाब के विरोधाभास में क्या कारण है स्पष्ट करें।

उत्तर इस सम्बन्ध में मैं यह बताना चाहूंगा कि मैं और मेरे जीजाजी कम पढ़ें लिखें हैं और पुलिस कचहरी के मामलों में कभी नहीं पड़े। कोटा में G.R.P. Police ने हमारे साथ बदतमीजी से व्यवहार किया Train के Coach से लेकर थाने में पुछताछ तक कई बार धक्का मुक्की की और कई बार डांटा फटकारा। उन्होंने मेरे जीजाजी श्री चतरू लाल मीणा से अलग कमरे में बैठाकर पुछताछ की। क्योंकि मेरे जीजाजी की उम्र 60 वर्ष है जिसकी वजह से उनमें घबराहट व डर बैठ गया। वहां उनसे जो बयान लिये गये इसमें उन्होंने यह स्पष्ट करने की कोशिश की यह राशि हम सवाई माधोपुर से भुवनेश्वर लेकर गये और वहां से वापस लेकर आ रहे हैं। उन्होंने मेरे जीजाजी के बयानों का गलत अभिप्राय: लगाया और यह गलत अर्थ से लिया कि यह राशि हम भुवनेश्वर से लेकर आ रहे हैं, उन्होंने गलत फहमी में स्पष्टीकरण देने का अवसर ही नहीं दिया और जबरदस्ती बयान में यह लिखाया कि हम भुवनेश्वर से यह राशि लेकर आ रहे हैं।

Shri Chatru Lal Meena (Page-2, Question 6)

प्रश्न 6. दिनांक 27.02.2020 को आपने व श्री रामअवतार मीणा जी को जी.आर.पी. थाना, कोटा स्टेशन द्वारा ट्रेन पूरी-बीकानेर एक्सप्रेस (14710) के कोच S-7 से प्लेटफार्म नं. 4 पूछताछ की गई और दो बैग में 95,89,000/- रुपये आपसे बरामद किये। इस नगद राशि के सम्बंध में आपसे की गई पूछताछ में आपने दोनो बैगों में रखी राशि भुवनेश्वर से लेकर आना बताया है। इस राशि के स्रोत के संबंध में आपसे पूछा गया था जिसके संतोषजनक जवाब आपके द्वारा प्रस्तुत नहीं किये गये और जी.आर.पी. द्वारा भी नकदी रुपये

95,89,000/- को 102 सी.आर.पी.सी. में जप्त कर लिया गया। पुनः बताये कि आप कहीं से कहीं तक यात्रा कर रहे थे? इतनी बड़ी नकदी आप कहीं से लेकर आ रहे थे? इसका स्रोत क्या है?

उत्तर जो घटनाक्रम आपने मुझे बताया उसमें मैं मौजूद था। यह राशि हमारी फर्म M/s मीना कन्सल्टेशन वर्क की थी। श्रीमान मैं आपसे निवेदन करना चाहूँ कि मेरी तबीयत सही न होने के कारण मैं ज्यादा सवालों के जवाब नहीं दे पाऊँगा। मैं मेरे पार्टनर श्री रामअवतार मीणा को Authorise करता हूँ और वो जो भी जवाब देगे वह मुझे मान्य होगा।

It was thus explained before ADIT-Inv. that GRP people coerced the assessee and Sh. Ramavtar Meena, i.e. partners of the firm carrying cash. Their statements were misunderstood/misinterpreted and incorrectly recorded by GRP. It was also explained before ADIT-Inv. that the cash belonged to partnership firm and not to the assessee. It was taken from Sawai Madhopur to Bhubaneshwar and was brought back from Bhubaneshwar to Sawai Madhopur on account of non-fulfilment of the object. Your honours would appreciate that so far as consequences under Income Tax Act are concerned, statements recorded by Income tax authorities on oath have more evidentiary value than to the statements recorded by GRP, viz. not an authority under Income Tax Act more particularly when no evidence whatsoever has been brought on record by Id.AO to prove the contrary.

It is further submitted that statements recorded before Police u/s 161 of CrPC Act, 1973 have no evidentiary value in view of Supreme Court decision in the case of Hon'ble Supreme Court in the case Parvat Singh & Ors. vs. State of Madhya Pradesh [Criminal Appeal No 374 of 2020], wherein it is held that:

"14.1. ...as per the settled preposition of law a statement recorded under Section 161 CrPC is inadmissible in evidence and cannot be re/let upon or used to convict the accused..."

In view of above, it is submitted that there is no contradiction in statements recorded by GRP vis-à-vis ADIT (Inv.). And in case there is some assumed contradiction then also, statement given before ADIT on oath would prevail over the usual statement is recorded by GRP, as there are not on oath and are inadmissible evidence.

Moreover, Id. AO could not have relied upon solely on the statements recorded by other officials and instead ought to have made direct enquiries on his own, more particularly when no other material whatsoever was brought on record to substantiate such statements recorded by GRP and to disprove the documentary evidences furnished by assessee in support of source of investment by individual partners.

2. FORMATION AND RELATED COMPLIANCES OF PARTNERSHIP FIRM:

Ld.AO as well as Id.CIT(A) have disregarded the explanation of the assessee on various generalized technical issues, i.e. alleged non compliances by the firm, submission w.r.t. the same is made as under:

- (a) That the partnership firm was created just one month prior to the date of seizure of cash and various compliances were not done.

It is submitted that the quotation was invited in the month of Dec-2019 and within a month, partnership was formed on 17.01.2020 in order to document all the terms and conditions amongst the partners. Also, after the said formation, within a month, the partners decided to travel for purchase of second-hand machinery.

- (b) Existence of partnership firm has been alleged stating that:

- Firm was not registered and partnership deed was merely notarised
- GST and PAN not obtained
- bank account was not opened

Such allegations are dealt with as under:

NOT HAVING REGISTERED UNDER GST

According to Section 22 of CGST Act, 2017, businesses are required to obtain registration when the turnover of goods exceeds Rs 40 lakhs and in case of services exceeds Rs 20 lakhs.

Therefore, Id. AO has wrongly pointed out towards absence of GST registration of the "MCW".

NOT OBTAINED PAN

The next one is for not obtaining the PAN for the business. Section 139A prescribes the list of assesses for whom obtaining PAN are mandatory.

In this regard, it is submitted that non compliance of provisions of section 139A, which specifies circumstances, wherein PAN is to be obtained mandatorily, attracts penalty of Rs.10,000/- as specified u/s 272B. Also, there may be other consequences such as assessee cannot open bank account, tax deducted at higher rates etc. However, merely because no PAN was taken, existence of an entity (Meena Construction Works) cannot be doubted more particularly when a duly signed and notarised

Partnership Deed was filed and all the partners thereof accepted being into partnership.

NOT OPENED BANK ACCOUNT

There is no law regulating or mandating opening of bank account at any stage of business. "MCW" under the peculiar facts and circumstances, did not feel necessity, in its own wisdom, to open the bank account. Rural economy in India do not have banking priority. It is pertinent to note that all the partners were basically agriculturists who earn in cash and save in cash and for this reason also, adverse inference drawn by Id. AO, again, is unfounded.

It is submitted that "MCW" was duly constituted by executing the partnership deed. Buying suitable machineries was the first milestone, post which further compliances were planned. Thus, allegation of Id. AO and Id.CIT(A) with reference to sequence of such compliances has no bearing on the main issue of cash belonging to the firm. The firm did not exceed any mandatory time-line for complying with any of the formalities as explained above.

Without prejudice to above, it is submitted that bank account of MCW, at that point of time, could not be opened due to procedural issues. Partners were not aware that a separate PAN is required for the firm. This fact was duly explained before ADIT-Inv. This was the reason that cash had to be taken for purchase of machinery. It is submitted that nevertheless the firm obtained PAN on 05.09.2020. However, due to seizure of cash and outbreak of pandemic the activities of the firm came to stand-still.

Screenshot of Statement of Shri Hanuman Prasad Meena is as under (Page6, Question 10)

प्रश्न.10 M/s मीना कन्सट्रक्शन वर्क और पैन कार्ड की जानकारी स्पष्ट बताइये?

उत्तर मेरे पास स्वयं का पैन कार्ड है तथा मुझे इस बात की जानकारी नहीं थी कि फर्म का पैन कार्ड अलग से लेना होता है। यह हमें बाद में पता पड़ा कि बिना फर्म के पैन कार्ड के खाता नहीं खुल सकता। जानकारी के अभाव में हम फर्म का पैन कार्ड नहीं बनवा पाये। शीघ्र ही मैं पैन कार्ड के लिए अप्लाई कर रहे हैं।

3. QUOTATION INVITED PRIOR TO FORMATION OF FIRM:

It has been alleged that the quotation for the purchase of the machinery was in the name of one of the partners and not in the name of the

assessee firm. In this regard, it is submitted that the enquiries were being made for the purchase of machineries and when the same looked feasible, the partnership firm was formed. It is submitted that the law nowhere prohibits such enquiry being made in the name of the partner. When the terms and conditions were mutually agreed upon by all the partners, then only further steps were taken for purchase of old machineries.

The "MCW" after making local enquiries and comparing the quotation received from Bhubaneshwar decided to buy the machinery from Bhubaneshwar. This is the business decision of the "MCW" and Id. AO is not expected to interfere and draw adverse conclusions from the business decision of the firm. Reliance is placed on the following judicial pronouncement:

S.A. Builders Ltd. v. CIT [2007] 158 Taxman 230 (SC)

Once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximise its profit. The Income-tax Authorities must not look at the matter from their own viewpoint but that of a prudent businessman.

Though the above decision is regarding necessity to incur the certain expenses for business purpose, it holds that Id.AO cannot put himself in the armchair of a businessman, which means how a business is to be carried on and what decisions have to be taken, is to be decided by businessman only and not by anyone else.

4. AFTERTHOUGHT OF THE PARTNER TO PURCHASE THE MACHINERY

Ld. AO as well as Id.CIT(A) have drawn adverse inference from the fact that why Shri Gulkesh Meena (i.e. son of assessee who was residing in Bhubaneshwar) had not been consulted in advance regarding if payment for purchase of machinery could be made in cash or not. He has also doubted the version and has mentioned that prudent businessman will always ensure the availability of the person to whom they are going to meet. It is submitted that Shri Gulkesh Meena was not consulted because he had nothing to do with the firm and its transactions. Otherwise also, if partners had any doubt, then only, they would have consulted anyone but they were under a bonafide belief that the

machinery could be purchased in cash and accordingly carried the cash for purchase of machinery.

Apart from this, non-availability of vendor, Shri Ravi Jain, proprietor of Shree Mahaveer Associates has also been doubted. In this regard, it is submitted that Shri Ravi Jain had to leave the town due to last minute emergency on his part. Shri Chatru Lal Meena and Shri Ram Avatar Meena returned without waiting for the vendor to return because they came to know about one legal requirement of cash payment and therefore, there was no reason to wait for the vendor to return. It is submitted that Id. AO could have issued summon or made enquiry from Shri Ravi Jain for confirming the facts. During the course of statements of Shri Ram Avatar Meena recorded by ADIT-Inv. on 17.07.2020 while replying question no 13 not only the complete address but the contact number was also given. However, Id. AO without discharging his onus, simply disbelieved the explanation of the assessee. Reply to question no 13 is reproduced below:

प्रश्न. 13 कृपया M/s महावीर एसोसियेट का पता और इसके मालिक श्री रवि जैन का कॉन्टेक्ट नम्बर बताये।

उत्तर. M/s महावीर एसोसियेट का पता विनायक टावर, फ्लैट नं. 309, नियर विटा होटल, भुवनेश्वर। इसके मालिक का कॉन्टेक्ट नं. 9437019362 हैं।

It is also brought to notice that other partner was aware of complete facts about vendor and had given the above address and contact number of the vendor.

5. PARTNERS HAVING NO KNOWLEDGE TRAVELLED:

It has been alleged that the partners who had no or limited knowledge had travelled for purchase of the said machinery. In this regard, it is submitted that the partners, the assessee and Shri Ram Avatar Meena had discussed, elaborately with all the partners of the firm, before going to Bhubaneshwar for purchase of the machinery. The partners which had more knowledge in this regard had also given their input and then only decision of purchase was taken.

6. SOURCE OF CONTRIBUTION OF CAPITAL BY PARTNERS OF MCW HAS BEEN ALLEGED AS UNEXPLAINED:

As stated above, out of 10 partners of the firm, "MCW", 6 had appeared before Id. ADIT (Inv.). Statements of such partners, u/s 131, were recorded. They

confirmed their respective contribution of cash in firm, "MCW". Even those, who could not appear before ADIT, had explained the source of capital contributed by them by filing letter to Id.AO during assessment proceedings. Each one had also submitted documentary evidences to substantiate their capital contribution. The summarized position is as under:

S. No.	Name of Partner	Capital Contr. in Rs.	Appeared before ADIT-Inv. & Statements Recorded Date	Source of Income	Evidence filed before Id. AO and ADIT-Inv.
1.	Harikesh Meena	12,00,000	No	3 years income from- Agricultural activities Cultivation of Guava farm Sale of fruit and milk	Letter ACIT (APB 60) Copy of ITR [APB 63-181] Jamabandi and Girdhawri [APB 182-185] Vouchers of fruit sold in mandi [APB 186-202]
2.	Choth Mal Meena (s/o Sh. Rati Ram Meena)	8,00,000	NO	4 years income from- Agricultural activities Sale of milk & milk products	Letter ACIT [APB 203] Copy of ITR [APB 205-323] Jamabandi and Girdhawri [APB 324-335] Bank Statements [APB 336-342]
3.	Man Mohan Meena	8,00,000	NO	3 years income from- Agricultural activities Cultivation of Guava farm Sale of milk & milk products	Letter ACIT (APB 343) Vouchers of fruit sold in mandi [APB 468-490] Jamabandi and Girdhawri [APB 464-467] Bank Statements [APB 492-495] Copy of ITR [APB 345-463] NOC [APB 491]
4.	Choth Mal Meena (s/o Sh. Puni Ram Meena)	11,00,000	No	4 years income from- Agricultural activities Cultivation of Guava farm Sale of milk & milk products	Letter ACIT (APB 496) Vouchers of fruit sold in mandi [APB 622-706] Jamabandi and Girdhawri [APB 619-621] Copy of ITRs of various year (APB 499-617) NOC [APB 618]

5.	Ram Avtar Meena	8,50,000	Yes on 17.07.2020 [APB 11-25]	3 years income from- Agricultural activities Sale of milk & milk products. Cultivation of Guava farm	Letter ACIT (APB 707) Vouchers of fruit sold in Mandi [APB 717-737] Jamabandi and Girdhawri [APB 709-716] NOC[APB 708]
6.	Hanuman Prasad Meena	12,00,000	Yes on 21.07.2020 [APB 51-59]	4 years income from- Agricultural activities Rent and commission Having supervisory work experience of digging of pond, earth work, land levelling Business Income	Letter ACIT (APB 738) Vouchers of fruit sold in mandi [APB 743-763] Jamabandi and Girdhawri [APB 740-742] NOC [APB 739]
7.	Radha Kishan Meena	12,00,000	Yes on 21.07.2020 [APB 46-50]	3 years income from- Agricultural activities	Letter ACIT (APB 764) Jamabandi and Girdhawri [APB 767-781] ITR's of various AY [APB 782-85] NOC [APB 766]
8.	Ram Chej Meena	9,50,000	Yes on 21.07.2020 [APB 40-45]	4 years income from- Agricultural activities Cultivation of Guava farm Sale of milk & milk products.	Copy of bills of sale of guava [APB 913-998] Jamabandi and Girdhawri [APB 789-793] Copy of ITR [APB 794-912] NOC [APB 788] Letter ACIT [APB 786]
9.	Tulsi Ram Meena	13,00,000	Yes on 21.07.2020 [APB 35-39]	4 years income from- Agricultural activities Cultivation of Guava farm Sale of milk & milk products. Having own truck and doing transportation Having supervisory work experience of digging of pond, earth work, land levelling.	Jamabandi and Girdhawri [APB 1001-1006] Copy of ITR [APB 1007-1125] Sample Voucher [APB 1126-1146] Letter ACIT [APB 999]

10.	Chatru Lal Meena	4,00,000	Yes on 17.07.2020 [APB 26-34]	4 years income from- Agricultural activities Sale of milk & milk products	Bills of Krishi Upaj Mandi Samati [APB 1165-1170] Jamabandi and Girdhawri [APB 1147- 1164]
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Thus, assessee duly discharged his onus by way of personally appearing and also presenting the partners of "MCW", who also provided documentary evidences proving source of making cash contribution as their share. On the other hands, Id. AO and Id. CIT(A) have disbelieved the explanation of assessee without any cogent reasons and without rebutting the explanation and evidence produced before AO.

The observations of the Id. AO as approved by Id.CIT(A) and our rebuttal in respect of partners of Meena Construction Works is as under:

Ownership of Land: In all the cases, Jamabandi and Girdhawri papers [APB 182-185 , 324-335 , 464-467 , 619-621 , 709-716 , 740-742 , 767-781 , 789-793 , 1001-1006 & 1147-1164] of his agricultural land showing land holding have been filed. Also, wherever land is not owned by assessee individually but by the family as is prevalent in the joint family system in India, more so in rural India (where family land is owned and held in the name of any member of the family and cultivated by all the family members). In such cases, copy of No Objection Certificate is filed, which clearly shows that the partners claiming to have earned agriculture income were actually engaged in Cultivation. Once Girdhawri reports were submitted to support cultivation of agricultural produce, before disbelieving this revenue record of government, it was incumbent upon the Id. AO to make necessary enquiry with Patwari to establish that Girdhawri report was incorrect.

Evidences of Agriculture income: All the partners engaged in the agriculture activities have filed evidences in the form of sale bills for sale of agricultural produce [APB 186-202, 468-490, 622-706, 717-737, 743-763, 913-998, 1126-1146 & 1165-1170]. However, in certain cases Id. AO has observed that only first name instead of full name is written on bills, and description of agricultural produce is not mentioned. It is submitted that writing the first name in place of full name cannot be the reason of not believing on the evidences filed by Harikesh Meena. It is also important to note that complete details of all the vendors, are clearly mentioned on the bill submitted by partners. Thus, if Id.AO/ Id.CIT(A) were not satisfied with explanation of the assessee, direct enquiries could have been made/ summons could have been

issued to the vendor before drawing adverse inference. However no such action has been taken by Id.AO.

No Evidence for owning Cattle: It is submitted that there can be no evidence of owning cattle. Also, in the rural economy, livestock is sold/purchased without formal bills. Any evidence for subsequent addition to livestock by breeding cannot be made available. In addition to the same, there are no bills issued, in rural economy, for selling the milk and other related products.

Evidence of Sale of Milk and Milk Produce: It is submitted that the sale of milk and milk produce in rural India is not part of formal economy. Expecting formal record in the form of bills etc. in this regard on the part of Id. AO shows his complete ignorance of the way these items are sold in rural economy.

Amounts have been introduced by the partners in instalments and, therefore, genuineness of cash availability is doubted.: In this regard, it is submitted that the cash was contributed by the partners in accordance with the mutual understanding and convenience of the respective partners. Introducing capital in instalments cannot be criteria to doubt the transaction.

Ld.AO observed that Choth Mal Meena had filed evidences in the form of sale bills for sale of agricultural produce, however bills were in the name of "Punya". It is submitted that the word "Punya" indicates the nick name of his father, Shri Puni Ram Meena. Since, land was in the name of father of Sh. Choth Mal Meena, bill was also made in his name. In fact, Shri Choth Mal Meena has received funds *via* RTGS (AO Order, Page-6) from Rehan Fruit Co. in his bank account, which substantiates sale of fruits in the mandi. Ld. AO is not doubting or controverting this fact.

Similarly, Receipt of funds *via* NEFT (AO Order, Page-8) from vendors in bank account of Shri Ram Chej Meena substantiates sale of fruits by him. Ld. AO has not doubted or controverted. Ld. AO has erred in ignoring the fact what could be the better evidence of genuineness of sale proceeds when funds from the fruit merchant have been received *via* NEFT that too will before the date of interception of assessee by GRP.

Your honours would appreciate that in rural India most of the transactions are done in cash. People do not have banking habits. Therefore, amount normally is not kept deposited in bank. The withdrawn cash is kept by way of cash in hand. This is the reason, partners have contributed cash as capital in the firm, MCW.

Now, statements of various partners as recorded before ADIT (lv.) have been discussed as under:

1. Shri Ram Avatar Meena appeared before ADIT-Inv., on 17.07.2020 in response to summon u/s 131 issued to him. His statements on oath were recorded on 17.07.2020 [APB 11-25]. In his statements, Shri Ram Avatar Meena confirmed the fact of formation of MCW, he being partner in the said firm and towards contributing Rs 8,50,000 in this firm. Screenshot of the same is as under (Question-15)

प्रश्न 15. आप द्वारा इस फर्म में कुल कितनी राशि (Capital) के तौर पर उपलब्ध करवाई गई है? उसके साक्ष्य के तौर पर Bank A/c Statement या आपकी Individual Book उपलब्ध करवाइये?

उत्तर मेरे द्वारा फर्म में 8,50,000/- रुपये लगाये गये जो कि विभिन्न तारीखों में लगाया है। यह रकम मैंने विभिन्न तारीखों को नकद में जमा करवाई है। मैं आपको फर्म में मेरा पूँजी खाता उपलब्ध करवा रहा हूँ तथा मेरा बैंक खाता भी आपको उपलब्ध करवा रहा हूँ। इसके अतिरिक्त जैसा कि मैं पहले बता चुका हूँ कि मैं कृषि कार्य करता हूँ तथा साथ में दूध भी बेचता हूँ। यह रकम मैंने पिछले 3 वर्षों में मेरी अर्जित आय से एकत्रित की है। इसी राशि को मैंने फर्म में निवेश किया है।

2. Shri Hanuman Prasad Meena had appeared before ADIT-Inv., on 21.07.2020 in response to summon u/s 131 issued to him. His statements on oath were recorded on 21.07.2020 [APB 51-59]. In his statements, Shri Hanuman Prasad Meena confirmed the fact of formation of MCW, he being partner in the said firm and he himself contributing Rs 12,00,000 in the said firm. Screenshot of the same is as under [Question 7]:

प्रश्न 7. आपने Partnership Firm M/s Meena Coinstruction Works में कुल कितनी राशि (Capital amount) उपलब्ध करवाई है ? इसके उपयोग की आपकी क्या कार्य योजना थी और किन-किन तारीखों में यह राशि दी गई है ? यह पैसा कहाँ रखा गया है?

उत्तर मैंने स्वयं 12,00,000/- रुपये इस पार्टनरशिप फर्म में उपलब्ध करवाये जो 17.01.2020 से 10.02.2020 तक 9 Transaction में दिये गये। यह पैसा मेरे पास ही रखा रहा और दिनांक 21.02.2020 को पार्टनरशिप फर्म के Office address ग्राम-खाटकलॉ, पोस्ट-पढ़ाना, तहसील व जिला- सवाई माधोपुर पर रामअवतार मीणा (पार्टनर) को दे दिये गये। चूँकि फर्म में शुरू करने के लिए कुछ machine खरीदने की हमारी योजना थी और जिसके लिये यह पैसा Capital के रूप में Contribute किया गया।

3. Shri Radha Kishan Meena had appeared before Id. ADIT (Inv.) on 21.07.2020 in response to summon u/s 131 issued to him. His statements on oath were recorded on 21.07.2020 [APB 46-50]. In his

statements Shri Radha Kishan Meena confirmed the fact of formation of MCW, he being partner in the said firm and towards contributing Rs 12,00,000 in this firm. Screenshot of the same is as under [Question 12]:

प्रश्न 12. कृपया यह बताये कि आपने 12,00,000/- रुपये किसके कहने पर और किस को दी ?

उत्तर मैंने यह राशि श्री हनुमान मीणा के कहने पर श्री रामअवतार मीणा जो कि मेरे पार्टनर है की दी। यह राशि मैंने विभिन्न दिनांक को ग्राम'खाट कलां, पोस्ट, पढाना, तहसील व जिला-सवाई माधोपुर को श्री रामअवतार मीणा को दी।

4. Shri Ram Chej Meena also appeared before Id. ADIT(Inv.) on 21.07.2020 in response to summon u/s 131 issued to him. His statements on oath were recorded on 21.07.2020 [APB 40-45]. In his statements Shri Ram Chej Meena confirmed the fact of formation of MCW, he being partner in the said firm and towards contributing Rs 9,50,000 in this firm. Screenshot of the statements is as under [Question 10]:

प्रश्न 10 आपने Partnership Firm M/s Meena Construction Works में कितनी राशि (Capital) लगाई है ? यह राशि आपने किस तारीख को दी ? इस राशि का आप क्या उपयोग करने वाले थे?

उत्तर मैंने Partnership Firm M/s Meena Construction Works में 9.50 लाख रुपये लगाये थे। मैंने यह राशि 17.01.2020 से लेकर 15.02.2020 तक दिये। चूँकि फर्म के काम शुरू करने के लिए मशीन खरीदने की जरूरत थी जिसके लिये सबने अपना-अपना पैसा जमा करवाया।

5. Shri Tulsi Ram Meena had appeared before Id. ADI (Inv.) on 21.07.2020 in response to summon u/s 131 issued to him. His statements on oath were recorded on 21.07.2020 [APB 35-39]. In his statements Shri Tulsi Ram Meena confirmed the fact of formation of MCW, he being partner in the said firm and towards contributing Rs 13,00,000 in this firm. Screenshot of the statements is as under [Question 7]:

प्रश्न 07 आपने Partnership Firm M/s Meena Construction works में कितनी राशि (Capital) लगाई है? यह राशि किस-किस तारीख को दी? इस राशि का आप क्या उपयोग करने वाले थे ?

उत्तर मैंने M/s Meena construction Works में 13,00,000/- लगाये थे। मैंने यह राशि 17.01.2020 से लेकर 15.02.2020 तक दिये। चूँकि फर्म में काम शुरू करने के लिए

Machine खरीदने की जरूरत थी जिसके लिए सबने अपना-अपना पैसा जमा करवाया।

6. Shri Chatru Lal Meena (i.e. assessee) had appeared before Id. ADIT (Inv.) on 17.07.2020 in response to summon u/s 131 issued to him. His statements on oath were recorded on 17.07.2020 [APB 26-34]. In his statements, Shri Chatru Lal Meena confirmed the fact of formation of MCW, he being partner in the said firm and towards contributing Rs 4,00,000 in this firm. Screenshot of the same is as under Screenshot of the statements is as under [Question 7]:

प्रश्न 07. आपसे दिनांक 27.02.2020 G.R.P. Police, Kota द्वारा पूछे जाने पर आपने बताया कि उक्त नकदी आप भुवनेश्वर से लेकर आ रहे हैं। इस तथ्य को G.R.P., Kota ने अपने पत्र में भी इस कार्यालय को बताया है। कृपया बतावे आप कहाँ से कहाँ तक यात्रा कर रहे थे। इतनी बड़ी नकदी आप कहाँ से लेकर आ रहे थे और इसका स्रोत क्या है?

उत्तर जी यह पैसा हमारी फर्म का है जो हमने नकद में अपने हिस्से से इकट्ठा किया है। हमारी फर्म में 9-10 लोग हैं और हम सबको तलाई बनाने, मेड़बन्दी, समतलीकरण आदि काम करने थे और इन कामों के लिए कुछ पुरानी मशीनें खरीदनी थीं। मुझे इन मशीनों की ज्यादा जानकारी नहीं है। मेरे पार्टनर श्री रामअवतार मीणा और श्री हनुमान प्रसाद मीणा को इनकी जानकारी है कि क्या-क्या मशीनें लेनी हैं। मैंने इसीलिए 4,00,000/- रुपये इस फर्म में लगाये। मैं इन सब लोगों में उम्र में सबसे बड़ा हूँ इसीलिए भरोसे और विश्वास होने से भुवनेश्वर जाने वाले लोगों में मुझे भी शामिल कर लिया था। साथ में मेरा पुत्र गुलकेश मीणा भी वहाँ पर नौकरी करता है तो मैंने सोचा कि उससे मिल भी आऊँगा और उसके लिए गेहूँ, घी और अमरूद भी पहुँचा दूँगा जो हमारे घर में उपलब्ध वस्तुएँ हैं।

मेरे पार्टनर और साला रामअवतार और मैं स्वयं यह सामान और यह पैसे लेकर सवाई माधोपुर से रवाना हुये। 25.02.2020 की सुबह भुवनेश्वर पहुँचें। यह पैसा हम सवाई माधोपुर से ही लेकर गये थे इतना मुझे पता है। बाकि हिसाब किताब तो हनुमान जी (डेकवा) और तुलसीराम (सामोता) को संभालना था।

मैं अनपढ़ आदमी हूँ और ऐसे कामों में कोई लेना-देना कभी नहीं हुआ। मैंने तो अपने बयानों में लिखवाया था कि हम तो माधोपुर से पैसे लेकर गये थे और भुवनेश्वर जाकर वापिस आ रहे हैं। मुझे नहीं मालूम कि उन्होंने यह क्यों लिखा कि मैं यह पैसा भुवनेश्वर से लेकर आ रहा हूँ। पुलिस ने हमें पकड़ा तो हम थोड़ा डर गये थे। उन्होंने मेरी उम्र का लिहाज भी नहीं किया और मेरे साथ गलत व्यवहार किया, मुझे डौटा और मुझे धक्के मारे। मुझे ऐसा लग रहा है कि उन्होंने मेरी बात का उल्टा मतलब समझा है और यह लिख दिया कि हम यह पैसा मेरे पुत्र गुलकेश मीणा के पास से भुवनेश्वर से लेकर आ रहे हैं। उन्होंने मेरी बात का कोई नया ही अर्थ निकाल दिया है। या फिर वो मेरी बात ढंग से समझ ही नहीं पाये। सच्चाई यही है कि यह हमारे 8-10 पार्टनरों का पैसा है और इसे हम माधोपुर से ही लेकर गये थे।

In view of above, it is most humbly submitted that:

1. Id. AO and Id.CIT(A) have discarded the documentary evidences on surmises and conjectures and have completely ignored the fact that the

partners of MCW were summoned by ADIT-Inv. and their statements on oath were recorded. Their statements were confirming the facts which were explained before the Id. AO during the assessment proceedings.

2. If not satisfied, Id.AO was duty bound to summon the said partners and record their statements seeking information/clarification. Not having done so and still rejecting the explanation and ignoring the documentary evidences is unjustified and illegal on the part of Id. AO.

3. It is also submitted that during the course of assessment proceedings, vide reply dated 21.3.2022, it was categorically conveyed (AO Page-13, first line) that all the partners are ready to appear before AO and give their statements on oath. In spite of this, Id. AO chose not to summon the partners because he was not willing to accept the truth.

4. Ld. AO at Page 9 of his assessment order has mentioned that sufficient opportunities vide summons dated 03.11.2020, 10.11.2020, 26.12.2020 and 13.01.2021 were given to file evidences. It is submitted that these summons were not issued by the Id. AO. These summons were issued by ADIT and as many as six partners appeared before ADIT and their statements were recorded and in others case evidences were furnished. It is submitted that as regards proceedings before AO is concerned, the first notice u/s 143(2) was given by Id. AO only on 21.02.2022. It is not the case of the Id. AO that on summoning by him, the partners did not appear. Thus, this, in itself, amounts to admission by Id. AO of his inaction during assessment proceedings.

5. Explanation given by the assessee should be considered objectively before any officer takes a decision to accept it or reject it. The Department cannot act unreasonably and reject the explanation. Before the Department rejects any explanation, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The Department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof. In the absence of something which showed that the "explanation was inherently improbable" the explanation deserves to be accepted. If the explanation was "fairly satisfactory" the same deserves to be accepted. All these legal propositions have been propounded by the Hon'ble Apex Court in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112.

6. The explanation furnished by the assessee needs to be considered objectively and the explanation given cannot be rejected arbitrarily or capriciously, without sufficient grounds, on suspicion or on imaginary or irrelevant grounds. Sona Electric Co. V. CIT(1985) 152 ITR 507(Del.); Roshan Di Hatti v. CIT (1977) 107 ITR 938 (SC).

7. Provisions of section 69A have been invoked without establishing that the assessee was the owner of the money. It was explained at the inception of the matter that the cash belonged to the firm M/s MCW and assessee, Shri Chatru Lal Meena along with another partner Sh. Ramavtar Meena were carrying the cash for and on behalf of the firm as its agent. A carrier of cash is not owner of the cash and therefore section 69A cannot be invoked against such carrier. Reliance is placed on the recent judgement of Hon'ble Supreme Court in the case of D.N. Singh vs. CIT [2023] 454 ITR 595 (SC) wherein the Hon'ble Court at Para 39 of the order held that:

39. To apply Section 69A of the Act, it is indispensable that the Officer must find that the other valuable article, inter alia, is owned by the assessee. A bailee, who is a common carrier, is not an owner of the goods. A bailee who is a common carrier would necessarily be entrusted with the possession of the goods. the purpose of the bailment is the delivery of the goods by the common carrier to the consignee or as per the directions of the consignor. During the subsistence of the contract of carriage of goods, the bailee would not become the owner of the goods. In the case of an entrustment to the carrier otherwise than under a contract of sale of goods also, the possession of the carrier would not convert it into the owner of the goods.

Without prejudice to the above, it is submitted that the cash was seized from two persons, Shri Chatru and Shri Ram Avatar Meena and assuming Shri Chatru to be the sole owner of the entire cash is not justified more particularly when Sh. Ramavtar Meena also admitted that cash belonged to partnership firm and was contributed by 10 persons. Thus, even if Id.AO was not convinced with the fact that partnership firm was not in existence at the time of seizure of cash, then too so far as none of the partners has denied giving money, at the most cash seized could have been assessed in the hands of them all as AOP.

In view of the above addition made u/s 69A deserves to be deleted.

Ground of Appeal No.4

In this ground of appeal, assessee has challenged the action of Id.CIT(A) in confirming the invocation of provisions of section 115BBE of the Income tax Act, arbitrarily.

It is submitted that provisions of section 115BBE are invoked in respect of cash seized from assessee and Sh. Ramavtar Meena by alleging the same as unexplained money of assessee. In this regard, it is submitted that in view of detailed submission furnished above, assessee has offered a valid explanation for the cash seized by the Department and therefore, it cannot be termed as unexplained money of the assessee. Once the addition cannot be made u/s 69A, invoking the provisions of section 115BBE is also unjustified.

In view of the above, application of Section 115BBE, by the Id. AO, to the amount of Rs. 95,89,000 is illegal and deserves to be quashed. Hence, on such amount, there cannot be any applicability of Section 115BBE.

Ground of Appeal No.5:

In this ground, assessee has challenged the action of Id.CIT(A) in confirming additions amounting to Rs 25,481/- made by Id.AO under the head interest income on the cash seized of Rs 95,89,000.

In this regard, it is submitted that the cash seized amounting to Rs 95,89,000 does not belong to assessee and the same is of his firm, MCW. If the cash does not belong to him, the interest earned on the same amounting to Rs 25,481 is also not related to him and therefore, cannot be taxed in the hands of the assessee. Hence, the addition amounting to Rs 25,481 is illegal and deserves to be deleted.

In view of the above addition amounting to Rs 25,481 deserves to be deleted.

Ground of Appeal No.6:

In this ground of appeal, assessee has challenged the action of Id.CIT(A) in confirming addition of Rs. 1,55,400/- made by Id.AO u/s 68 and invoking provisions of section 115BBE on the same.

In this regard, it is submitted that Id. AO treated the business income amounting to Rs 1,55,400 as unexplained and invoked the provisions of section 115BBE for taxing such income. The reason for treating the business income to be unexplained was that no evidences of sale of milk were produced by the assessee. It is submitted before your honours that the assessee is an agriculturist and earns agricultural income. Apart from this, assessee has offered business income of Rs 1,40,500 from sale of milk and milk products in his return of income u/s 153A. Since, the sale of milk and milk produce in rural India is not part of formal economy expecting formal record in this regard on part of Id. AO shows his complete ignorance of the way of items are sold in rural economy. Also, as stated above, it is reiterated that there can be no evidence of owning cattle. Also, in the rural economy,

livestock is sold/purchased without formal bills. Evidence of any subsequent addition to livestock by breeding cannot be made available. In addition to the same, there are no bills for selling the milk and other related products.

Ld. AO has invoked the provisions of section 68 for addition of sale of milk offered as business income which is illegal and unjustified. Considering the fact that there can be no bills for sale of milk in the rural economy, the action of Id. AO in treating the business income to be unexplained deserves to be quashed.

It is also submitted that provisions of section 68 deem non income to be income. The said income is already offered for taxation in the return of income by way of sales. Hence, Section 68 *per se* cannot be invoked. Section 68, therefore, is applied on, say, unexplained loans for treating those loans to be income.

Section 68 can be invoked where any sum is found credited in the books of accounts maintained by the assessee. In the present case, books of accounts are not maintained by the assessee and accordingly nothing is found credited in the books. Therefore, the very invoking of the provisions of section 68 *per se* is illegal and once the addition u/s 68 is not justified, the very invoking of provisions of section 115BBE is illegal and justified.

In view of the above addition amounting to Rs 1,55,400 deserves to be deleted.

Grounds of Appeal No. 7 & 8:

In ground of appeal No. 7, assessee has challenged the action of Id.CIT(A) in confirming the action of Id.AO in treating the agriculture income to the tune of Rs.2,92,500/- as unexplained u/s 68, whereas in ground of appeal no. 8, invocation of provisions of section 115BBE in respect of the same has been challenged.

In this regard, addition was made without any basis and Id.AO simple ESTIMATED the agricultural income at the rate of Rs 12,000 per bigha, totalling per annum of Rs 1,50,000 and made addition of differential amount of Rs 2,92,500 (4,42,500-1,50,000) u/s 68 and invoked the provisions of section 115BBE for taxing such income, which stood confirmed by Id.CIT(A).

It is submitted that Id. AO has not doubted that the assessee is the owner of agricultural land and earns agricultural income. The assessee has submitted complete documents as stated above to support his ownership of agricultural land. The fact of ownership itself is enough to prove that the assessee earns agricultural income. Apart from this, assessee submitted *vikray parchees* in

support of his claim of earning agricultural income of Rs 4,42,500 [APB 1165-1170]

The area where land of the assessee is situated is a very fertile area and yield is much higher as compared to the other parts of Rajasthan. It is thus submitted that the agricultural income offered by the assessee is most reasonable and deserves to be accepted.

It is further submitted that provisions of section 68 are Deeming provisions and a credit entry, for which assessee is not able to furnish proper explanation is deemed to be income. However, in the present case, agriculture income is already offered for taxation in the return of income. Hence, Section 68 per se cannot be invoked. Further, Section 68 can be invoked where any sum is found credited in the books of accounts maintained by the assessee. In the present case, books of accounts are not maintained by the assessee and accordingly nothing is found credited in the books. Therefore, the very invoking the provisions of section 68 *per se* is illegal.

Once the addition u/s 68 is not justified, the very invoking of provisions of section 115BBE is illegal and justified.

In view of the above, entire agriculture income is duly explained and the addition of Rs 2,92,500/- made by Id.AO deserves to be deleted. Further, and consequently invocation of the provisions of section 115BBE to such addition also being not in accordance with law and deserves to be quashed.

Ground of Appeal No.9:

In this ground of appeal, assessee has challenged the action of Id.CIT(A) in confirming the action of Id.AO in passing order without DIN.

In this regard, reliance is placed on :

The Commissioner of Income Tax-1, New Delhi vs. Brandix Mauritius Holdings Ltd 2023] 456 ITR 34 (Delhi) [20-03-2023]

Where AO passed final assessment order without DIN, since there were no exceptional circumstances as mentioned in Circular No. 19/2019, dated 14- 8-2019 which would sustain communication of impugned order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and, thus, impugned final order could not be sustained."

Submitted respectfully,

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

S. No.	PARTICULARS	PAGE NOS.
1	Copy of acknowledgement of Return of Income filed u/s 139(1) of Income Tax Act, 1961.	1
2	Copy of acknowledgement of Return of Income filed u/s 153A of Income Tax Act, 1961.	2
3	Copy of partnership deed of M/s Meena Construction Works executed on 17.01.2020	3-8
4	Copy of Quotation received from Shri Mahavir Associates, Odisha for purchase of machinery dated 18.12.2019.	9
5	Copy of Report of Police Station Officer, GRP, Kota dated 27.02.2020.	10
6	Copy of Statements of Shri Ramavatar Meena as recorded on oath before ADIT-Investigation, Kota dated 17.07.2020.	11-25
7	Copy of Statements of Shri Chatru recorded on oath before ADIT-Investigation dated 17.07.2020.	26-34
8	Copy of Statements of Shri Tulsu Ram Meena recorded on oath before ADIT-Investigation dated 21.07.2020.	35-39
9	Copy of Statement of Shri Ram Chej Meena recorded on oath before ADIT-Investigation dated 21.07.2020.	40-45
10	Copy of Statement of Shri Radha Kishan Meena recorded on oath before ADIT-Investigation dated 21.07.2020.	46-50
11	Copy of Statement of Shri Hanuman Prasad Meena recorded on oath before ADIT-Investigation dated 21.07.2020.	51-59
12	Copy of letter dated 19.01.2021 filed by Sh. Harikesh Meena before ACIT, Investigation, Kota alongwith-	60
(i)	Copy of PAN card along with Aadhar Card.	61-62
(ii)	Copy of ITR for A.Y. 2019-20 & 2020-21	63-181
(iii)	Copy of Khasra Girdhawri and Jamabandi of Land Holding	182-185
(iv)	Copy of Sample Vouchers of agriculture produce sold in Mandi.	186-202

S. No.	PARTICULARS	PAGE NOS.
13	Copy of letter dated 19.01.2021 filed by Sh. Choth Mal Meena s/o Shre Ratti Ram Meena before ACIT- Investigation, Kota, alongwith;	203
(i)	Copy of PAN Card	204
(ii)	Copy of ITR for AY 2019-20 & 2020-21	205-323
(iii)	Khasra Girdhawri and Jamabandi in support of Land Holding	324-335
(iv)	Copy of Bank Statement for 1.4.2017 to 31.03.2020	336-342
14	Copy of letter dated 18.01.2021 filed by Sh. Man Mohan Meena s/o Shree Ram Nath Meena before ACIT- Investigation, Kota, alongwith;	343
(i)	Copy of PAN Card	344
(i)	Copy of ITR for A.Y. 2019-20 & 2020-21	345-463
(ii)	Copy of Khasra Girdawari and Jamabandi in the name of Sh. Ramnath Meena, i.e. father of Sh. Man Mohan Meena	464-467
(iii)	Copy of Sample Vouchers of sale of agriculture produce in Mandi	468-490
(iv)	Copy of NOC issued by Sh. Ramnath Meena in respect of agriculture activity carried out by Sh. ManMohan Meena on land owned by Sh. Ramnath Meena	491
(v)	Copy of Bank Statement for 1.4.2017 to 31.03.2020	492-495
15	Copy of Reply dated 18.01.2021 filed by Sh.Choth Mal Meena s/o Sh. Puni Ram Meena before ACIT, Investigation, Kota alongwith;	496
(i)	Copy of PAN Card along with Aadhar card	497-498
(ii)	Copy of ITR for A.Y. 2019-20 & 2020-21	499-617
(iii)	Copy of NOC issued by Sh.Puni Ram Meena in respect of agriculture activity carried out by Sh. Choth Mal Meena on land owned by Sh. Sh. Puni Ram Meena (father)	618
(iv)	Copy of Jamabandi and Khasra Girdhawri.	619-621

S. No.	PARTICULARS	PAGE NOS.
(v)	Copy of sample Vouchers of agriculture produce sold in mandi.	622-706
16	Copy of Reply filed on 18.01.2021 by Sh. Ram Avtar Meena s/o Sh. Ram Karan Meena before ACIT (Inv.), Kota alongwith;	707
(i)	Copy of NOC issued by Sh. Ramkaran Meena, father of Sh. Ram Avtar Meena in respect of agriculture activity carried out by Sh. Ram Avtar Meena on land owned by his father	708
(ii)	Copy of Jamabandi and Khasra Girdhawri.	709-716
(ii)	Copy of sample Vouchers of sale of agriculture produce in mandi.	717-737
17	Copy of Reply filed on 19.01.2021 by Sh. Hanuman Prasad Meena s/o Sh. Ram Swaroop Meena before Id.ACIt, Inv.(Kota) alongwith;	738
(i)	Copy of NOC issued by Sh. Ram Swaroop meena (i.e. father of assessee) in respect of agriculture activity carried out by Sh., Hanuman Prasad on land owned by his father	739
(ii)	Copy of Jamabandi and Khasra Girdhawri.	740-742
(iii)	Copy of Vouchers of agriculture produce sold in Mandi.	743-763
18	Copy of Reply filed by Sh. Radha Kishan Meena on 19.01.2021 before ACIt, Inv.(Kota) alongwith;	764
(i)	Copy of PAN Card	765
(ii)	Copy of NOC issued by Smt. Kanchan Devi, i.e. mother of Sh. Radha Kishan Meena in respect of agriculture activity carried out by him on land owned by his mother	766
(ii)	Copy of Jamabandi and Khasra Girdhawri	767-781
(iii)	Copy of ITRs for A.Y. 2019-20 and 2020-21	782-785
19	Copy of Reply filed by Sh. Ram Chej Meena on 19.01.2021 before ACIT, Inv.(Kota) alongwith;	786
(i)	Copy of PAN Card	787
(ii)	Copy of NOC issued by Sh. Raja ram Meena, i.e. father of Sh. Ram Chej Meena in respect of agriculture activity carried out by him on land owned by his father	788

S. No.	PARTICULARS	PAGE NOS.
(iii)	Copy of Jamabandi and Khasra Girdhawri	789-793
(iv)	Copy of ITR for A.Y. 2019-20 & 2020-21	794-912
(v)	Copy of sample vouchers evidencing sale of agriculture produce by Sh. Ramchej meena	913-998
20	Copy of reply filed by Sh. Tulsi Ram Meena on 18.01.2021 before ACIT, (Inv.), Kota alongwith,	999
(i)	Copy of PAN Card	1000
(ii)	Copy of Khasra Girdawari report and Jamabandi of Sh. Tulsi Ram meena	1001-1006
(iii)	Copy of ITR for A.Y. 2019-20 and 2020-21	1007-1125
(iv)	Copy of Sample vouchers evidencing sale of agriculture produce by Sh. Tulsi ram Meena	1126-1146
21	Copy of Jamabandi and Khasra Girdhawri of Sh. Chatru Lal meena	1147-1164
22	Copy of Vikray Parchees evidencing agriculture income of Shri Chatru Lal Meena	1165-1170
23	Copy of letter dated 21.09.2022 requesting approval u/s 153D and its receipt of registered post	1171-1172

8. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the railway police found cash from the two person on 27.02.2020 (APB page 10). The fact is self speak itself from terrace that the assessee facts that he went for purchase of machine and coming back. It is not disputed the assessee is resident of Rajasthan. There is no as such any

activity from where the assessee coming in train. The revenue did not prove anything contrary to what has been submitted by the assessee which is also supported by cogent evidence. Immediately after the seizure there was country wide lock down. When the guide in covid-19 relaxed assessee on 17.07.2022 appeared before ADIT. Referring to the statement recorded Shri Ram Avatar vide question no. 7 explained the connected facts. Even the statement of the assessee was recorded wherein he has categorically stated that the cash belongs to the firm wherein he is one of the partners. Ld. AR of the assessee submitted a chart explaining the investment made by each partner. All partners assessed to tax and six of them appeared before the Id. AO and their statement was recorded. They have also expressed a willingness to appear again if required. Thus, it was made crystal clear before Id. AO that the source of cash seized belong to firm and that ultimate source of partner details were also placed on record and in turn revenue recorded their statement also. Ld. AO issued 143(2) on 21.02.2022 and completed the assessment proceeding on 29.03.2022 so it is evident that the Id. AO in fact has not made any efforts to understand and analyze the details already available on record. In fact no detailed query was made to the assessee as to why the

cash seized was considered in his hands. Even he has assessed interest income in his hands. Assessee income from regular activities and agricultural income was considered as unexplained income. As is evident from the record that Id. AO vide notice dated 26.03.2022 called the details of the firm which was uploaded online all that evidence placed on record vide page 3-8 of the paper book. Even the assessee has submitted the quotation that quotation has not been disputed by the Id. AO by making any necessary independent inquiry. As regards the agricultural income the assessee placed on record Khasra Girdhawri and Jamabandi of Land holding (page 182-185), copy of evidence showing agricultural produce sold in mandi (page 186-202) so on merits of the case suggest that the returned income was required to be accepted but was not done. The Id. AR of the assessee as regards the various technical grounds so raised relied upon the written submission and paper book filed.

9. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). As is evident that the statement of Ram Avatar being contradictory to the fact the

assessee has made after though to justify the unaccounted cash found. So the assessee was not clear as to correct state of affairs. Assessee could not justify as to why and how they went to Odisha what are rates of the machine in Rajasthan. The assessee could not sufficiently proved how they travelled to Odisha with cash. How can assessee can return on the very next day how can the assessee carry huge cash without any reservation as to the travel and coming back. The quotation of Mahavir Associates was in the name of Hanuman Meena and not in the name of the firm. Though the firm established but it was not registered with any of the government agencies and therefore, the story advanced has not supporting evidence. As stated 4 partner was suppose to visit the machinery but ultimately two persons went and that too their alleged journey has no proof of travelling. As regards the agricultural activities bill no details of the produce sold was furnished. As regards the carrying on milk business no details of the doing the business of milk was given. Ld. AO with 35 days available with him he has touched upon all the aspect and has passed very detailed order and Id. DR supported the finding recorded therein. Even before the Id. CIT(A) the assessee has not given details of the firm like GST registration etc. were furnished.

As regards the legal ground Id. DR relied upon the finding recorded in the order of the Id. CIT(A).

10. In the rejoinder the Id. AR of the assessee submitted that in the firm majority investment was in the name of Hanuman Prasad and therefore, he was active and called for the quotation. Details of the source of investment made by each partner placed on record there is no finding recorded in the order of the assessment. Even the partner appearing before the AO and their statement were totally ignored. Thus, there was sufficient evidence placed on record to support the contentions raised and thereby the addition made are unwarranted and required to be deleted.

11. We have heard the rival contentions and perused the material placed on record.

12. Vide ground no 4 & 5 raised by the assessee challenged the addition of Rs. 95,89,000/- made u/s. 69A r.w.s. 115BBE of the Act. The brief facts related to the dispute as it emerges from the record are that G.R.P Thana has seized cash amounting to Rs.95,89,000/- from train no. 14710 at platform no.4 of Kota railway station under section 102 of CRPC on 27.02.2020 from Shri Chatru Lal who were travelling on seat no.66 and 67 of coach no. S-7

Since Shri Chatru Lal Meena was unable to explain the source of cash found, the SHO, GRP Thana, Kota has intimated to IT Department. Subsequently, warrant of authorization was obtained u/s 132A of the IT Act from the Pr. DIT (Inv.), Rajasthan, Jaipur and cash of Rs. 95,89,000/- was requisitioned from SHO, GRP Thana, Kota. Consequent to the cash seizure action, the case of the assessee was centralized to Central Circle, Kota. Notice u/s 153A of the Act was issued to the assessee on 15.12.2021 which was duly served to the assessee through ITBA Portal.

In compliance with notice issued u/s 153A, the assessee has furnished his return of income on 18.02.2022, declaring same income as disclosed in ITR u/s 139 on 31.12.2020 declaring total income of Rs. 1,55,400/ and agricultural income of Rs.4,42,500/-.

As regards the seizure of cash amounting to Rs. 95,89,000/- by CRPC on 27.02.2020 from Shri Chatru Lal who were travelling on seat no.66 and 67 of coach no S-7, same was seized as assessee was unable to explain the source of cash found and in turned intimated to revenue.

Thereafter in order to verify the source of cash seized by the GRP, Thana, summons u/s 131(1A) of the Act were issued by the ADIT(Inv.), Kota on 04.03.2020 fixing the date of hearing on

11.03.2019 to Shri Chatru Lal Meena and Shri Ramavtar Meena. Subsequently, the office of department was closed on 22-March, 2020 due to declaration of complete lockdown on account of Covid-19. On 17.07.2020 Shri Chatru Lal Meena along with Shri Rain Avtar Meena appeared suo-motto and filed a written reply dated 17.07 2020 and statements of Shri Ram Avatar Meena and Shri Chatru Lal Meena was recorded on oath. Shri Ram Avtar Meena stated in his statement that the amount of Rs.95,89,000/- belongs to firm M/s Meena Construction Work in which he is a partner. In that firm a total of 10 partners formed the firm to develop rural activities like Pond Constriction, Leveling of land, Medbandi and other construction related work.

He has claimed that this amount is contributed by different persons / partners of the firm M/s Meena Construction Work as capital introduction. He has further stated that Rs.96,00,000/- were carried for purchase of old machinery from Orissa which was required for carrying out execution of works of the firm. This is the contrary version Shri Ram Avtar Meena which was given before Police. He has stated before Police that the cash was brought from Bhubaneswar, Orissa. He further stated that the amount was

contributed by the partners of the firm for the purchase of shovel machines like Hydraulic Excavator, JCB and Dumper.

As regards the purchase of machinery from Orissa, Shri Ram Avatar Meena has stated that the son of his brother-in-law, Shri Gulkesh Meena is a Garrison Engineer in Defense Account Services at Bhubaneswar and he assured to help in purchase of old and good quality machines. So, quotation was called from M/s Shree Mahavir Associates, Balasore, Odisha. On comparison of the rates of the machines available in Sawai Madhopur and Jaipur, it was found that the rates of machines at Odisha were reasonable. So, Shri Ram Avtar Meena along with Shri Chatru Lal Meena, Shri Hanuman Prasad Meena and Shri Tulsi Ram Meena planned to go to Odisha.

On 23.02.2020 daughter of Shri Hanuman Prasad Meena was admitted in the hospital. Shri Chatru Lal and Shri Ram Avtar Meena departed for Odisha on 23.02.2020 with an amount of Rs.96.00.000/-. It was further stated by Shri Ram Avtar Meena that after reaching Bhubaneswar, it was informed by Shri Gulkesh Meena, S/o Shri Chatru Lal Meena that the payment of machines cannot be made in cash. Therefore, the machinery could not be purchased, and they returned back with the amount and the

amount was seized by G.R.P, Kota on 27.02.2020 while returning from Orissa.

During assessment proceedings, the assessee was asked to submit the details and explain source of the cash seized of Rs 95,89,000/- vide notice u/s 142(1) dated 26.02.2022. In that reply while explaining source of cash seized assessee stated that assessee is a partner in firm M/s Meena Construction Company. Assessee was travelling along with one his partner Ram Avtar Meena for business purpose and GRP has found Rs. 95,89,000/- cash with assessee and his partner Shri Ram Avtar Meena. The assessee and his partner Shri Ram Avtar Meena have submitted complete details with ADI Kota and justified the source of the cash found. The assessee also placed on record source of income and business activity of all the partners which is forming of the assessment order. It was further submitted that all the partners of the firms **were ready on come on oath, if required at your end.**

Even though all these details placed on record Id. AO made the addition of Rs. 95,89,000/- u/s. 69A r.w.s. 115BBE of the Act.

12.1 When the matter carried to Id. CIT(A) he has also confirmed that addition holding that the cash seized was not belong to the

firm. While doing so he observed that cash was seized from the appellant and Shri Ramavtar Meena. The appellant gave a different version before the Police with regard to source of cash and changed its stand before the AO. The AO has examined the claim made. The reply and evidences filed by the assessee during the post search proceedings and assessment proceedings are not found reliable. Ld. CIT(A) while holding so also noted that the claim of purchase of machinery from Bhuwaneshwar was considered as an afterthought by AO because the quotation is found to be dated 18/12/2019 while the firm was formed on 17/01/2020. Secondly, the quotation was in the name of Shri Hanuman Meena and not in the name of so called firm M/s Meena Construction Work. The veracity of the quotation is doubtful as the assessee has not submitted any details about the contractor. The Firm has not fulfilled the requirement of registration under GST, allotment of PAN, opening of bank accounts, which are the basic requirements to start any business. There has been no activity in the firm since inception. Therefore, he noted that AO has examined the arguments of the appellant on the human probability test. The claim of the appellant was considered on account of many inconsistencies in the claim made. The appellant has tried to

explain these inconsistencies but the same was not supported by any evidence as noted by Id. CIT(A). Therefore, the assertions made by the appellant were considered without any supporting evidence and thereby the addition was confirmed.

12.2 We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee, mainly derives income from agricultural activities and selling of milk. The assessee, along with other partners, decided to constitute a partnership firm, M/s Meena Construction Works (MCW). The said partnership firm was formed on 17.01. 2020. Copy of partnership deed enclosed [APB 3-8]. **At this stage it is clear that the firm was incorporated before the cash was found and seized.** Assessee has placed on record all the details of all the partners and their capital contribution in the said firm is as under:

S. No.	Name of the Partner	Amount In Rs	PAN	Address
1.	Ram Avatar Meena	8,50,000	GEXPM4336G	Khat Kalan, Sawai Madhopur, Pa dana, Rajasthan, 322034
2.	Tulsi Ram Meena	13,00,000	ASOPR6320E	Shyamota, Sawai Madhopur, Manipura, Rajasthan, 322027
3.	Hanuman Prasad Meena	12,00,000	ALUPM1369D	Dehakwa, Sawai

				Madhopur, Rajasthan, 322001
4.	Chatru Lal Meena (Assessee)	4,00,000	BUVPC1977N	Gram Nimod Teh Malarana Dunger, Neemod, Sawai Madhopur, Rajasthan, 322030
5.	Choth Mal Meena s/o Puni Ram Meena	11,00,000	GEXPM4350G	Chota Pada, Jarawata, Sawai Madhopur, Rajasthan, 322027
6.	Man Mohan Meena	8,00,000	FPRPM7123D	Bharja Nadi, Sawai Madhopur, Rajasthan, 322024
7.	Radha Kishan Meena	12,00,000	DHBPM5327M	Jola, Sawai Madhopur, Rajasthan, 322701
8.	Choth Mal Meena s/o Rati Ram Meena	8,00,000	EOEPM7468L	Bagavda, Khijoori, Sawai Madhopur, Rajasthan, 322001
9.	Ramchej Meena	9,50,000	DXGPR3040P	Bandha, Lorwara, Sawai Madhopur, Lorwara, Rajasthan, 322701
10	Harikesh Meena	12,00,000	GEXPM4395M	Bhagwan Shanakar ke Mandir ke paas, Jarawata, Sawai Madhopur, Rajasthan, 322027
	Total	98,00,000		

As is evident that all the details related to all the partner were made available so as to verify the source of the cash found from one of the partner of the firm. The said firm "MCW" decided to purchase the old second-hand construction machineries and for the same, the partners of the firm started making enquiries for the purchase of the machineries. Since the partners had good contacts in Odisha, one of the partners, Shri Hanuman Prasad Meena also obtained quotation from Shri Mahaveer Associates situated at

Chaudhary Market Complex, Proof Road, Balasore, Odisha for the purchase of machineries like Hydraulic Excavator, JCB and Dumper. Copy of quotation dated 18.12.2019 available at page 9 of the paper book. It was submitted that the partners of the firm were intending to carry out the business in **partnership and were in discussion for the same well before the formal execution of the Partnership Deed**. The initial due diligence was started and quotation for machinery was obtained in the second half of December 2019. After the initial due diligence, the partners found it a viable proposition and accordingly executed deed of partnership on 17.01.2020. Assessee and one more partner, Shri Ram Avatar Meena decided to travel to Bhubaneshwar. Unfortunately, upon reaching Bhubaneshwar it was discovered that the vendor, Shri Ravi Jain proprietor of Shri Mahaveer Associates from whom the said old second-hand machineries was to be purchased was not available due to last minute emergency.

Since the transaction of purchase of machinery did not materialize, the assessee along with other partner, Shri Ram Avatar Meena travelled back on the next day i.e., 26.02.2020. While returning to Sawai Madhopur, GRP Thana seized cash amounting to Rs 95,89,000 from train no 14710 at platform no 4

from the assessee and other partner, Shri Ram Avatar Meena. GRP Thana after recording the statements on 27.02.2020 [APB 10] and intimated to Income Tax Department. Thereafter, summons u/s 131(1A) were issued to the assessee by ADIT(Inv.) Kota on 4.3.2020 fixing the date of hearing on 11.3.2020 (erroneously mentioned as 11.3.1019 in Assessment Order). However, adjournment was filed by assessee in response to such summons, which was given upto 25.3.2020. Thereafter, due to COVID breakdown, there was a countrywide lockdown w.e.f. 22.3.2020. On 17.7.2020, assessee suo moto appeared and filed Reply dated 17.7.2020. Also, statements of assessee as well as Shri Ramavtar Meena were recorded on oath. In such statements complete facts were duly explained by Shri Ramavtar Meena and it was also clarified that there was no contradiction in statements as given before GRP and before ADIT and basically, their statements were misinterpreted. Also, complete details w.r.t. source of making investment in Meena Construction firm were also furnished. In fact, during assessment proceedings also, it was stated that if Id.AO was not satisfied with the submission made and statement recorded by ADIT (Inv.), direct enquiries may be conducted from all the partners.

However, Id.AO did not conduct any single enquiry from any of the partners nor recorded any statements and solely relied upon the statements recorded by GRP and ADIT(Inv.). We note that before presuming that there was contradiction in the statements (that too without any basis), Id.AO was duty bound to record statements on his own, however no such effort was made by Id.AO and entire assessment was completed within a short span of 1 month, i.e. notice u/s 143(2) was issued on 21.2.2022 and notice u/s 142(1) was issued on 26.2.2022, which was duly complied with. Thereafter show cause notice was issued on 17.3.2022, which was complied with assessee on 21.3.2022 and Assessment order was passed on 29.3.2022. Thus, we note that Id. AO, without considering the explanation offered by assessee and without cross verifying the details furnished, assumed the cash as the unexplained money that too only of the assessee whereas money belonged to all the ten partners as per their respective capital contribution and made the additions of entire cash found in the hands of the assessee. When the matter was carried to even Id. CIT(A) confirmed the addition by relying upon the observations of Id.AO.

Dealing with the observation of the Id. AO we note that in fact there is no contrary version in the statements so recorded. Immediately when the assessee confronted assessee being an aged person, could not immediately understood as to why such sudden action was being taken against them and when it was asked as to from where they were coming with cash, it was simply stated that they were coming from Bhuwneshwar. Such statements of assessee were misinterpreted, and it was inferred that cash was being brought from Bhuwneshwar. Subsequently, when statements of both assessee and Shri Ramavtar Meena were recorded before the ADIT- Investigation, on oath, wherein it was clarified that the cash they were carrying was taken from Sawai Madhopur only and since deal for purchase of machinery could not be materialize, it was being brought back. It was also explained as to under what circumstances the statements were given to GRP Police and how they were not interpreted in its true sense. Also, these statements before ADIT- Inv. [APB 11-34] were given on oath by both the partners which have vital evidentiary value. The relevant part of statements of both the partners reads as under :

Shri Ram Avatar Meena (Page-5, Question 8)

प्रश्न 8. आपने दिनांक 27.02.2020 को G.R.P. को बताया कि आप यह नकदी bhuvenshwar से लेकर आ रहे हैं। यही तथ्य G.R.P. थाना ने Letter द्वारा हमें बताया है। जबकि अब आप यह बता रहे हैं कि यह राशि आप सवाई माधोपुर से लेकर गये थे। अभी दिये जवाब में और G.R.P. थाना में दिये गये जवाब के विरोधाभास में क्या कारण है स्पष्ट करें।

उत्तर इस सम्बन्ध में मैं यह बताना चाहूंगा कि मैं और मेरे जीजाजी कम पढ़ें लिखे हैं और पुलिस कचहरी के मामलों में कभी नहीं पड़े। कोटा में G.R.P. Police ने हमारे साथ बदतमीजी से व्यवहार किया Train के Coach से लेकर थाने में पुछताछ तक कई बार धक्का मुक्की की और कई बार डांटा फटकारा। उन्होंने मेरे जीजाजी श्री चतरू लाल मीणा से अलग कमरे में बैठाकर पुछताछ की। क्योंकि मेरे जीजाजी की उम्र 60 वर्ष है जिसकी वजह से उनमें घबराहट व डर बैठ गया। वहां उनसे जो बयान लिये गये इसमें उन्होंने यह स्पष्ट करने की कोशिश की यह राशि हम सवाई माधोपुर से भुवनेश्वर लेकर गये और वहां से वापस लेकर आ रहे हैं। उन्होंने मेरे जीजाजी के बयानों का गलत अभिप्राय: लगाया और यह गलत अर्थ से लिया कि यह राशि हम भुवनेश्वर से लेकर आ रहे हैं, उन्होंने गलत फहमी में स्पष्टीकरण देने का अवसर ही नहीं दिया और जबरदस्ती बयान में यह लिखाया कि हम भुवनेश्वर से यह राशि लेकर आ रहे हैं।

Shri Chatru Lal Meena (Page-2, Question 6)

प्रश्न 6. दिनांक 27.02.2020 को आपने व श्री रामअवतार मीणा जी को जी.आर.पी. थाना, कोटा स्टेशन द्वारा ट्रेन पूरी-बीकानेर एक्सप्रेस (14710) के कोच S-7 से प्लेटफार्म नं. 4 पूछताछ की गई और दो बैग में 95,89,000/- रुपये आपसे बरामद किये। इस नगद राशि के सम्बंध में आपसे की गई पूछताछ में आपने दोनो बैगों में रखी राशि भुवनेश्वर से लेकर आना बताया है। इस राशि के स्रोत के संबंध में आपसे पूछा गया था जिसके संतोषजनक जवाब आपके द्वारा प्रस्तुत नहीं किये गये और जी.आर.पी. द्वारा भी नकदी रूपये 95,89,000/- को 102 सी.आर.पी.सी. में जब्त कर लिया गया। पुनः बताये कि आप कहां से कहां तक यात्रा कर रहे थे? इतनी बड़ी नकदी आप कहां से लेकर आ रहे थे? इसका स्रोत क्या है?

उत्तर जो घटनाक्रम आपने मुझे बताया उसमें मैं मौजूद था। यह राशि हमारी फर्म M/s मीणा कन्सल्टेशन वर्क की थी। श्रीमान मैं आपसे निवेदन करना चाहूँ कि मेरी तबीयत सही न होने के कारण मैं ज्यादा सवालों के जवाब नहीं दे पाउँगा। मैं मेरे पार्टनर श्री रामअवतार मीणा को Authorise करता हूँ और वो जो भी जवाब देगे वह मुझे मान्य होगा।

On going through the version so recorded it was thus explained before ADIT-Investigation that GRP people coerced the assessee and Shri Ramavtar Meena, i.e. partners of the firm carrying cash. Their statements were misunderstood / misinterpreted and incorrectly recorded by GRP. It was also explained before ADIT-

Inv. that the cash belonged to the partnership firm and not to the assessee. It was taken from Sawai Madhopur to Bhubaneswar and was brought back from Bhubaneswar to Sawai Madhopur on account of not completion the purpose for carrying it. The statement recorded before the Income tax authorities on oath have more evidentiary value than to the statements recorded by GRP, viz. not an authority under Income Tax Act more particularly when no evidence whatsoever has been brought on record by Id.AO to prove the contrary. Ld. AR in support of the contention so to binding of the statement before Police u/s 161 of CrPC Act, 1973 has no evidentiary value in view of Supreme Court decision in the case of Hon'ble Supreme Court in the case Parvat Singh & Ors. vs. State of Madhya Pradesh [Criminal Appeal No 374 of 2020]. Therefore, we see no contradiction in statements recorded by GRP vis-à-vis ADIT (Inv.). As regards the incorporation of the partnership firm same were ignored because the assessee has not registered themselves with other governmental agencies. As is evident from the record that the firm was just incorporated one month prior to the date of seizure of cash and before that quotation was invited in the month of December 2019 and within a month, partnership was formed on 17.01.2020 in order to document all the

terms and conditions amongst the partners and proceed to purchase assets so as to start the business. Also, after the said formation, within a month, the partners decided to travel for purchase of second-hand machinery because that was the first step to start the activities. As regards the registration of the firm can also required to be made if the turnover exceed the threshold limit and therefore, that firm not liable for registration. As regards the allotment of PAN and bank account of the firm same was not opened because partners were not aware that a separate PAN required for the firm. This fact was duly explained before ADIT-Inv when statement was recorded. This was the reason that cash had to be taken for the purchase of machinery. It is submitted that nevertheless the firm obtained PAN on 05.09.2020. However, due to seizure of cash and outbreak of pandemic the activities of the firm came to stand-still also on the alternative facts which are also not disputed. As regards the contention that the quotation was obtained before the firm came into existence and obtained in the name of one of the partners and not in the name of the assessee firm. In this regard, it is submitted that the enquiries were being made for the purchase of machinery and when the same looked feasible, the partnership firm was formed. All the explanation were

backed by the supporting evidence and consistent statements. As regards the contention that it was an afterthought merely based on the fact that why Shri Gulkesh Meena (i.e. son of assessee who was residing in Bhuvneshwar) had not been consulted in advance regarding if payment for purchase of machinery could be made in cash or not. He has also doubted the version and has mentioned that a prudent businessman will always ensure the availability of the person to whom they are going to meet. It is submitted that Shri Gulkesh Meena was not consulted because he had nothing to do with the firm and its transactions. Otherwise also, if partners had any doubt, then only, they would have consulted anyone but they were under a bonafide belief that the machinery could be purchased outside the state only on payment on cash and accordingly carried the cash for purchase of machinery. As regards the non-availability of vendor, Shri Ravi Jain, proprietor of Shree Mahaveer Associates as he had to leave the town due to a last minute emergency on his part and they came to know about one legal requirement of cash payment and therefore, there was no reason to wait for the vendor to return. It is submitted that Id. AO could have issued summon or made enquiry from Shri Ravi Jain for confirming the facts. During the course of statements of Shri

Ram Avatar Meena recorded by ADIT-Inv. on 17.07.2020 while replying question no 13 not only the complete address but the contact number was also given. However, Id. AO without discharging his onus, simply disbelieved the explanation of the assessee. As is clear that all the information were given vide reply to question no 13 which reads as under:

प्रश्न. 13 कृपया M/s महावीर एसोसियेट का पता और इसके मालिक श्री रवि जैन का कॉन्टेक्ट नम्बर बताये।

उत्तर. M/s महावीर एसोसियेट का पता विनायक टावर, फ्लैट नं. 309, नियर विटा होटल, भुवनेश्वर। इसके मालिक का कॉन्टेक्ट नं. 9437019362 हैं।

As regards the contention that other partners were not aware of wherein Shri Ram Avatar Meena had discussed, elaborately with all the partners of the firm, before going to Bhubaneshwar for purchase of the machinery. The partners which had more knowledge in this regard also gave their input and then only decision of purchase was taken. Now the last issue remained to explained about the source of the cash found wherein details of name, address, details of source of investment made, PAN, details of source of income with supporting evidence all were placed in the paper book so filed. Even the Id. AO through the Id. DR did not

controvert any of the evidence so as to disbelieve the version of the appellant-assessee. The assessee has filed the plethora of document to prove his innocence which runs into 1172 pages as listed herein above. Not a single document were found to be forged not correct against the facts placed before us so as to clear beyond doubt to explain the source of cash found. Thus, we are of the considered view that the assessee has discharged his onus by way of personally appearing and also presenting the partners of "MCW", who also provided documentary evidence proving source of making cash contribution as their share. On the other hand, Id. AO and Id. CIT(A) have disbelieved the explanation of assessee without any cogent reasons and without rebutting the explanation and evidence produced before them. The bench also noted that Id. AO and Id.CIT(A) have discarded the documentary evidences on surmises and conjectures and have completely ignored the fact that the partners of MCW were summoned by ADIT-Inv. and their statements on oath were recorded. Their statements were confirming the facts which were explained before the Id. AO during the assessment proceedings. If not satisfied, Id.AO was duty bound to summon the said partners and record their statements seeking information / clarification. Not having done so and still

rejecting the explanation and ignoring the documentary evidence is unjustified and illegal on the part of Id. AO while dealing with such type of cases with the citizen tax payers and business men. We are also surmise to note the same was not only done by own but when it was specifically prayed by the assessee vide reply dated 21.3.2022, assessee categorically conveyed (AO Page-13, first line) that all the partners are ready to appear before AO and give their statements on oath, even though for the best reasons know to him Id. AO chose not to summon the partners and based on the surmised reasons proceeded against the evidence and facts of the case. The contention of the Id. AO that sufficient opportunities vide summons dated 03.11.2020, 10.11.2020, 26.12.2020 and 13.01.2021 were given to file evidences, but we note that these summons were not issued by the Id. AO but were issued by ADIT. In that response as many as six partners appeared before ADIT and their statements were recorded and in others case evidences were furnished. It is submitted that as regards proceedings before AO is concerned, the first notice u/s 143(2) was given by Id. AO only on 21.02.2022. It is not the case of the Id. AO that on summoning by him, the partners did not appear. Thus, this amounts to admission by Id. AO of his inaction during assessment

proceedings. Thus, good explanation given by the assessee should be considered objectively and should not act unreasonably and reject the explanation without proving it to be incorrect. Thus, as held in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112 by the apex court that “the explanation furnished by the assessee needs to be considered objectively and the explanation given cannot be rejected arbitrarily or capriciously, without sufficient grounds, on suspicion or on imaginary or irrelevant grounds”.

Thus, looking at the facts and evidence on record we note that the cash was found belonging to the firm and not of the assessee alone and thus invoking the provision of section 69A in the hands of the assessee misconceived from the start of the cash found till the same is concluded and is without considering the statement and evidence placed on record. While deriving this view of the matter we get support from the decision of Hon'ble Supreme Court in the case of D.N. Singh vs. CIT [2023] 454 ITR 595 (SC) wherein the Hon'ble Court at Para 39 of the order held that:

39. To apply Section 69A of the Act, it is indispensable that the Officer must find that the other valuable article, inter alia, is owned by the assessee. A bailee, who is a common carrier, is not an owner of the goods. A bailee who is a common carrier would necessarily be

entrusted with the possession of the goods. the purpose of the bailment is the delivery of the goods by the common carrier to the consignee or as per the directions of the consignor. During the subsistence of the contract of carriage of goods, the bailee would not become the owner of the goods. In the case of an entrustment to the carrier otherwise than under a contract of sale of goods also, the possession of the carrier would not convert it into the owner of the goods.

Thus, considering the contention raised before us supported by the detailed evidence, we do not find any reason to sustain the addition of Rs. 95,89,00,000/- and the same is directed to be deleted. Based on this observation Ground no. 4 & 5 raised by the assessee are allowed.

13. Ground no. 6 raised by the assessee deal with the addition of Rs. 25,481/- made and sustained in the hands of the assessee. As we hold that the cash is of the firm wherein the assessee is one of the partner and therefore, the same is of his firm, MCW. If the cash does not belong to him, the interest earned on the same amounting to Rs 25,481 is also not related to him and therefore, cannot be taxed in the hands of the assessee. Hence, the addition amounting to Rs 25,481 is illegal and deserves to be deleted in view of our finding in ground no. 4 & 5. Based on these observations ground no. 6 raised by the assessee is allowed.

14. Ground no. 7 raised by the assessee challenging the action of the Id. AO and that of the Id. CIT(A) in respect of business income of Rs. 1,55,400/- declared by the assessee as chargeable to tax u/s. 68 r.w.s. 115BBE of the Act. The facts related to the issue are that the assessee has shown business income of Rs. 1,55,400/- earned from the sale of milk. During the assessment proceedings, the assessee was asked to submit detailed evidence in this regard. But the assessee has not submitted any details and evidence which proves that the same income was earned from the sale of Milk. Therefore, it was held that the assesses failed to submit details and evidence regarding source of income of Rs. 1,55,400/- the same was treated as unexplained income as per provision of section 68 of the IT Act and tax is charged as per provision of section 115BBE of the IT Act. When the matter carried before the Id. CIT(A), he confirmed the addition by observing as under :

The income offered in return under a particular head of income needs to be established that the income is belonging to that particular head of income. However, in this case, the claim of the appellant with respect to business income is found to be without any evidence. Therefore, the income cannot be treated as business income. In the facts of the case, the AO was justified in making addition u/s 68 of the Act.

We note that the reason for treating the business income to be unexplained was that no evidences of sale of milk were produced

by the assessee. Since, the sale of milk and milk produced in rural India is not part of formal economy expecting formal record in this regard on part of Id. AO shows ignorance the way of items are sold in rural economy. Also, as stated above, it is reiterated that there can be no evidence of owning cattle. Also, in the rural economy, livestock is sold/purchased without formal bills. Evidence of any subsequent addition to livestock by breeding cannot be made available. In addition to the same, there are no bills for selling the milk and other related products. Ld. AO has invoked the provisions of section 68 for addition of sale of milk offered as business income which is illegal and unjustified. Because there can be no bills for sale of milk in the rural economy, the action of Id. AO in treating the business income to be unexplained deserves to be quashed because provision of section 68 cannot be used deem non income to be income. The said income is already offered for taxation in the return of income by way of sales amounting to Rs 1,55,400 deserves to be deleted. Based on this observation ground no. 7 raised by the assessee stands allowed.

15. Ground no. 8 & 9 raised by the assessee challenges the action of Id. CIT(A) in confirming the action of Id.AO in treating the agriculture income to the tune of Rs.2,92,500/- as unexplained u/s

68 thereby invocation of provisions of section 115BBE. Brief facts as emerges from the records are that the assessee offered agricultural income for an amount of Rs. 4,42,500/-. The assessee was asked to submit details of income & expenditure accounts and other relevant documents to justify the agricultural income. In his reply, the assessee stated that he owns 12.50 Bighas agriculture land which is fully irrigated and submitted Vikray Parchies of agricultural produce of Rs.4,51,082/-. On perusal of such Vikaray parchee, it is noticed that some Vikaray parchee were not related to assessee. Further, the assessee has not produced any details regarding quantity of production of agricultural crops, expenditure related to agricultural activities, Income & Expenditure account etc to justify the agricultural income. In the absence of these details and documentary evidence, the agricultural income shown by the assessee is remains unexplained. Further it is not possible that the assessee has earned such a huge agricultural income of Rs. 4,42,500/- from only 12.50 Bighas agricultural land. As the assessee has not submitted a satisfactory reply and relevant documents about earning of agricultural income then the agricultural income is being estimated at the rate of Rs. 12,000/- per bigha which comes to Rs. 1,50,000/- (12000*12.5).

Considering these fact, the agricultural income of the assessee was assessed at Rs 1,50,000/-, As, the assessee has shown agricultural income of Rs. 4,42,500/-. Therefore, the excess amount of Rs. 2,92,500/-(442500-150000) was added to the total income of the assessee as per provision of section 68 of the IT Act and tax is charged as per provision of section 115BBE of the IT Act.

When the same was carried before the Id. CIT(A) he confirmed the action of the Id. AO by merely stating that “the appellant has failed to explain the source and nature of credit in the books of accounts. Therefore, the AO has rightly made the addition u/s 68 of the Act.”

We note that Id. AO accepted the agricultural income at the rate of Rs 12,000 per bigha, totalling per annum of Rs 1,50,000 and made addition of differential amount of Rs 2,92,500 (4,42,500-1,50,000) u/s 68 and invoked the provisions of section 115BBE for taxing such income, which stood confirmed by Id.CIT(A). Thus, we note that the Id. AO has estimated the income without any supporting documents. Whereas the income offered by the assessee once accepted in part and thereafter the same is

supported by bills for sale items sold the said agricultural income cannot be considered in part. If we calculate the income of Rs. 4,42,500/- dividing the land 12.5 vigha it comes to Rs. 35,400/- per vigha which is also fair and reasonable and does not require to be disbelieved merely the assessee could not produce the bills whereas the bills were submitted but were disbelieved merely on account of the fact that same are not complete. Ld. AO when partly considered the income on set of evidence why not full. In view of the above, entire agriculture income stands explained and the addition of Rs 2,92,500/- made by Ld.AO deserves to be deleted. Further, and consequently invocation of the provisions of section 115BBE to such addition also being not in accordance with law and deserves to be quashed.

16. Ground no. 1 and 2 raised by the assessee challenges the order of the assessing officer on technical grounds. Since we have considered the grounds of appeal on its merits this technical ground becomes educative in nature. Ground no. 10 being general does not require our finding.

Based on the observations made herein above, the appeal of the assessee in ITA no. 726/JPR/2023 for A. Y. 2020-21 stands allowed.

17. The bench noted that the grounds of appeal raised by the assessee in ITA no. 721/JPR/2023 to 725/JPR/2023 and 727/JPR/2023 for assessment year 2015-16 to 2019-20 and A. Y. 2021-22 are covered and discussed in detailed while considering the appeal of the assessee in ITA no. 726/JPR/2023 for assessment year 2020-21. Since we have allowed those grounds by a detailed finding herein above, we do not find it imperative to repeat the grounds, facts and the decision taken by us for the appeal of the assessee in ITA no. 721/JPR/2023 to 725/JPR/2023 for assessment year 2015-16 to 2019-20 and that similar grounds of appeal to appeal no. 727/JPR/2023 for A. Y. 2021-22 and therefore, the finding recorded by the bench while dealing with the appeal of the assessee in ITA no. 726/JPR/2023 shall apply mutatis mutandis to ITA no. 721/JPR/2023 to 725/JPR/2023 and ITA no. 727/JPR/2023.

In the result, all the seven appeals filed by the assessee are allowed.

Order pronounced in the open Court on 26/12/2024.

Sd/-

Sd/-

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

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

जयपुर / Jaipur

दिनांक / Dated:- 26/12/2024

*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- Sh. Chatru, Sawai Madhopur.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle, Kota.
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 No. 721 to 727/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar