

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ ITA. No. 558 & 559/JPR/2024
निर्धारण वर्ष / Assessment Year : 2013-14 & 2014-15

Sh. Rajendra Agarwal, 137, Radha Damodar Ki Gali, Chaura Rasta, Jaipur.	v.	The ACIT, Central Circle-1, Jaipur.
स्थायीलेखा सं./ जीआईआर सं./ PAN/GIR No.: ACPPC5384G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA. No. 572 & 573/JPR/2024
निर्धारण वर्ष / Assessment Year : 2013-14 & 2014-15

Sh. Rajendra Agarwal, 137, Radha Damodar Ki Gali, Chaura Rasta, Jaipur.	बनाम Vs.	The DCIT, Central Circle-1, Jaipur.
स्थायीलेखा सं./ जीआईआर सं./ PAN/GIR No.: ACPPC5384G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Vedant Agarwal, Adv.
राजस्व की ओरसे / Revenue by: Mrs. Anita Rinesh, JCIT-Sr D.R.

सुनवाई की तारीख / Date of Hearing : 07/01/2025
उद्घोषणा की तारीख / Date of Pronouncement: 08/01/2025

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

The above captioned four appeals have been filed by the assessee.
By way of ITA No. 558/JPR/2024, the assessee has challenged order

dated 16.02.2024, passed by Learned CIT(A), upholding the assessment order dated 31.3.2016, as regards assessment year 2013-14.

This common judgment is to dispose of all the four appeals, as the same involve common questions of fact and law, and have been argued together by learned AR for the appellant and learned DR for the department.

Vide said assessment order dated 31.03.2016, passed under section 143(3) read with section 153A of the Income Tax Act, 1961 (hereinafter referred to as “the “Act”), the Assessing Officer assessed total income of the assessee, at Rs. 1,26,67,390/-, by computing the same was under:-

“9. After examination of the information and details placed on record and discussion with the A/R of the assessee, the total income of the assessee is computed as under:-

Return income	Rs. 7,47,670/-
Add:- Disallowance of interest payment as discussed in para No. 5	Rs. 29,690/-
Add:- Part disallowances of expenses having personal elements as discussed in para No. 6	6,626/-
Add:- Disallowance as interest on TDS as discussed in para no. 7	Rs. 73
Add:- Addition as discussed in para no. 8	Rs. 1,18,83,333
Assessed total income	Rs. 1,26,67,392
R/o	Rs. 1,26,67,390/-

On challenge to the said assessment order by the assessee, byway of appeal, Learned CIT(A) upheld the assessment made by the Assessing Officer.

2. **ITA No. 572/JPR/2024** has been filed, while challenging order dated 29.02.2024 passed by the Learned CIT(A), Jaipur, whereby penalty order u/s 271AAB of the Act, has been upheld.

Vide penalty order, pertaining to the aforesaid assessment year i.e. AY 2013-14, the Assessing Officer levied penalty of Rs. 35,65,000/- (i.e. @ of 30% of the abovementioned undisclosed income of Rs. 1,18,83,333/-).

3. The above mentioned assessment order and the penalty order - relating to assessment year 2013-14- came to be passed, after search and seizure operation conducted u/s 132(1) of the Act, at various premises of Mahendra Kumar Agarwal, Katta & Dinesh Agarwal Group. Residential premises No. 137, Radha Damodar Ki Gali, Choura Rasta, Jaipur, i.e. of the assessee was also covered by said search and seizure operation.

The assessee runs a proprietorship concern, under the name and style of M/s D.K. & Company , while engaged in the business of trading of TT bars and also manufacturing gold and silver jewellery items.

4. In the course of search, two documents, the incriminating material, (page No. 38 and 39 of the seized papers) are stated to have been recovered from the said residential premises.

For the purpose of identification, during search, said documents were marked as Annexure-A, Exhibit-1.

5. In his statement u/s 132(4) of the Act, recorded during search, the assessee displayed ignorance about the said two incriminating documents.

Even in his statement recorded u/s 131(1) of the Act, the assessee displayed ignorance about, and denied any connection of the said documents with his business, but, admitted discovery and seizure of the said documents from his residential premises.

Consequently, notice u/s 153A of the Act was issued to the assessee on 11.07.2014. The assessee furnished his return of income, in response to the said notice, declaring total income of Rs. 7,47,670/-, as regards AY 2013-14.

It may be mentioned here that prior to the filing of the said return of income, the assessee had not filed regular return of income u/s 139 of the Act.

Notice u/s 143(2) of the Act was issued to the assessee. It was followed by notice u/s 142(1) of the Act accompanied by a detailed

questionnaire. Vide subsequent notices u/s 142(1) of the Act, more queries were raised. Thereupon, documentary evidence was submitted by the Chartered Accountant/AR of the assessee.

6. On completion of the assessment proceedings, the Assessing Officer analysed and decoded the contents of the two documents, and arrived at the following conclusion as under:-

“8.6 the analysis of these papers is done as under:-

Page No. 38:- This paper contains details of calculation of interest for the various period on different amount the same are reproduced as under:-

500	Ka 7Din	1342
500	Ka 8 Din	1533
500	Ka 1 maha 7 Din	7092
2000	Ka 1 maha 9 Din	29900
1000	Ka 1 maha	11500
1000	Ka 26 Din	9966

5	sunilji	
5	Dinshji	
25	Sheela Devi	
10	Arpitji	
10	Ajayji	
25	Sanjayji	1/3
25	Satyanarainji	15/3
35	Sureshji	<u>26/3</u>
		<u>3,22,000</u>
		<u>3,83,333</u>

On perusal of fist half of above table, it seems that these transactions are related to money lending. For example in the first column, principle amount is written

with omitting three zeros, in second column period for which amount was given on interest and in third column indicate interest amount interest amount has been calculated @ 1.15% per month

For example:-

5,00,000x1.15% =5750 (interest of 30 days)

(5750/30)x7 1341.66 r.o. 1342 (interest of 7 days)

In the second half of the above entries, it appears that the digits against the names represent amount of loan given by the assessee and are written in doder form. For example figure of 5 represents amount of Rs. 5 lacs and figure of 24 represents amount of Rs. 25 lacs. The total of these figures comes to Rs. 1.40 crore which is the total loan given by the assessee to the parties mentioned therein. The amount of Rs. 3,22,000 represents the amount of interest @ 1.15% for two months charged on the total loan of Rs. 1.40 crores. And the figure of Rs. 3,83,333 is the total of Rs. 3,22,000 + 61,333 received as interest by the assessee.

Page No. 39:- This paper contains details of amounts given on loan to various persons on Interest. Detail of the page is as under :-

1. Sheela Devi	2500	1/4/13
2. Ajayji Agarwal	1000	20/03/13
3. Arpit Ji	1000	16/03/13
4. Sunilji Jain	500	7/3/13
5. Dinesh Ji Matani	500	2/3/13

On perusal of this page, it appears that the digits against the names represent amount of loan given by the assessee and are written in coded form. For example figure of 2500=/= represents amount of Rs. 25 lacs and figure of 1000=/= represents amount of Rs. 10 lacs. The total of these figures comes to Rs. 55 lacs which is the total loan given by the assessee to the parties mentioned therein. All these names and figures are repetition of entries mentioned at page no. 38.

8.7 However, in his statement, the assessee disowned the transactions mentioned in these pages and stated that these were not related to his business. This claim of the assessee cannot be accepted. It can be seen that this paper has been recovered from the premises of Shri Rajendra Agarwal. The entries in this page are very clear and their nature gets clarified by the calculations of interest made on page no. 38 which have been discussed above. Partially, the dates are also mentioned which show that these are related to the month of March. The search was conducted on 03.04.13 and hence these entries appear to be related to March/April, 2013. The dates are further confirmed by the clear dates which have been mentioned on page no. 39 discussed above wherein some of these entries are appearing with the same amounts. The name of the parties are given and amount are mentioned against them. The assessee is not prepared to give any explanation about these entries. However a wholistic construction of the entries on page no. 38 and 39 suggests that these entries are related to the money which has been advanced by Shri Rajendra Agarwal to different parties. These advances have not been recorded in any books of account of Shri Rajendra Agarwal and his firms.

8.8 Therefore these unaccounted advances of Rs. 1.4 crore and interest thereon are hereby added to the total income of the assessee as his undisclosed advance and interest. This is added to his total income in AY 2013-14 and AY 2014-15 as per the dates mentioned in these papers. Total loan is of Rs. 1,40,00,000/- as per the discussion above and interest is of Rs. 3,83,333. The detail is as under:-

5,00,000	Sunilji	7/3/13
5,00,000	Dineshji	2/3/13
25,00,000	Sheela Devi	1/4/13
10,00,000	Arpitji	16/3/13
10,00,000	Ajayji	20/3/13
25,00,000	Sanjayji	1/3
25,00,000	Satyanarainji	15/3

35,00,000 Sureshji 26/3
1,40,00,000

The amount of Rs. 25,00,000/- advanced to Sheela Devi pertains to AY 2014-15 and the balance amount of Rs. 1,15,00,000/- pertains to AY 2013-14. The interest amount of Rs. 3,83,333/- also pertains to AY 2013-14. Therefore addition of Rs. 1,18,83,333/- is hereby made in the total income of AY 2013-14 and addition of Rs. 25,00,000/- is hereby made in AY 2014-15/- Therefore, penalty proceedings u/s 271AAB of the Act are being Initiated separately.

Addition of Rs. 1,18,83,333”

7. Vide abovesaid assessment order, the Assessing Officer disallowed a sum of Rs. 73, claimed as interest on TDS, by observing in the assessment order that the same was not permissible as per provisions of Section 40A(ii) of the Act.

8. During assessment proceedings, the Assessing Officer found that the assessee had claimed interest expenses of Rs. 29,690/- in profit and loss account of M/s D.K. & Company. The Assessing also found that on said payment, the assessee had not deducted TDS. Said payments were found to have been made to Non Banking Finance Company (NBFC). In the assessment order, said payments have been described as under:-

S. No.	Name of the NBFC	Interest paid
1.	Magma Ginance Corp	8519
2.	City financial Finances Ltd.	842.76
3.	HDB Finance	20329
	Total	29690.76

In the assessment order, the Assessing Officer observed that instead of opportunity, the assessee had failed to furnish any reply to the notice. Hence, said disallowance of payment of interest, u/s 40A(ia) of the Act.

ITA No. 572/JPR/2024

9. In view of the above facts and circumstances, penalty proceedings were initiated and same led to passing of a penalty order. The other appeal i.e. ITA No.572/JPR/2024 relates to said penalty order and same AY i.e. 2013-14.

10. As noticed above, vide assessment order dated 31.03.2016 (referred to while narrating facts of ITA No. 558/JPR/2024 above), the Assessing Officer made addition of Rs. 1,18,83,333/-, while calculating total income of assessee for the assessment year 2013-14.

On the same date i.e. 31.03.2016, the Assessing Officer levied penalty of Rs. 35,65,000/-, on the abovesaid said amount treated as undisclosed income of the assessee, as per provisions of clause (c) of section 271AAB(1) of the Act.

Feeling aggrieved by the penalty order, the assessee challenged the same by way of appeal before Ld. CIT(A). Said appeal came to be dismissed by Learned CIT(A) vide order dated 29.02.2024, thereby

upholding the levy of penalty on the minimum rate i.e. @ 30% of the undisclosed income. Hence, this appeal.

ITA No. 559/JPR/2024 (relating to AY 2014-15)

11. As noticed above, on 03.04.2013, a search and seizure operation u/s 132(1) of the Act was carried out at various premises of Mahendra Kumar Agarwal, Katta & Dinesh Agarwal Group. Residential premises of the assessee at No. 137, Radha Damodar Ki Gali, Choura Rasta, Jaipur, and also his business premises i.e. No. 197, Johari Bazaar, Jaipur were also subject to search and seizure operation.

Said search and seizure operation also led to proceedings and passing of the assessment order u/s 143(3) r.w.s. 153C(1)(b) of the Act, relating to AY 2014-15.

12. It may be mentioned here that, as regards the assessment year 2014-15, the assessee furnished return of income on 28.10.2015 i.e. after the search and seizure operation, declaring therein total income at Rs. 30,92,250/-.

13. As regards the year under consideration, as noticed above, search and seizure operation had led to the discovery and seizure of the above mentioned two documents i.e. page No. 38 and 39 of the seized papers- the incriminating documents, marked as Annexure-A, Exhibit-1.

Having regard to said incriminating material, and after providing opportunity of being heard to the assessee, the Assessing Officer made an addition of Rs. 25 lacs by observing in the manner as under:-

"7.5 It is an undisputed fact that these papers (Annexure-A, Exhibit-1 page no. 38 an 39) have been recovered from the premises of the assessee himself and therefore it was his primary duty as per section 292C of the Act to explain the same but he has altogether failed to do so. Therefore, it is presumed u/s 292C of the Act that these papers are related to him and he is wilfully omitting to explain the same.

7.6 The analysis of these papers is done as under:-

Page No. 38:- This paper contains details of calculation of Interest for the various period on different amount the same are reproduced as under:-

500	Ka 7Din	1342
500	Ka 8 Din	1533
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		<u>3,22,000</u>
		<u>3,83,333</u>

On perusal of first half of above table, it seems that these transactions are related to money lending. For example in the first column, principle amount is written with omitting three zeros, in second column period for which amount was given on interest and in third column indicate interest amount. Interest amount has been calculated @ 1.15% per month.

For example:-

$$5,00,000 \times 1.15\% = 5750 \text{ (interest of 30 days)}$$

$$(5750/30) \times 7 = 1341.66 \text{ r.o. } 1342 \text{ (interest of 7 days)}$$

In the second half of the above entries, it appears that the digits against the names represent amount of loan given by the assessee and are written in coded form. For example figure of 5 represents amount of Rs. 5 lacs and figure of 25 represents amount of Rs. 25 lacs. The total of these figures comes to Rs. 1.40 crore which is the total loan given by the assessee to the parties mentioned therein. The amount of Rs. 3,22,000 represents the amount of interest @ 1.15% for two months charged on the total loan of Rs. 1.40 crores. And the figure of Rs. 3,83,333 is the total of Rs. 3,22,000+ 61,333 received as interest by the assessee.

Page No. 39: This paper contains details of amounts given on loan to various persons on Interest. Detail of the page is as under :-

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On perusal of this page, it appears that the digits against the names represent amount of loan given by the assessee and are written in coded form. For example figure of 2500=/= represents amount of Rs. 25 lacs and figure of 1000=/= represents amount of Rs. 10 lacs. The total of these figures comes to Rs. 55 lacs which is the total loan given by the assessee to the parties mentioned therein. All these names and figures are repetition of entries mentioned at page no. 38.

7.7. However, in his statement, the assessee disowned the transactions mentioned in these pages and stated that these were not related to his business. This claim of the assessee cannot be accepted. It can be seen that this paper has been recovered from the premises of Shri Rajendra Agarwal. The entries in this page are very clear and their nature gets clarified by the calculations of interest made on page no. 38 which have been discussed above. Partially, the dates are also mentioned which show that these are related to the month of March. The search was conducted on 03.04.13 and hence these entries appear to be related to March/April, 2013. The dates are further confirmed by the clear dates which have been mentioned on page no. 39 discussed above wherein some of these entries are appearing with the same amounts. The names of the parties are given and amounts are mentioned against them. The assessee is not prepared to give any explanation about these entries. However a wholistic construction of the entries on page no. 38 and 39 suggests that these entries are related to the money which has been advanced by Shri Rajendra Agarwal to

different parties. These advances have not been recorded in any books of account of Shri Rajendra Agarwal and his firms.

7.8 Therefore these unaccounted advances of Rs. 1.4 crore and interest thereon are hereby added to the total income of the assessee as his undisclosed advances and interest. This is added to his total income in AY 2013-14 and AY 2014-15 as per the date mentioned in these papers. Total loan is of Rs. 1,40,00,000/- as per the discussion above and interest is of Rs. 3,83,333. The detail is as under:-

5,00,000	Sunilji	7/3/13
5,00,000	Dineshji	2/3/13
25,00,000	Sheela Devi	1/4/13
10,00,000	Arpitji	16/3/13
10,00,000	Ajayji	20/3/13
25,00,000	Sanjayji	1/3
25,00,000	Satyanarainji	15/3
<u>35,00,000</u>	<u>Sureshji</u>	<u>26/3</u>
<u>1,40,00,000</u>		

The amount of Rs. 25,00,000/- advanced to Sheela Devi pertains to AY 2014-15 and the balance amount of Rs. 1,15,00,000/- pertains to AY 2013-14. The interest amount of Rs. 3,83,333/- also pertains to AY 2013-14. Therefore addition of Rs. 1,18,83,333/- is hereby made in the total income of AY 2013-14 and addition of Rs. 25,00,000/- is hereby made in AY 2014-15/- Therefore penalty proceedings u/s 271AAB of the Act are being initiated separately.

Addition of Rs. 25,00,000/-“

The assessment order relating to AY 2014-15 also dealt with following two other issues:

- (a) **Disallowance of interest payment of Rs. 10,305/- u/s 40A(ia) of the Act.**
- (b) **Disallowance of expenses having personal element.**

As regards the first issue, during assessment proceedings, the Assessing Officer found that the assessee had claimed interest expenses of Rs. 10,305/-, in Profit and loss account of M/s D.K. & Company. The Assessing Officer also found that on said payment, the assessee had not deducted TDS. Said payments were found to have been made to Non Banking Finance Company (NBFC), as described here under:-

S. No.	Name of the NBFC	Interest paid
1.	Magma Ginance Corp	10305
	Total	10305

In the assessment order, the Assessing Officer observed that despite opportunity, the assessee had failed to furnish any reply. Hence, disallowance of payment of interest, u/s 40A(ia) of the Act.

As regards the second issue, in the course of assessment proceedings, the Assessing Officer found that the assessee had debited following expenses in the Profit and loss account :-

Telephone expenses	Rs. 74,791/-
Petrol & conveyance Exp.	Rs. 10,200/-
Repaid & Maintenance	Rs. 5,084/-
Total	Rs. 90,075/-

Query letter dated 26.11.2015 was issued to the assessee, whereupon he submitted his reply thereto.

The Assessing Officer did not find any merit in the said response by the assessee and accordingly, disallowed in lump sum a sum of Rs. 9,007/- i.e. 10% of the expenses claimed by the assessee, and which related to telephone and vehicle. In this regard, the Assessing Officer made following observations:-

“6.4 The reply of the assessee has been duly considered but the same has not been found tenable. The assessee has not maintained any detail or log book of running of vehicle and use of telephone. The assessee has not furnished any copy of log book for the same. Thus, the assessee could not adduce any evidence to prove that the expenditure incurred for telephone and vehicle were incurred wholly and exclusively for business purposes. No log book has been maintained by the assessee in respect of use of telephone and vehicle, hence, the fact that the personal use of telephone and vehicle or uses for purposes other than the business cannot be ruled out. Therefore, a lump-sum disallowance of Rs. 9,007/- (10% of the expenses claimed related to telephone and vehicle) out of the total telephone and vehicle related expenses claimed is hereby made treating the same for use other than for business purposes and added back in the total income of the assessee accordingly.”

Consequently, the Assessing Officer assessed total income of the assessee at Rs. 56,11,560/-, having record to the above mentioned disallowance of interest payment, part disallowance of expenses having personal element and undisclosed income.

The above facts and circumstances also led to penalty proceedings and passing of penalty order as regards same AY 2014-15.

ITA No. 573/JPR/2024

14. As noticed above, vide assessment order dated 31.03.2016 under challenge by way of ITA No. 559/JPR/2024), the Assessing Officer made addition of Rs. 25,00,000/-, while calculating total income of the assessment year 2014-15.

As regards the said amount, the Assessing Officer also passed penalty order on the same date i.e. 26.03.2019 and levied penalty of Rs. 13,95,000/-, on the said undisclosed income of Rs. 46,50,000/- as per provisions of clause (c) of section 271AAB(1) of the Act.

15. Feeling dissatisfied by the said penalty order, the assessee preferred appeal before Ld. CIT(A).

16. The appeal preferred by the assessee against said penalty order came to be dismissed by Learned CIT(A) vide order dated 29.02.2024, thereby upholding the levy of penalty at minimum @ 30% of the undisclosed income.

Contentions and discussions

***Additions as regards undisclosed incomes of Rs. 1,18,83,333/-
(relating to the Assessment Year 2013-14)***

AND

***due to undisclosed income of Rs. 25,00,000/- (as regards the
Assessment Year 2014-15).***

17. As noticed above, search and seizure operation was carried out on 03.04.2013 at the residential premises. Business premises of the assessee was also subjected to search and seizure operation.

Above said 2 additions, as regards two assessment years mentioned above, were made by the Assessing Officer vide separate assessment orders, having regard to the two incriminating papers by way of identification, said two documents/papers were given page 38 & 39, Annexure-A and Exhibit-1.

18. Assessing Officer, after providing opportunity of being heard to the assessee, in view of the entire material available on record arrived at

conclusion that the assessee had failed to explain undisclosed income of Rs. 1,18,83,333/- (as regards the Assessment Year 2013-14) and income of Rs. 25,00,000/- as regards the Assessment Year 2014-15.

19. It may be mentioned here that in the written submissions, Id. Counsel for the appellant submitted that ground No. 1 challenged the dismissal of the appeal in limine by Id. CIT(A). However, in the course of arguments before us, Id. Counsel for the appellant has not pressed said ground of appeal, in respect of the appeals filed here, and withdrawn the said ground of appeal, the reason being that subsequent to the passing of the impugned orders. Ld. CIT(A), vide order u/s 154 of the Act rectified typographical error regarding inadvertent incorporation of para 2.1 in the impugned orders.

Accordingly, the appeals filed by the assessee challenging the impugned orders on the grounds of dismissal of his appeal in limine, are dismissed as not pressed, as regards the said ground.

20. Ld. Counsel for the appellant has submitted that the authorities below should not have placed reliance on the two incriminating documents mentioned above, the reason being that these are two loose papers not indicating as to whether the same pertained to any transaction of receipt or disposal of loan/advance, and further that the authorities below could not

draw any presumption that the entries recorded in the said two papers relate to the lending of money, particularly when in his statements, the assessee pleaded ignorance about said two papers by stating that the same did not belong to him and were also not in his hand writing.

Ld. Counsel for the appellant has contended that in the given situation, it was for the Assessing Officer to collect convincing evidence so as to link the assessee with to the said transactions, instead of drawing presumption against the assessee by relying on the provisions of section 292C and 132 of the Act. In support of his submission, Ld. Counsel for the appellant has relied on following decisions:

- Principal Commissioner of Income-tax, Central-3 vs. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC)
- Ajay Gupta vs. Commissioner of Income-tax [2020] 114 taxmann.com 577 (Hon'ble Allahabad High Court)
- Principal Commissioner of Income Tax, Central-2 vs. Umesh Ishrani [2019] 108 taxmann.com 437 (Hon'ble High Court of Bombay)
- Navneet Jhamb v. ACIT [2023] 156 taxmann.com 345 (Hon'ble High Court of Punjab and Haryana)

It may be mentioned here that with the written submissions, Id. Counsel for the appellant has also submitted copies of said decisions.

21. Ld. DR for the department has reclined against the observations recorded by the Assessing Officer, in assessment orders and in the impugned orders passed by Id. CIT(A). Ld. DR has also referred to specific questions, with answers thereto, as available in the statement made by the assessee during the proceedings, and submitted that when the assessee failed to explain the incriminating material as available in the two incriminating documents, the authorities below have rightly arrived at the conclusion that the said transactions were of income of the assessee, which he failed to explain, and as such, said additions deserve to be upheld.

22. Admittedly, search and seizure operation was carried out by the team Income tax department at the residential premises of the assessee, business premises of the assessee; that two incriminating documents i.e. page 38 & 39 marked as Annexure-A, Exhibit-1 were seized from the residential premises of the assessee.

The assessee does not dispute that he had not filed any return of income for the said two assessment years. Statements of the assessee were recorded u/s 132(4) i.e. during search & seizure, and 131 of the Act i.e. post search.

23. Even though, it has been submitted by Id. Counsel for the appellant, in the course of arguments that the assessee had retracted the statements said to have been recorded during the search proceedings, no material has been placed on record to discard the said statements i.e. one made at the time of search and seizure, and the other made u/s 131 of the Act.

24. On going through Question No. 15, 18 and 19, with responses thereto by the assessee, it transpires, and as rightly submitted on behalf of the Revenue, attention of the assessee was specifically drawn to the two documents i.e. page No. 38 & 39, while putting it to him that on 3.4.2013, said documents were recovered at the time of search of his residential premises and that transactions recorded therein revealed that same pertained to lending of money, on interest, to the persons named therein.

The assessee in response to the said question admitted seizure of the said documents from his residential premises at the time of search on 03.04.2013. However, he denied that same had any connection with him or that same were in his handwriting or in the hand writing of his son. He also pleaded that transactions recorded therein had no connection with his business and also that he had no knowledge about the said transactions.

25. When above said incriminating material was admittedly recovered from the residential premises of the assessee, it was for the assessee to

explain as to how the said documents were found lying at his residential premises and as to who was the author of the contents thereof. However, the assessee failed to explain possession of the said two incriminating documents recovered on search of his residential premises. The simple ignorance displayed by the assessee, in the manner indicated above, does not come to the aid of the assessee in shifting onus to the Assessing Officer.

26. In the given situation, presumption has been rightly drawn against the assessee, by Learned CIT(A), in view of the provisions of section 292C and 132(4)(A) of the Act, by observing in the manner as:

“The specific provisions in the Income Tax Act are very much specific to the income tax proceedings and are not mentioned in other laws like the Evidence Act and the judgements relied upon by the appellant in the context of other laws and in different facts are not applicable to the present controversy.

As per the specific presumption provided in the law it is clear that legally for the purposes of income tax proceedings the seized documents belong to the appellant. In case the appellant desires to prove that the document does not belong to him, the same is required to be done with positive material evidences and not by making only the self-serving statements. In case it was the bone fide claim of the appellant that these documents do not belong to the appellant the natural implication and natural corollary, specifically in view of the presumption in the law, was that the appellant would have found out and placed on record facts and evidences to show that who created these documents and how these documents came to be in the possession of the appellant. The document was found with the appellant and it is only the appellant who can explain the document and in case the document does not belong to him only the appellant can find out the reality if it is different than what has been found in the assessment order. However no such exercise has been done. Further the presumption in law cannot be rebutted by just making simple plea denying the

same in the self-serving manner. In view of the facts and circumstances the rebuttal of the appellant is found to be devoid of any basis in any merits and is hereby rejected and it is hereby held that the documents seized belong to the appellant.

Further regarding the evidentiary value, there is no requirement in the law that the documents seized during the course of search and seizure action must be in the handwriting of the assessee or the same should be having the signatures of the assessee or the same should have clear titles on the headings etcetera. It is a matter of common knowledge that the loose papers found and seized during the course of search and seizure action pertaining to unaccounted transactions are never written in a very formal and very clear manner except in very rare circumstances. The very reason that the transactions are unaccounted leads to the logical inference and conclusion that there cannot be any prescribed format for the same.

Further it is the settled law as per judgements of honourable Supreme Court that unaccounted transactions take place in secrecy and direct and complete evidences are rarely found and that the revenue authorities are not required to put blinkers on their eyes and the adjudication is to be done considering the various factors including the circumstantial factors.

The seized documents are very much legible and found to have been written in a very clear manner and the assessing authority has also decoded the same with clear mathematical formulas. It can be seen that these paper have been recovered from the premises of Shri Rajendra Agarwal. The entries in this page are very clear and their nature gets clarified by the calculations of interest made on page no. 38 which have been discussed in the assessment order. Partially, the dates are also mentioned which show that these are related to the month of March. The search was conducted on 03.04.13 and hence the reasonable view is that these entries relates to March/April, 2013. The dates are further confirmed by the clear dates which have been mentioned on page no. 39 discussed in the assessment order wherein some of these entries are appearing with the same amounts. The names of the parties are given and amount are mentioned against them. The appellant is not prepared to give any explanation about these entries. However a wholistic construction of the entries on page no. 38 and 39 suggests that these entries are relegated to the money which has been advanced by Shri Rajendra Agarwal to different parties. These advances have not been recorded in any books of account of Shri Rajendra Agarwal and his firms.

Further as per the presumption in section 132(4A) and 292C, the contents of the seized documents are to be treated as true."

27. The assessing authority analysed the contents of the two documents
i.e page 38 & 39 as under:-

“8.6 The analysis of these papers is done as under:-

Page No. 38:- This paper contains details of calculation of interest for the various period on different amount the same are reproduced as under:-

500	Ka 7 Din	1342
500	Ka 8 Din	1533
500	Ka 1 maha 7 Din	7092
2000	Ka 1 maha 9 Din	2990
1000	Ka 1 maha	11500
1000	Ka 26 Din	9966
		61333

5	Sunilji	
5	Dineshji	
25	Sheela Devi	
10	Arpitiji	
10	Ajayji	
25	Sanjayji	
25	Sanjayji	1/3
25	Santyanarainji	15/3
35	Sureshji	<u>26/3</u>
		<u>3,22,000</u>
		<u>3,83,333</u>

On perusal of first half of above table, it seems that these transactions are related to money lending. For example in the first column, principle amount is written with omitting three zeros, in second column period for which amount was given on interest and in third column indicate interest amount. Interest amount has been calculated @ 1.15% per month.

$5,00,000 \times 1.15\% = 5750$ (interest of 30 days)

$(5750/30) \times 7 = 1341.66$ r.o. 1342 (interest of 7 days)

In the second half of the above entries, it appears that the digits against the names represent amount of loan given by the assessee and are written in codec form. For example figure of 5 represents amount of Rs. 5 lacs and figure of 2t represents amount of Rs. 25 lacs. The total of these figures comes to Rs. 1.40 crore which is the total loan given by the assessee to the parties mentioned therein. The amount of Rs. 3,22,000 represents the amount of interest @ 1.15%

for two months charged on the total loan of Rs. 1.40 crores. And the figure of Rs. 3,83,333 is the total of Rs. 3,22,000 + 61,333 received as interest by the assessee.

Page No. 39:- This paper contains details of amounts given on loan to various persons on Interest. Detail of the page is as under :-

1. Sheela Devi	2500	1/4/13
2. Ajayji Agarwal	1000	20/3/13
3. Arpit Ji	1000	16/3/13
4. Sunilji Jain	500	7/3/13
5. Dinesh Ji Natani	500	2/3/13

On perusal of this page, it appears that the digits against the names represent amount of loan given by the assessee and are written in coded form. For example figure of 2500=/= represents amount of Rs. 25 lacs and figure of 1000=/= represents amount of Rs. 10 lacs. The total of these figures comes to Rs. 55 lacs which is the total loan given by the assessee to the parties mentioned therein. All these names and figures are repetition of entries mentioned at page no. 38.

8.7 However, in his statement, the assessee disowned the transactions mentioned in these pages and stated that these were not related to his business. This claim of the assessee cannot be accepted. It can be seen that this paper has been recovered from the premises of Shri Rajendra Agarwal. The entries in this page are very clear and their nature gets clarified by the calculations of interest made on page no. 38 which have been discussed above. Partially, the dates are also mentioned which show that these are related to the month of March. The search was conducted on 03.04.13 and hence these entries appear to be related to March/April, 2013. The dates are further confirmed by the clear dates which have been mentioned on page no. 39 discussed above wherein some of these entries are appearing with the same amounts. The names of the parties are given and amount are mentioned against them. The assessee is not prepared to give any explanation about these entries. However a wholistic construction of the entries on page no. 38 and 39 suggests that these entries are related to the money which has been advanced by Shri Rajendra Agarwal to different parties. These advances have not been recorded in any books of account of Shri Rajendra Agarwal and his firms.

8.8 Therefore these unaccounted advances of Rs. 1.4 crore and interest therefore are hereby added to the total income of the assessee as his undisclosed advance and interest. This is added to his total income in AY 2013-14 and AY 2014-15 as per the dates mentioned in these papers. Total loan is of Rs. 1,40,00,000/- as per the discussion above and interest is of Rs. 3,83,333. The detail is as under:-

5,00,000	Sunilji	7/3/13
5,00,000	Dineshji	2/3/13
25,00,000	Sheela Devi	1/4/13
10,00,000	Arpitji	16/3/13
10,00,000	Ajayji	20/3/13
25,00,000	Sanjayji	1/3
25,00,000	Satyanarainji	15/3
<u>35,00,000</u>	Sureshji	<u>26/3</u>
1,40,00,000/-		

The amount of Rs. 25,00,000/- advanced to Sheela Devi pertains to AY 2014-15 and the balance amount of Rs. 1,15,00,000/- pertains to AY 2013-14. The interest amount of Rs. 3,83,333/- also pertains to AY 2013-14. Therefore addition of Rs. 1,18,83,333/- is hereby made in the total income of AY 2013-14 and addition of Rs. 25,00,000/- is hereby made in AY 2014-15/- Therefore, penalty proceedings u/s 271AAB of the Act are being initiated separately.

Addition of Rs. 1,18,83,333/-“

28. In Ajay Gupta's case, Tribunal was found to have reversed finding of the Id. CIT(A) only on the basis of presumption u/s 132(4)A, without recording any finding as to how the loose sheets recovered on search, were linked with the assessee. Hon'ble High Court was of view that in absence of corroborative evidence, Tribunal was not justified in reversing the finding recorded by Id. CIT(A).

29. In view of the contents of the two documents, referred to above, it can safely be said that said material is incriminating material recovered from the possession and residential premises of the assessee.

In the given facts and circumstances, the decision in Ajay Gupta's case (supra), does not come to the aid to the appellant.

30. As regards the other 2 decisions on the point of enquiry to be conducted by the Assessing Officer, suffice it to state that despite opportunity the Assessee did not disclose any details as regards the contents of the two incriminating documents. Had the assessee given details of the persons named in the documents, the Assessing Officer would have taken steps to associate said persons in the enquiry or assessment proceedings. Since, no detail was provided by the assessee, and rather, he opted to display ignorance simplicitor, the Assessing Officer could not associate any such person for the purposes of enquiry. Accordingly, said two decisions do not come to the aid of the assessee.

Additions under section 40(a)(ia) of the Act.

31. While assailing the impugned orders and said additions, learned counsel for the appellant has contended that the assessee was under the impression that NBFC is also a Bank, and as such he was under bona fide belief that no TDS for said payments was required to be deducted.

At the same time, learned counsel has submitted that matter be remanded to Assessing Officer for fresh decision on this issue taking into consideration details available in Form 26 A.

32. On the other hand, learned DR for the Revenue has reclined against the observations and findings recorded by CIT(A) in upholding the additions, and submitted that there is no merit in the contentions raised on behalf of the appellant, particularly, when there was no justification for non deduction of TDS on the said payments.

33. In the course of arguments, Learned counsel for the appellant has not disputed that NBFCs are not banks. Ignorance of law is no excuse. It is not case of the appellant that he had no assistance of any Chartered Accountant. When enquired in the course of hearing, Learned counsel admits that the assessee did not furnish any information by way of Form No. 27BA i.e. certificate by the Accountant regarding said payments and deductions required by law.

34. Having regard to the provisions of section 40(a)(ia) of the Act, and non compliance thereof by the assessee, we do not find any merit in the submission that the appellant was under the impression that NBFCs are not Banks or that the addition be deleted. As a result, the impugned orders upholding the additions for the two Assessment Years under consideration are upheld.

Lumpsum disallowances

35. Learned counsel for the appellant has contended that the Assessing Officer has made lump sum disallowances, as regards certain expenses observing that same contained personal elements, but the Assessing Officer having not identified any particular instance of personal use, the disallowances deserve to be deleted.

36. As is available from the impugned orders, the Assessing Officer called upon the assessee to produce record to explain as to whether the subject expenses were incurred for business purposes, but the assessee was found to have not been maintaining any details or log book of the running vehicle and about use of telephone. Assessing Officer specifically observed that the assessee did not produce any evidence in support of the reply to the query raised i.e. to establish that the expenditures were incurred for business purposes.

In absence of any such evidence, it can safely be said that the assessee failed to prove the version put forth for the purposes of deletion of the disallowances.

37. Therefore, Learned CIT(A) was justified in sustaining the orders passed by the Assessing Officer, whereby disallowances were made.

Result

38. In view of the above discussion and findings, we are of the considered opinion that there is no illegality or irregularity in the assessment orders relating to the two assessment years under consideration i.e. 2013-14 and 2014-15, or in the impugned orders passed by Learned CIT(A).

Consequently, both the appeals ITA No.558/JP/2024 and ITA No.559/JP/2024 as regards the quantum assessments are hereby dismissed.

ITA No.572/JP/2024 and ITA No.573/JP/2024

39. First mentioned appeal been filed, while challenging order dated 29.02.2024 passed by the Learned CIT(A), Jaipur, whereby penalty order u/s 271AAB of the Act, has been upheld.

Vide penalty order, pertaining to the aforesaid assessment year i.e. AY 2013-14, the Assessing Officer levied penalty of Rs. 35,65,000/- (i.e. @ of 30% of the abovementioned undisclosed income of Rs. 1,18,83,333/-).

As noticed above, the appeal filed qua the quantum assessment stands dismissed. In view of the above findings and having regard to the provisions of section 271AAB(1)(c) of the Act, no fault can be found with the penalty order.

Consequently, this appeal is hereby dismissed.

ITA No. 573/JPR/2024

40. As noticed above, vide assessment order dated 31.03.2016 under challenge by way of ITA No. 559/JPR/2024), the Assessing Officer made addition of Rs. 25,00,000/-, while calculating total income of the assessment year 2014-15.

As regards the said amount, the Assessing Officer also passed penalty order on the same date i.e. 26.03.2019 and levied penalty of Rs. 13,95,000/-, on the total undisclosed income of Rs. 46,50,000/- as per provisions of clause (c) of sub-section (1) of section 271AAB of the Act.

41. As noticed above, the appeal filed qua the quantum assessment stands dismissed. In view of the above findings and having regard to the provisions of section 271AAB(1)(c) of the Act, no fault can be found with the penalty order.

Consequently, this appeal is also hereby dismissed.

42. Copy of the common judgment be also placed in the connected appeal files, for record.

43. Appeal files be consigned to the record room, after the needful is done by the office.

Order pronounced in the open court on 08/01/2025.

Sd/-

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 08/01/2025

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Rajendra Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-1, Jaipur.
DCIT, Central Circle-1, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 558, 559, 572 & 573/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar