

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM**

I.T.A. No. 3432/Mum/2024
(Assessment Year: 2020-21)

I.T.A. No. 3430/Mum/2024
(Assessment Year: 2022-23)

M/s. GNP Consultancy & Solutions Pvt. Ltd. Office No. 51, 52, 56, 57 and 58, 5 th Floor, Plot – 209, Atlanta Premises Co-operative Society Ltd., Jamnalal Bajaj Marg, Nariman Point, Mumbai-400021 PAN : AADCG3716B	Vs.	DCIT Circle-6(1), Room No. 445, 4 th Floor, Kautilya Bhavan, BKC, Mumbai-400051.
Appellant)	:	Respondent)

I.T.A. No. 4480/Mum/2024
(Assessment Year: 2018-19)

I.T.A. No. 4479/Mum/2024
(Assessment Year: 2020-21)

I.T.A. No. 4478/Mum/2024
(Assessment Year: 2022-23)

ACIT Central Circle-6(1), Room No. 445, 4 th Floor, Kautilya Bhavan, BKC, Mumbai-400051.	Vs.	M/s. GNP Consultancy & Solutions Pvt. Ltd. Plot – N 91, Shop, Shop No. 91, Shop No.1, Channel Classic CHS, Sector-4, Kopar Khairane, Maharashtra-400709 PAN : AADCG3716B
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Nishit Gandhi & Adnya
Bhandari, AR

Revenue / Respondent by : Shri Kishor Dhula, CIT-DR & Shri
Bhangepatil Pushkraj Ramesh, Sr.
AR

Date of Hearing : 10.12.2024
Date of Pronouncement : 15.01.2025

ORDER

Per Bench:

These cross appeals by assessee and the Revenue are against the separate orders of the Commissioner of Income Tax (Appeals)-54, Mumbai [in short "the CIT(A)"] all dated 24.06.2024 for Assessment Years (AY) 2018-19, 2020-21 & 2022-23.

2. The assessee is a company engaged in the business of providing consultancy services to industrial clients by providing end to end solutions right from understanding the client requirements, selecting ideal location for industrial set-up, type of plot in industrial belt, lay out for building construction, etc. The issues contended by the assessee and the revenue are common and therefore these appeals were heard together and disposed of through this common order. For the purpose of adjudication, we will first consider the appeal of the Revenue and the assessee filed for AY 2022-23 (ITA.No. 4478&3430/Mum/2024) as a lead case.

3. The assessee filed the return of income for AY 2022-23 on 30.09.2022 declaring a total income of Rs. 29,95,97,768/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. A search under section 132 of the Income Tax Act, 1961 (the Act) on 23.09.2021 was conducted in which

the various premises of the assessee were covered. During the course of search various loose papers were found suggesting that the assessee was in receipt of unaccounted consultancy fees and also same loose sheets showing notings of unaccounted expenses of construction, consultancy, etc. which were not recorded in the regular books of accounts of the assessee. Based on the seized material found the assessee offered Rs. 11,80,18,000/- as the unaccounted income and after deducting unaccounted expenses to the tune of Rs. 3,54,05,400/- offered the net income of Rs. 8,26,12,600/- (70% of unaccounted income) to tax. The assessee paid the taxes due on the additional income offered during the course of search. The Assessing Officer (AO) while completing the assessment under section 143(3) of the Act for AY 2022-23 made the following additions arriving at the assessed income of Rs. 61,00,07,691/-

(i) Unaccounted Business receipts	- Rs. 22,84,97,381/-
(ii) Unexplained Expenditure u/s 69C of the Act	- Rs. 4,49,32,144/-
(iii) Disallowance u/s. 37(1)	- Rs. 15,75,000/-

4. The CIT(A) on further appeals gave partial relief to the assessee. Both the assessee and the Revenue are in appeal before the Tribunal Against the order of the CIT(A). The grounds raised by the Revenue and the assessee are as given below:

ITA No. 4478/Mum/2024 for AY 2022-23 (Revenue)

"1. Ground i. "Whether on the facts and in the circumstances of the case and in law the Ld CIT(A) erred in deleting the addition of unaccounted business receipts of Rs. 22,84,97,381/- without appreciating the fact that Shri Pradip (Uday) Dahale failed to justify the amounts mentioned in the evidences found during the search proceedings?"

2. ii. "Whether on the facts and in the circumstances of the case and in law the Ld CIT(A) erred in deleting the addition of unaccounted business

receipts of Rs. 22,84,97,381/- without appreciating the fact that Shri Pradip (Uday) Dahale failed to substantiate as to how and why he is making submission in respect of all other brokers and why was he in possession of the data of other brokers?"

3. *iii. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the deduction of expenses of Rs. 4,49,32,144/- without appreciating the fact that the assessee had not specified in its statement recorded before the DDIT(Inv.) u/s. 132(4) that expenses through vouchers are application of funds out of undisclosed receipts and also no details in respect of vouchers had been furnished such as name, PAN of the parties to whom payments were made and also ignoring the fact that the cases of Hon'ble High Courts on which reliance was placed by the Ld. CIT(A) are distinguishable on facts?"*

4. *iv. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the claim of expenses @ 30% out of unaccounted business receipts offered without appreciating the fact that the assessee has not submitted any documentary evidences that 30% of the expenses were incurred for the earning of such income and no evidence was submitted by the assessee regarding the claim of expenses?"*

ITA No. 3430/Mum/2024 for AY 2022-23 (Assessee)

"1) On Merits: Disallowance of claim of rental expenses of Rs. 15,75,000/- u/s 37(1) of Act (Para 8.4 on Page Nos.74)

1.1) *On the facts of the case, in law and under the circumstances, the Learned CIT (Appeal)-Central erred in confirming the addition of Rs. 15,75,000/- u/s 37 (1) of Income Tax Act by observing that assessee has not used the said premises for business purpose."*

Unaccounted Business receipts - Ground No. 1 & 2

5. During the course of search at the residential premises of Shri Kaustab Latke an image was retrieved from the Whatsapp message. Based on the said Whatsapp message received from Mr. Pradip Uday Dahale who is the broker of

various plots of land, the AO made an addition of Rs. 13,09,93,119/- during the AY 2021-22. For the year under consideration, the AO made similar addition based on the same Whatsapp message for the balance amount as reflected in the said messages to the tune of Rs. 22,84,97,381/-. The additions made in the earlier year was based on the contention that the amount mentioned in the Whatsapp message is receivable by the assessee. The CIT(A) held that during the course of search no huge amount has been seized or discovered and the nature of various entries in the Whatsapp message is duly explained by the broker who owned the documents as mentioned in the Whatsapp messages. The CIT(A) further held that the AO himself has accepted that assessee has already offered Rs. 1,00,000/- per unit as unaccounted consultancy fees and that the addition made by the AO is merely based on assumptions without any evidences. The CIT(A) relied on his own order for AY 2021-22 while deleting the addition made by the AO.

6. The ld. AR submitted that the issue is covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2021-22 where the Tribunal has confirmed the decision of the CIT(A). The ld. AR further submitted that for the year under consideration, the AO has made the balance amount as mentioned in the same Whatsapp message and therefore the decisions of the Co-ordinate Bench is applicable for the year under consideration also.

7. The ld. DR on the other hand vehemently argued that the reason for the broker sending the WhatsApp messages to the assessee is not explained. The ld DR further argued that if the amounts stated in the message do not pertain to the assessee then why the same is sent to the assessee and this factor is not examined by the CIT(A). Accordingly the ld DR supported the order of the AO.

8. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench while considering the issue of addition based on the Whatsapp messages in assessee's own case (ITA No. 3110 and 2547/Mum/2023 dated 20.03.2024) has held that

“66. Ground number 8 of the appeal is with respect to the deletion of addition of ₹ 130,993,119 and further ground number 9 relates to the same issue wherein the same seized document is dealt with.

67. The facts relating to the issue shows that during search proceedings certain images were retrieved from the mobile phone of Mr. Kaustubh latke , promoters of the GNP group, which relates to the on money received against the services provided to various clients for allotment of TTC cluster and AARUL cluster. It is the claim of learned AO that assessee has received ₹ 46.54 crores out of which ₹ 35.95 crores has already been received by the assessee through various brokers. Seized document shows that there is a tabulated sheet mentioning the name of eight brokers in the first column, in the second column rate is mentioned at ₹ 30 lakhs to 15 lakhs, in column number 3 the number of cases related to each of the broker is mentioned. The total of that column shows that there are 282 transactions. The total receivable broker Wise was mentioned in column number four wherein the total amount receivable is mentioned at ₹ 46.54 crores, in column number five total sum received of each of the broker is mentioned in the total of such column is ₹ 359,490,500/- and in the subsequent column is outstanding balance of each of the broker and the total of such outstanding sum is ₹ 95,206,500/-. Another mage was also found wherein the name of four brokers are mentioned showing total of ₹ 16.24 crores as amount received till date and further the name of the brokers is mentioned against them amount received is mentioned. At third message was also found wherein against the name of broker certain figures are mentioned. During search the AO questioned the director who claimed that these are the amounts directly paid by the buyers to Maharashtra industrial development Corporation (MIDC) and those are made through cheque. The director also provided listed of units handled by each of the broker. In post search proceedings, director of the company accepted that the assessee has received ₹ 1 lakh per plot as its service fees for total 281 clients. He submitted that two hundred clients are handled by him for AARUL cluster and 81 clients are handled by him for TTC cluster. He submitted that these incomes are offered in assessment year 2020 – 21 and 2021 – 22. The learned assessing officer noted that from the image it is apparent that a sum of ₹ 13 lakhs to ₹ 18.60 lakhs per plot was received or receivable. According to that,

he found that all 151-unit holders who are being handled by one broker Mr. Udhay Dahale in two different clusters has different prices. The AO noted that in case of one cluster, prizes ₹ 5,026,220 and in another cluster, it is ₹ 970,360/- respectively. Thus, the amount stated by the director does not commensurate with the amounts mentioned through cheque payments. The AO issued notice under section 142(1) of the act. Assessee claimed that the transactions appearing in the said evidence is between the buyers and the sellers through various brokers and assessee is neither a buyer nor a seller. Assessee however did not comment and stated that such evidence can be explained by the brokers only. The learned assessing officer rejected the contention of the assessee holding that such evidence has been retrieved from the mobile phone of the promoter of the assessee group and therefore the onus lies on him to explain the content of said evidence along with documentary evidence. As the director of the company has stated that these are cheque payments, but he failed to substantiate with documentary evidence. Therefore, in absence of that evidence, the AO noted that total receivable amount against various brokers for both the clusters for 281 clients are mentioned at ₹ 46.54 crores. The assessee has accepted that unaccounted income of ₹ 81 lakhs in respect of all eighty-one units of TTC cluster at the rate of ₹ 1 lakh per unit. Against the name of Mr. Uday Dahale total number of cases are eighty-one of TTC cluster and seventy of AARul cluster totalling to 151 units. The total amount received mentioned is ₹ 244,197,000/- (mentioned in fifth column of the seized document against name of Mr. Uday Dahale). Thus, the AO found that the total amount received for 251 cases is ₹ 244,197,000/- and therefore for eighty-one units the amount would be ₹ 130,993,119/-. When this addition was made AO also issued summons to the broker for recording his statement on oath, but he did not attend because of death of his mother. Subsequently letter dated 22/12/2022 he was asked, and he agreed with the claim made by the director of the company and GNP group. The assessee explained that the said payments were made through cheque by the customers/clients directly to the MIDC. The learned AO did not accept, as the director of the company could not produce the details. The AO also disbelieved the receipt of ₹ 1 lakh per unit being consultancy fee of the assessee. Based on this the learned AO made an addition of ₹ 130,993,119/- and of ₹ 81 lakhs to the total income of the assessee as unaccounted business receipts.

68. The learned CIT – A dealt with this issue as per ground number 5 of his order. The learned CIT – A deleted the addition for the following reasons:-

- i. Assessee is in the business of providing consultancy services in the field of industrial setup in MIDC.

ii. *The WhatsApp images found from the mobile of the assessee director was sent to him by one broker Mr. Pradeep (Uday) Dahale.*

iii. *This document was explained by the director of the company in statement under section 132 (4) of the act in reply to question number 50 stating that it is a statement of the parties who wants to purchase land from MIDC by paying directly to the MIDC through various brokers. The assessee earns consultancy fee only after the occupation certificate of the building has been received after construction by those buyers.*

iv. *All these payments have been received in cheque by MIDC from various customers buying the plot. The assessee submitted the details of payment made and other documentary evidence in respect of several clients who purchased the property directly from MIDC.*

v. *The payments have been made by the parties to the broker as well as to the assessee only after completion of the transaction and possession of the property are handed over to them.*

vi. *The document found contains the names of the broker who brings clients to the assessee and respective payments made by the clients to the MIDC for purchase of the property in various clusters.*

vii. *The total 281 clients purchased through various brokers property in MIDC for which assessee has charged a lump-sum fee of ₹ 1 lakh per unit and accordingly for eighty-one client's ₹ 1 lakh has been considered for each cluster. Accordingly, Rs. 2.81 crore is already offered for the transaction.*

viii. *AO has enquired directly from the brokers about the above transaction who also confirmed the statement made by the director of the company.*

ix. *AO made addition of the screenshot/images pertaining to the amounts receivable or received by the MIDC. The image contains name of broker, rate for each of the properties, total number of cases with respect to each of the brokers, total amount receivable from each of the brokers for transaction of their client, total amount received of each of the brokers with respect to the client and outstanding balance. The amount is received by MIDC through cheques from various clients who have acquired the plots of land with MIDC through brokers. Thus,*

assessee has no role to play in the transaction except to the extent of service fee of ₹ 1 lakh per unit.

x. The learned AO has accepted the declared income of ₹ 100,000/- for each unit as unaccounted consultancy fee income of the assessee for all the 281 units.

69. The learned AO is aggrieved and is in appeal before us against the deletion of the above sum. The learned CIT DR vehemently supported the order of the learned assessing officer. He submits that there is no reference of the rates submitted in the seized document of ₹ 15 lakhs to ₹ 13 lakhs stated in the seized documents. Therefore, this aspect has not at all been considered. He extensively referred to the seized document as well as the finding of the learned assessing officer.

70. The learned authorized representative specifically referred to the seized document placed at page number 556 of the paper book. It was stated that the brokerage is not added to the total income of the assessee, but the total sale price is added to the total income of the assessee. He submits that as the land belongs to the MIDC and not to the assessee the sale price cannot be considered as income of the assessee. Therefore, according to him it is not the income of the assessee. He submitted that the assessee has already disclosed the consultancy charges of ₹ 1 lakh per unit for 281 units therefore the learned CIT – A is correct in deleting the addition.

71. We have carefully considered the rival contention and perused the orders of the lower authorities. During search WhatsApp image was found from the mobile phone. The WhatsApp image is an excel sheet where the name of various brokers, the rate of the land, number of cases handled by each of the broker and amount receivable for the transaction and total amount received until date along with the outstanding balance is mentioned. The explanation of the assessee is that the name of the broker is mentioned who have dealt with in purchasing the land by the clients brought in by broker for MIDC allotment. Thus, on careful perusal of the document it is apparent that there are seven brokers who have brought in 282 clients. Out of these 282 clients, one client is directly brought in by the assessee. Therefore, the brokers in turn have brought 281 clients. For all these clients the total amount receivable for allotment of land is ₹ 46.54 crores, out of which ₹ 35.95 crores is received and balance of ₹ 9.52 crores is outstanding. The assessee has charged fees of ₹ 1 lakh per unit for 281 units sold through all these brokers for which occupation certificate is received and possession is granted to those parties. The explanation of the assessee before the AO was same, such statement was also

confirmed by the broker, the land transferred to the various parties did not belong to the assessee therefore naturally the sale consideration of that land could not be the income of the assessee. As the land does not belong to the assessee the rates mentioned in the column number 2 of the seized documents is irrelevant for the taxation in the hands of the assessee. The assessee has shown that this is the amount payable by these unit acquired to the MIDC, and sample cheques details is provided. Therefore, as the land is transferred by MIDC to the respective unit holders through all these brokers for which the assessee has received consultancy fees of ₹ 100,000/- for each unit, the whole of the sale transaction of the land cannot be taxed in the hands of the assessee. Merely because the assessee failed to provide the documentary evidence of payment of cheque by the unit acquired to the MIDC, the whole income cannot be taxed in the hands of the assessee when assessee is not shown to be the owner of such land. In the hands of the assessee, a sum of Rs. 2.81 crores have already been taxed on basis of this document. In view of this we do not find any infirmity in the order of the learned CIT – A in deleting the total addition of ₹ 13.09 crores in the hands of the assessee. Accordingly, ground number 8 and 9 of the appeal is dismissed.”

9. The AO made the addition of Rs. 22,84,97,381/- based on the same Whatsapp message basis which a similar addition was made for AY 2021-22 (refer page 3 of AO's order). Therefore, there is merit in the submissions that the issue is covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2021-22. Respectfully following the above decision, we hold that there is no infirmity in the order of the CIT(A). Grounds raised by the revenue in this regard are dismissed.

Unexplained Expenditure u/s 69C

10. The AO made various additions under section 69C of the Act to the tune of Rs.4,49,32,144 as unexplained. The AO in this regard relied on the Whatapp messages, excel sheet contained in pen drive seized. The CIT(A) has deleted the addition based on the submissions and the evidences submitted by the assessee. The main contention of the ld AR in this regard is that the expenditure incurred has

not been separately claimed and is subsumed in the claim of profit as offered pursuant to search i.e. 70% of the receipts in the case of Consultancy income already offered. The Id AR in this regard took us through the submissions made by the assessee before the CIT(A) along with supporting documents from the paper book. The Id AR argued that the CIT(A) has considered the each and every item of the detailed submission as extracted below before giving relief to the assessee –

a) The details of expenditure of Rs.2,14,56,605/- found as per the whatsapp chat pertaining to period 03.09.2021 to 22.09.2021, are on account of various expenditure of Construction expenses, brokerage paid, Consultancy Expenses, Personal expenses of directors etc. Details thereof were furnished to AO vide letter dt. 27.02.2024 & 09.03.2024. (Refer Para 2 on Page No. 789 of reply given dt. 27.02.2024 and Para 4 on Page No. 464 of reply given dt. 09.03.2024).

b) The details of expenditure of Rs.1,07,91,939/- as per found in pen drive of Mrs. Harshana Sonavane are on account of various expenditure of Admin Expenses, Diwali Expenses, Consultancy Expenses, Legal Expenses, Plot registration charges etc. Details thereof were furnished to AO vide letter dt. 04.12.2023, 27.02.2024 and 09.03.2024. (Refer Para 13 on Page No.768 of reply given dt. 04.12.2023, Para 1 on Page No. 784 of reply given dt. 27.02.2024 and Para 4 on Page No. 464 of reply given dt. 09.03.2024).

c) Evidence of payment of Rs. 10 Lacs paid to Mr. Shravan as per whatsapp chat dated 09.09.2021 was found. It was paid for construction expenses. Details thereof were furnished to AO vide letter dt. 04.12.2023, 27.02.2024 and 09.03.2024. (Refer Para 14 on Page No. 772 of reply given dt. 04.12.2023, Para 3 on Page No. 802 of reply given dt. 27.02.2024 and Para 4 on Page No. 464 of reply given dt. 09.03.2024).

d) Evidence of payment of Rs. 50 Lacs paid to Mr. Aniket Kadam as per whatsapp chat was found. It was paid to consultant Mr. Aniket Kadam

for introducing clients to assessee. Details thereof were furnished to AO vide letter dt. 04.12.2023, 27.02.2024 and 09.03.2024 (Refer Para 17 on Page No.775 of reply given dt. 04.12.2023, Para 6 on Page No. 803 of reply given dt. 27.02.2024 and Para 4 on Page No. 464 of reply given dt. 09.03.2024).

e) Details of expenditure of Rs. 66,83,600/- as per seized document found on account of cash vouchers were furnished to AO vide letter dt. 04.12.2023 and 09.03.2024 (Refer Para 22 on Page No. 781 of reply given dt. 04.12.2023 and Para 4 on Page No. 464 of reply given dt. 09.03.2024).

f) Personal withdrawals / expenses of Directors are application of undisclosed income offered by assessee and its group (Refer detailed submission in Para 2.3 of letter dt. 27.02.2024 & Para 6 of letter dt. 09.03.2024 of APB) and said explanation duly accepted by AO in the assessment of individual Directors (Copy of assessment orders of directors is enclosed on Page No. 1149 to 1154 of APB)

11. The Id AR further submitted that the similar additions made by the AO in AY 2021-22 were deleted by the CIT(A) and the coordinate bench has upheld the order of the CIT(A). It is also submitted by the Id AR that the department has not preferred further appeal against the order of the Tribunal. Accordingly the Id AR argued that the findings of coordinate bench in AY 2021-222 is applicable for the year under consideration also.

12. The Ld DR on the other hand argued that the addition made under section 69C is subsumed in the undisclosed expenses declared during the course of search is not substantiated by the assessee with any evidence and therefore the AO has correctly made the addition.

13. We heard the parties and perused the material on record. The coordinate bench in assessee's own while considering the issue of additions made by the AO under section 69C has held that –

053. Ground number 6 is with respect to the deletion of the addition under section 69C of the act of ₹ 54,830,909/-. Ground number 7 of the appeal is also connected to ground number 6.

054. The addition of ₹ 54,830,909 comprises of several additions made by the learned assessing officer during assessment proceedings. These are described hereinafter.

055. During search, a pen drive was found from the employee of the company wherein it was found that that there are internal cash transfers, opening balances and the receipts mentioned in the sheet and the expenses. In paragraph number 6 of the assessment order, it is discussed. This is also discussed while deciding ground number 1 of the appeal of the AO. In the said document opening balance of ₹ 828903/- and total deposits of ₹ 23,055,400 and the total payments of ₹ 23,822,348/- were disclosed. When confronted the assessee submitted that the total deposits of ₹ 23,055,400/- is pertaining to the internal transfers, consultancy fees received and income from consultancy of clusters. Apart from the internal transfers, it was further stated that some of ₹ 5,202,500/- and ₹ 2,450,000/- has already been disclosed as consultancy income for the respective assessment years. With respect to the opening balance, the assessee submitted that it is part of the disclosure already made. With respect to the various expenses, it was submitted that such expenses should be granted to the assessee as a deduction. The learned AO disbelieved and made an addition of Rs 130,30,409/- as an unexplained expenditure under section 69C of the act.

056. Similarly, statement was found for the period from 11/3/2021 to 16/3/2021 during search which disclose the opening balance of ₹ 162,451,306/-, total receipts of ₹ 97,228,748/- and the total payments of Rs. 195,66,500/-. This was the document, which was found from the mobile of the director of the assessee wherein WhatsApp message was sent by Mr. Sailesh Patil to the director. The content of this document has already been dealt with by us in the order earlier. The learned assessing officer made an addition of opening balance, unaccounted receipt and made an addition of unexplained expenditure of ₹ 19,566,500/- as per paragraph number 7.6 of the assessment order.

057. An addition of ₹ 50 lakhs was made under section 69C of the act based on WhatsApp message photo retrieved from the mobile of the director of the company wherein a cash statement dated 22/6/ 2020 was found wherein the opening balance of ₹ 13.41 crores, receipt of ₹ 329,500 and unaccounted expenditure of ₹ 50 lakh/- was mentioned. The learned assessing officer made an addition of the opening balance of ₹ 13.41 crores, the addition of receipt of ₹ 3.29 lakhs and further the addition of ₹ 50 lakhs of the unexplained expenditure. This has been dealt with in paragraph number 8.4 of the assessment order.

058. An addition of ₹ 157,000/- was made under section 69C of the act wherein during search document was found which contained of various payments and receipts. The assessee was questioned under section 142 (1) to provide the details of the income contained in the document of ₹ 1 lakh and the expenditure of ₹ 157,000/- . The assessee failed to explain and therefore the learned assessing officer over and above making the addition of ₹ 1 lakh as unaccounted business income made the addition of ₹ 157,000/- as unexplained expenses under section 69C of the act. This is as per Para number 9.3 of the assessment order.

059. Further, during search, backup of mobile phones was found of the director of the company. Digital evidence and images of it were retrieved from mobile phone. In that mobile phone, there were images of various cash vouchers. These were further confronted to the director of the company. The total sum of ₹ 3,692,100/- was confronted in fifteen such images to the director. Director of the company denied the statement stating that there is no signature in the any of the vouchers. The statement of the executive assistant to the directors explained that she used to send these vouchers for the approval and the director was to approve the same over the WhatsApp chat. The AO agreed that though there is no physical signature of the director of the company however same have been approved by the director as confirmed by the executive assistant it was found that several such approvals were found amounting to ₹ 6,683,600/-. These vouchers were pertaining to four different financial years. For financial year 2020 – 21 such sum of ₹ 5 lakhs, the learned assessing officer questioned the assessee, assessee denied stating that payments have been made against these vouchers are unsigned. The learned assessing officer rejected the explanation and made an addition of ₹ 5 lakhs as per paragraph number 11.8 of the assessment order.

060. During search the WhatsApp chat of the directors from iPhone 12 pro was retrieved wherein some unaccounted transactions were found. The assessee was questioned as per question number 97 of the statement of the

director recorded on 27/9/2021. The director was unable to explain the same. From the document it was found that the above cheques are related to the purchase of land of ₹ 5.345 acres by one Shri Rajesh Shah and the GNP charges mentioned are ₹ 5 lakhs per acre i.e., 26.725 lakhs, which was, rounded off to ₹ 27 lakhs. There are also references in that of amount 'paid'. The title of the sheet shows that it is land purchased for GNP in his name. This according to the AO establishes that Mr. Rajesh is purchasing the land on behalf of GNP. The land is admeasuring 16.5775 acres on behalf of GNP for a total consideration of ₹ 3.31 crores, out of which ₹ 1.65 crores is cash consideration. Therefore, the LD AO treated this amount as an unexplained expenditure under section 69C of the act. This addition is made as per paragraph number 12.3.3 of the order.

061. Thus, the total addition under section 69C of the act is cumulatively of all such transactions totalling to ₹ 54,830,909/- was made.

062. All these additions were challenged before the learned CIT – A as per ground number 13 before him which has been dealt with in paragraph number 15 of the order. The learned CIT – A noted that assessee has offered the income at the rate of 70% of gross business receipts as additional income after claiming estimated expenses deduction of 30% under section 132 (4) of the act. As per estimation made by the assessee it has presumed that all unaccounted expenditure incurred for earning the income are subsumed in that income so offered and therefore no separate claim of expenditure has been made by the assessee and therefore no separate addition should be made of unaccounted expenditure incurred by the assessee. The assessee submitted these details of such expenditure in the paper book filed, and in the return of income assessee offered that income. During assessment proceedings, the learned assessing officer made a separate addition of ₹ 5.48 crores. The learned CIT – A was requested to consider the argument that assessee has already disclosed the income however has not claimed any such expenditure and therefore no disallowance/separate addition can be made and secondly the addition made by the learned assessing officer has been subsumed in 30% of the total business receipts. The learned CIT – A held that once the receipt has already been taxed, the application of such income in the form of expenditure could not be once again added to the total income of the assessee. He further held that when learned assessing officer has believed the business receipts as per seized documents, the expenditure also has to be believed and therefore the net income is to be estimated and no separate addition is required to be made under section 69C of the act as held by the honourable Bombay High Court in case of Golani Bros (2017) 85 taxmann.com 355 (Bom). Similar view has also been taken by the honourable Delhi High Court

in 349 ITR 85. Accordingly in paragraph number 15.13 after discussing the plethora of judicial precedents the learned CIT – A held that since the entire receipts found as a business receipt under section 28 of the act has been considered, deduction of expenditure must be granted to the assessee and net income is to be estimated. Therefore, separate addition in respect of unexplained expenditure cannot be made. Accordingly, he deleted the entire addition of ₹ 5.48 crores. Thus, the learned assessing officer is aggrieved and is in appeal before us.

063. The learned departmental representative vehemently supported the order of the learned assessing officer and submitted that when each of the document, the income has been added separately, the expenditure which has also been stated in the same documents are also required to be adjusted under section 69C of the act. Argument of the learned departmental representative is that all this expenditure is unexplained expenditure and are not received so the logic given by the learned CIT – A in deleting the addition is incorrect. He further submitted that section 69C bars any deduction in the act. He submitted that the proviso is clear on this account.

064. The learned authorized representative supported the order of the learned CIT appeal. He further referred to the several judicial precedents and the binding judicial precedents of the honourable Bombay High Court in case of Golani Bros (supra). He submits that assessee has already offered the gross income less 30% expenditure, AO has also taxed the income in the seized documents, in the same document there is reference of expenditure, therefore, it is unfair for the revenue to only tax the income and do not give any credit for expenditure already incurred. He submits that assessee has not claimed any expenditure specifically. In view of this, his argument was that it would amount to double disallowance/addition.

065. We have carefully considered the rival contention and perused the orders of the lower authorities. Looking to all the additions, it is apparent that the learned assessing officer from the statement has investigated the opening balances stated in that particular document and the receipt. The learned assessing officer has made addition of the opening balance as well as the receipt as undisclosed income of the assessee. When in the same document there are references of the expenditure, the learned assessing officer has further added such expenditure under section 69C of the act. It is apparent that only the net addition is required to be made arising out of the seized documents. If the approach of the learned assessing officer is accepted, it will result into the addition of the income as well as the addition of expenditure under section 69C of the act. The learned CIT – A has also relied upon the

decision of the honourable Bombay High Court in case of Golani Bros, (supra). We do not see any infirmity in the order of the learned CIT – A. Even the statement that the logic given by the learned CIT – A is not correct is also not supported by the reason. Further provisions of section 69C of the act applies where in any financial year the assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part there of the explanation offered by him is not in the opinion of the assessing officer satisfactory, then amount covered by such expenditure or part thereof, is the case may be maybe, deemed to be the income of the assessee for such financial year. The proviso also says that when there is an addition under section 69C of the act such unexplained expenditure, which is deemed the income of the assessee, should not be allowed as a deduction under any head of income. In the present case, assessee has incurred certain expenditure, which is found during search in the seized documents, the seized documents also show the amount of undisclosed income and the amount of expenditure incurred for earning such income. In those circumstances, the disclosure of undisclosed income shows the source of such expenditure. Therefore, naturally net income in the seized document can be assessed as income. If the approach of the ld. AO is accepted then in such case, Income and its application both are taxable as income. This is not correct. In view of this we do not find any infirmity in the order of the learned CIT – A in deleting the addition of ₹ 54,830,909/- under section 69C of the act. Accordingly, ground number 7 of the appeal is dismissed.

14. From the perusal of the above findings it is clear that the basis of making additions made for AY 2021-22 are identical to the additions by the AO for the year under consideration. The coordinate bench while confirming the relief given by the assessee has held that when the net income offered by the assessee, addition towards unexplained expenditure once again cannot be made. Further the coordinate bench has held that the disclosure of undisclosed income is the source for the expenditure and therefore it is the net income that needs to be taxed. The Tribunal also did not find any infirmity in the reliance placed by the CIT(A) in the decision of Hon'ble Bombay High Court in the case of Golani Bros (supra). During the course of hearing, the revenue did not bring any new material on record to controvert the findings of the Tribunal. In view of these discussions and

respectfully following the above findings of the coordinate bench we see no reason to interfere with the decision of the CIT(A) for the year under consideration. The grounds raised by the revenue in this regard are dismissed.

Claim of expenses @ 30% out of unaccounted business receipts – Ground No.4

15. The Assessee had offered consultancy receipts at 70% of the gross receipts thereby claiming 30% as expenses for earning the said receipts without making any separate claim for expenses though evidences of expenditure were also found along with the evidences of receipts discovered at the time of search. The AO held that the Assessee has claimed expenses at 30% without any supporting evidences such as the names, addresses, PAN of the parties to whom the payments are made etc. Accordingly the AO made an addition of Rs. 3,54,05,400/- being claimed @ 30% of the unaccounted receipts disclosed of Rs. 11,80,18,000/- under section 69C of the Act. The CIT(A) deleted the addition by holding that since the AO has duly considered the entire receipts found as business receipts u/s 28 of the Act, deduction of expenditure has to be granted and net income is to be estimated. Accordingly the CIT(A) held that separate addition in respect of unexplained expenditure cannot be made where source is duly accepted as out of business receipts.

16. We heard the parties and perused the material on record. We notice that the AO has made a similar disallowance for AY 2021-22 which was deleted by the CIT(A). We further notice that the revenue preferred an appeal before the coordinate bench against the order of CIT(A) and the coordinate bench while upholding the order of CIT(A) has held that –

072. Ground number 10 is with respect to the direction of the learned CIT – A of allowing the claim of the assessee of expenses at the rate of 30% out of unaccounted business receipts offered. The claim of the assessing officer is that the learned CIT – A has failed to consider that assessee has not submitted any documentary evidence that the 30% of the expenses were incurred by it for earning of such income. In addition, in absence of any evidence, such claim cannot be entertained.

073. This issue came up before the learned CIT – A as per ground number 14 of the appeal wherein the assessee claimed that out of the gross income offered for taxation, 30% of such income should be granted as a deduction on ad hoc basis to the assessee for the expenditure incurred for earning such income. The fact shows that during search numerous evidence of unaccounted business receipts and expenditure were found which were not recorded in the books of accounts of the assessee. In the statement recorded of the director, he has accepted and owned various unaccounted business receipts. Assessee offered 70% of such income as net income during statement recorded under section 132 (4) of the act. It was also explained by letter dated 11/2/2022 claiming that the net income is to be estimated based on the evidence found. It was also claimed by the assessee that during search itself, various documents were found which itself shows that there is various expenditure incurred by the assessee for earning that income. The learned assessing officer rejected such claim and did not give any reason that why the claim of the assessee of net income offered should be rejected. The learned CIT – A found that the AO has made the addition of the entire gross receipts without allowing any claim of the expenditure such evidence is available in the recorded statement and seized documents. It is the claim of the assessee that the gross income offered by the assessee for taxation is ₹ 71,577,000/- out of which 30% of the expenses should be granted as deduction and net income of ₹ 50,103,900/- can only be taxed. Before the learned CIT – A several arguments were raised stating that even direct evidence correlating the expenditure may not be available but reasonable estimate based on the seized documents should be made. Several judicial precedents were also pressed into service. The learned CIT – A examined details of net income offered by the assessee in the return of income filed were furnished by the assessee. Ongoing through the above details, it was noticed that the assessee has offered that income from consultancy business in the audited books of accounts for the period assessment year 2017 – 18 till 2022 – 23 in the range of 28% to 62% and average net profit of all the years amounting to 53% as against the net income offered by the assessee at the rate of 70%. Further on perusal of the unaccounted gross receipts and the unaccounted expenditure for which evidences were found in the seized documents during the course of search which has been owned up by the

assessee, it is apparent that gross receipts amounting to ₹ 23.67 crores the unaccounted expenditure stands at ₹ 7.19 crores which showed that such expenditure is 30.3% of the unaccounted receipts. Therefore, the assessee has taken the approximate figure of 30% of such income as the expenditure. Based on this factual analysis, the learned CIT – A allowed the claim of the assessee for granting deduction at the rate of 30% of the gross receipt.

074. Learned AO is aggrieved with the same and is in appeal. The learned CIT DR vehemently supported the order of the learned assessing officer and submitted that no such expenditure can be granted as deduction on estimated basis in the absence of any expenditure incurred wholly and exclusively for earning of such income.

075. The learned authorized representative vehemently supported the order of the learned CIT – A.

076. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that in paragraph number 16.7 of the appellate order the learned CIT – A has categorically noted that assessee has incurred expenditure in its regular business at the rate of 28% to 62% and average net profit for all the years' amounts to 53% of the gross receipts. Further in the seized documents, unaccounted receipts were found of ₹ 23.67 crores and unaccounted expenditure was found at ₹ 7.19 crores which is almost 30.03% of the unaccounted receipts and therefore the claim of the assessee is reasonable and can be accepted that the gross receipts 30% of deduction should be allowed for the expenditure incurred by the assessee. Accordingly, we do not find any infirmity in the order of the learned CIT – A which is based on the financial statements of the assessee for past year as well as based on evidence found during search in the seized material. Accordingly, ground number 10 of the appeal of the AO is dismissed.

077. In the result, appeal filed by the learned AO is dismissed.

17. We notice that the coordinate bench has upheld the order of CIT(A) on the ground that the past financial statements as examined by the CIT(A) and the seized materials supports the claim that the expenditure incurred by the assessee is around 30% . For the year under consideration the revenue did not submit any evidence to support that the said percentage cannot be applied for the year under consideration also. Therefore in the absence of any contrary material being brought on record we

see no reason to take a different view from the view taken by the coordinate bench for AY 2021-22. Accordingly we hold that there is no infirmity in the order of the CIT(A) in this regard. Ground No.4 of the revenue is dismissed.

ITA No.3430/Mum/2024 – Assessee's appeal

18. During the year the Assessee had incurred certain expenditure in respect of rent paid at Rs.1,75,000 per month and the same is claimed as expenditure under section 37(1). It is submitted by the assessee before the AO that the said premises were residential premises being used by the assessee for its business purposes and the Director himself was present in the premises at the time of search. However the AO did not accept the submissions of the assessee and held that no supporting evidence has been provided by assessee that said premises have been used for business purpose except for merely stating that same has been used as a guest house for their business purpose. Accordingly the amount of rent was disallowed on the ground that the same is personal expense and cannot be allowed u/s 37(1). Before the CIT(A), the assessee submitted that the rent is paid to Mrs. Shivika Garg is paid by cheque and duly recorded in regular books of accounts and that no evidence is found during the search that these expenses are not genuine. The CIT(A) confirmed the addition for want of evidence in support of the claim,

19. Before us the Id AR submitted that the expenditure incurred is not personal in nature and that the said premises are used by the Director for his residence. Therefore the Id AR submitted that there is no question of making an addition in the hands of the Assessee.

20. The Id DR submitted that the addition is made since the assessee has not submitted any evidence to support the claim that the rent is paid towards the premises that is used for business purposes.

21. We heard the parties and perused the material on record. The contention of the Id AR before us justifying the claim is that the premises is used as residence of the director. However even before us no evidence such as the rental agreement etc., have been produced to support the claim. Further, whether the rent free accommodation provided to the director is taxed as perquisite in the hands of the director is also not substantiated. In our view, mere fact that the payments are made by cheque towards rent cannot be the only basis for allowing the deduction under section 37(1). In the absence of any proper evidence that the expenditure is incurred wholly and exclusively incurred for the purpose of business, we are inclined to uphold the decision of CIT(A) in confirming the disallowance made by the AO towards rent paid. This ground of the assessee is dismissed.

22. In result the appeal of the revenue and the appeal of the assessee are dismissed.

ITA No.4479/Mum/2024 – Revenue's appeal & ITA.3432/Mum/2024 – Assessee's appeal

23. The revenue and the assessee raised the following grounds of appeal:

“Revenue:

- i. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the additions of Rs. 51,48,38,250/- (u/s 694 & 69C) by merely stating that these amounts were not owned up by the assessee but by Sh. Shailesh Patil without appreciating the fact that Shri Shailesh Patil could not identify even a single party other than the GNP in the said document and he could not substantiate his claim with any supporting documents?"

ii. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the additions made u/s 69C of Rs. 13,93,86,936/- without appreciating the fact that the these expenses were not recorded in the books of accounts?"

iii. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the additions made u/s 69C of Rs. 13,93,86,936/- without appreciating the fact that the assessee had not submitted any details of bills/vouchers and the nature of expenses and also had not submitted any evidences regarding the source of funds for the expenses?"

iv. Whether on the facts and in the circumstances of the case and in law the LL. CIT(A) erred in allowing the claim of expenses 30% out of unaccounted business receipts offered without appreciating the fact that the assessee has not submitted any documentary evidences that 30% of the expenses were incurred for the earning of such income and no evidence was submitted by the assessee regarding the claim of expenses?"

“Assessee:

1) Making addition of Rs. 33,20,000/- as alleged unexplained expenditure u/s 69C in the hands of assessee on the basis of loose papers found which belongs to third party (Paras 5.18, 5.19 & 5.20 on Page Nos. 49 & 50)

1.1) On the facts of the case, in law and under the circumstances, the Learned CIT (Appeal)-Central erred in confirming the addition in the hands of assessee of Rs. 33,20,000/- on the basis of loose papers admittedly belonging to and owned up by third party.

1.2) Alternatively, even if it is presumed that expenditure is belongs to assessee, no addition u/s 69C can be made when the assessee has sufficient source which is duly taxed u/s 28 of Act and the same is duly accepted by AO & CIT(A), hence no addition can be made u/s 69C of the act.

Prayer

The Appellant craves leave to add, amend, alter, delete, modify or withdraw all or any of the above grounds of appeal.”

24. Ground No.1 in revenue's appeal and Ground No.1 in Revenue's appeal are considered together. Facts pertaining to the issues contended are that during the

course of search action, loose sheets were found wherein ledger of cash payments/receipts was maintained and on the top of sheet name was mentioned of Shri Shailesh Patil Kalyan and GNP sub-group was using the services of Shri Shailesh Patil for the receipt and payments of cash. The assessee submitted that the said documents found during the search in the name of Shri Shailesh Patil which was made as part of Annexure-1, 2 & 4 to statement recorded of Shri Girish Pawar, Director of the Assessee. The assessee with respect to the explanation of the said documents found submitted that the said documents found is belongs to Shailesh Patil, during the course of search based on this documents found Shri Girish Pawar, director of the company was confronted during the search on the identity and the services provided by Shri Shailesh Patil and in reply to various questions, he has replied that Shri Shailesh Patil is a freelancer and is providing Angadia services including to GNP group for movement of sales proceeds collected at one site / offices to another offices/site etc. as per instruction of their Directors/Partners, and source of said receipts and payment is out of unaccounted business receipts offered by the assessee and its group. The AO held that the said evidence belong to the assessee only and all the transactions appearing in the said evidence are pertaining to the assessee. AO held that the assessee has not explained receipts of Rs. 17,57,00,000/- and expenses of Rs.34,24,58,250/- therefore, the amount of Rs.17,57,00,000/- is treated as unexplained money u/s.69A and the amount of Rs.34,24,58,250/- is treated as unexplained expenditure u/s.69C of the Act. The AO further held that similar addition based on the documents of Shri Shailesh Patil was made in the hands of the Assessee in AY 2021-22 for the reason that Shri Shailesh Patil could not explain the transactions and therefore addition should be made in the hands of the Assessee. The AO also stated that the order of the CIT(A) for AY 2021-22 is not acceptable to him since

an appeal against the same has already been filed against the same before the ITAT by the Department.

25. Aggrieved the assessee preferred further appeal before the CIT(A) where the assessee submitted that –

- The said documents belong to Shailesh Patil and in order to confirm the same, summon proceedings U/s. 131 was issued by AO to Shri Shailesh Patil and his statement was recorded U/s. 131 of the income tax act 1961 wherein he categorically replied to each and every content of the documents and accepted that said documents belong to him and the same has been prepared by him only. Further, in response to Show Cause Notice issued by the AO, the Assessee had replied vide letter dt. 08.03.2024 and submitted that said loose sheets belongs to Shri Shailesh Patil (Angadiya) and wherever transactions related to GNP Group for which services were provided by him as an angadiya have been considered in its working of additional income offered u/s 132(4) of act and rest of the transactions belong only to Shailesh Patil and same cannot be added in the hands of the Assessee.

- It was further explained that the nature of business of Shri Shailesh Patil as an Angadiya was accepted in his assessment for AY 2018-19. Further reliance was placed on the order passed by the Hon'ble ITAT in AY 2021-22 where similar transactions belonging to Shri Shailesh Patil added in the hands of the Assessee were deleted by the Hon'ble ITAT in ITA 3110 & 2547/M/23 and since the AO had stated this as the only reason for not accepting the Assessee's submissions, the said order must now be followed.

26. The CIT(A) after considering all the facts, relied on the order dated 20.03.2024 of the Hon'ble ITAT in ITA Nos. 3110 & 2547/Mum/2023 and stated that the Hon'ble ITAT has upheld the findings of CIT(A) and held that no addition is required to be made on this ground as the document found and the transactions contained therein had been duly owned up by Sh. Shailesh Patil. The CIT(A) however confirmed the disallowance of Rs.33,20,000/- on the ground that while

Shri Shailesh Patil stated that the same belonged to the GNP Group, these entries have not been owned up by the GNP Group in the reply given by the Assessee. Therefore the addition was made in the hands of the Assessee. Accordingly both the assessee and the revenue are in appeal.

27. With regard to the ground raised by the revenue, the Id AR submitted that the issue is covered by the decision of the coordinate bench in assessee's own case for AY 2021-22 and that the CIT(A) has correctly given relief to the assessee by relying on the same. With regard to the addition confirmed by the CIT(A) to the tune of Rs.33,20,000/- the Id AR made the following submission –

For item at Sr.84, Rs.3,20,000/-	There is a contradiction of answers given by Mr. Shailesh Patil and that by the Director of Assessee and so the same should have been confronted to the Assessee before making the addition
For item at Sr.88, Rs.15,00,000/-	Mr. Shailesh Patil himself said he does not recollect and therefore on his presumption an addition has been made
For item at Sr.115. Rs. 15,00,000/-	There is a contradiction of answers given by Mr. Shailesh Patil and that by the Director of Assessee and so the same should have been confronted to the Assessee before making the addition

28. We heard the parties and perused the material on record. We notice that the coordinate bench in the appeal for AY 2021-22, has considered the issue additions made based on statement of Mr. Shailesh Patil and held that –

043. Ground number 3 of the appeal is with respect to the finding of the learned CIT – A that the transaction appearing in the image of the document retrieved from the mobile phone of Mr. Kaustubh Latke Director of the assessee company during the course of search belongs to Sri Sailesh Patil without appreciating the fact that Sri Sailesh Patil could not identify even a single party other than the assessee in the said document and he could not substantiate his claim with any supporting documents. In paragraph number 7

of the assessment order, it is mentioned that during search action the content of aforesaid passage was retrieved between Mr. Kaustubh Latke and one Mr. Sailesh Patil. From the statement recorded of the director of the company the above sheet was found for the period from 11/3/2021 to 16/3/2021. Assessee stated that some of the transactions belong to the assessee from that sheet and further the document belongs to Mr. Sailesh Patil who has sent this message to the director of the company. It was further stated that Mr. Sailesh Patil is an Angadia. Statement of the director was recorded under section 132 (4) as well as of Mr. Sailesh Patil. Both have confirmed the above fact. In the statement of the director also, he did not identify some of the entries belonging to him. Therefore, the learned assessing officer made the addition of the entire sum mentioned in that document.

044. The learned CIT – A was categorically submitted that WhatsApp image was found was received from mobile numbers of Mr. Sailesh Patil – 2 that clearly show that it belongs to him and not to the assessee company. In 132(4) statements of the director of the assessee Mr. Girish Pawar he has categorically stated that Mr. Sailesh Patil is a trusted associate who used to help in movement of cash received and paid in the construction business of the assessee. On the issue of various entries found therein, the director of the company identified some of the entries and stated that only Mr. Sailesh Patil who has sent this message would be able to show to whom it belongs. It was further stated that the Mr. Sailesh Patil is not the employee of the assessee. On the several entries, the director of the assessee also stated that in the assessment, assessee has offered the income with respect to the same. The summons under section 131 was issued to Mr. Sailesh Patil, his statement was recorded. He stated that.

- i. He is into the business of angadia, and he collects cash from one-place office customers and delivers the cash at other place as instructed by his customers.*
- ii. He confirmed that he has sent the above WhatsApp message to the director of the company.*
- iii. Assessee group is also one of the clients to whom he provides the angadia services.*
- iv. He further confirmed that he collects cash from the various offices of the assessee and delivers the cash according to the instruction.*

v. In reply to question number 26 he has categorically stated that the content of the transaction of the WhatsApp image sent by him to the director of the assessee company is related to various persons and groups including the assessee and it belong to various parties.

vi. The AO made the addition of all the transactions stated therein.

vii. The learned CIT – A in paragraph number 10 – 10.11 has categorically held that that the statement of the assessee, statement of Mr. Sailesh Patil were not refuted by the learned assessing officer by showing any cogent evidence and in absence of such evidence, the statements given by the assessee as well as third party Mr. Sailesh Patil could not be disregarded. He further categorically held that the transaction with which the assessee group has entered with Mr. Sailesh Patil has been owned by the assessee in its income. The transactions which have not been owned by the assessee, both the parties i.e., assessee as well as Mr. Sailesh Patil stated that these transactions are not related to the assessee.

viii. Therefore, the addition was merely based on the documents, which have been denied by both the parties partly. Therefore, as far as ground number 3 is concerned, it is apparent that the document has been sent by Mr. Sailesh Patil to the director of the assessee company. This is the statement and finding of the learned CIT – A. Ground number 3 does not deal with any addition which has been deleted by the learned CIT – A.

ix. Before us it is not shown that why the document does not belong to Mr. Sailesh Patil who originated the message and sent to the assessee director. When Mr. Sailesh Patil stated that transactions belong to various other persons also, there is no material available on record to state that transaction belongs to Assessee Company only.

045. Therefore, we do not find any infirmity in order of learned CIT – A in holding so. Accordingly, ground number 3 of the appeal is dismissed.

29. The coordinate bench held the issue in favour of the assessee for the reason that nothing is brought on record to show why the document does not belong to Mr. Sailesh Patil who originated the message and sent to the assessee director. For the year under consideration also, the revenue has not submitted any evidence to substantiate the claim the amounts mentioned in the message belongs to the

assessee. We further notice that the CIT(A) while giving relief to the assessee has given a categorical finding in this regard (refer para 5.18 of CIT(A) order). Therefore we see no reason to interfere with the order of the CIT(A). Ground No.1 of the revenue is dismissed accordingly.

30. Now coming to the ground 1 of the assessee, we notice that the CIT(A) has confirmed the addition based on the statement of Mr. Sailesh Patil who has stated that the amounts belonged to GNP group. However from the perusal of the statement made by Mr. Sailesh Patil basis which the CIT(A) we notice that statement is vague such "to the best of my knowledge the transaction belongs to GNP". We also notice that the director of the assessee has stated that these entries do not belong to GNP group. Since the assessee cannot be asked to prove a negative fact, the revenue in our view should have made the addition based on some evidence and not based merely on the statement of Mr. Sailesh Patil. Therefore in our considered view, the ratio laid down by the coordinate bench in AY 2021-22 that the addition based on mere statement without any evidence is not sustainable, is applicable to the impugned additions also. Therefore we hold that the CIT(A) is not correct in confirming the addition to the tune of Rs.33,20,000 based on the statement alone without bringing any evidence to support the said claim. Accordingly we direct the AO to delete the addition made in this regard. Ground No.1 of the assessee is allowed.

31. Ground No.3 & 4 of the revenue is with regard to the relief given by the CIT(A) towards the addition made towards unexplained expenditure under section 69C of the Act. The assessee submitted before the AO that the impugned expenses are subsumed in the net income offered at 80% offered during the course of search and that when the income is accepted, the AO cannot deny the expenses claimed

against the same. However the AO did not accept the submissions of the assessee and made the addition for the following reasons –

With regards to expenses of Rs. 10,00,49,236/-

- The assessee has not furnished the details of parties to whom the payments were made their PANs, no other documents, bills etc have been submitted in respect of the expenses of Construction expenses of Rs.8,49,58,296/-, Consultancy expenses of Rs.1,19,40,000/- and personal expenses of Rs.31,50,940/- aggregates to Rs. 10,00,49,236/-. The seized document being whatsapp chats retrieved from the office premises of GNP show that cash expenses have been incurred and the same are not recorded.
- **With regards to expenses of Rs. 3,17,65,000/-**
- It was alleged that the assessee has not submitted any evidences to show that these expenses incurred pertains to the undisclosed receipts which was disclosed by the assessee and its group entities.
- The assessee has not furnished the details of parties to whom the payments were made their PANs, no other documents, bills etc have been submitted in respect of the expenses of Construction expenses of Rs.2,55,70,000/-, Consultancy expenses of Rs.56,59,000/- and personal expenses of Rs.5,36,000/- aggregating to Rs.3,17,65,000/-.
- The seized document being whatsapp chats retrieved from the office premises of GNP show that cash expenses have been incurred and the same are not recorded in the books of account of the assessee. Therefore a sum of Rs. 3,17,65,000/- was added to the total income of the assessee u/s.69C of the IT.Act, 1961.

With regards to expenses of Rs. 51,00,000/-

- The assessee explained that these are brokerage payments to parties of projects GNP-Arcadia, Galaxy, Ganadhish GNP and the same is not claimed as expenses separately as the assessee has claimed 80% of expenses against on money received and disclosed 20% of on-money receipts as additional income. This explanation was not accepted on the ground that the assessee has not correlated the expenses claimed as brokerage paid to Shri Ganesh Kotekar, Shri Bhushan Kotekar and others with details of flats in respect of which the brokerages were paid. Further the assessee has not submitted address, PANs of the parties, etc.

With regards to expenses of Rs. 20,82,000/-

- The AO rejected the assessee's explanation that cash payment voucher are nothing but expenditure incurred for the purpose of business of consultancy

and construction of group and also that it had disclosed unaccounted business receipts and no separate claim was made in respect of any expenses

- The AO further held that no details in respect of vouchers were furnished such as name, PAN of the parties to whom payments are made. Shri Kaustub Latke from whom the cash vouchers were found had admitted that they are not accounted in its books of account. Therefore, a sum of Rs. 20,82,000/- was added to the total income under section 69C of the IT Act, 1961.

With regards to expenses of Rs. 3,90,700/-

- The addition was made on the ground that the assessee did not submit any evidences to show that these expenses incurred pertains to the undisclosed receipts which was disclosed by the assessee and its group entities. Further the assessee has not furnished the details of parties to whom the payments were made their PANs, no other documents, bills etc have been submitted in respect of the expenses of Rs.3,90,700/-.
- The seized document show that cash expenses have been incurred and the same are not recorded in the books of account of the assessee and therefore a sum of Rs.3,90,700/- was added to the total income of the assessee u/s.69C of the I.T.Act, 1961.

32. Aggrieved the assessee preferred further appeal before the CIT(A). The assessee submitted before the CIT(A) that seized papers have to be interpreted as a whole and that the Ld. AO cannot accept part of the same and ignore the rest. The assessee further submitted that the AO has made the addition of unaccounted business receipts u/s 28, however, no deduction of expenses was allowed by him and made further addition of Rs. 13,93,86,936/- as unexplained expenditure u/s 69C of the Act despite the fact that source of the same duly accepted as business receipts u/s 28 of the Act. The CIT(A), after considering the submissions of the assessee deleted the addition by holding that the assessee has offered total unaccounted business receipts of Rs. 31.32 Cr. (Rs. 19.72 Cr. for the FY 2018-19 & Rs. 11.60 Cr. for the FY 2019-20) and source of incurring such unaccounted expenses of Rs. 13.93 Cr has been explained to be out of unaccounted business receipts of group offered to tax of Rs. 31.32 Cr as above and assessed u/s 28 by the

Ld. AO in the case of the assessee and other GNP group entities. The CIT(A) further held that personal expenses / withdrawals amounted to Rs. 36,86,940/- are duly shown as application of undisclosed income offered by assessee group wherein Promoters are Partners and no separate additions have been made and sufficient source of income are duly offered by above group entities/firms and accepted by the Ld. AO. Accordingly the CIT(A) gave relief to the assessee. The CIT(A) has placed reliance on the decision of the coordinate bench in assessee's case in this regard.

33. We heard the parties and perused the material on record. From the perusal of the facts pertaining to the additions made under section 69C we notice that the same is similar to additions made in AY 2021-22. The contention of the assessee is that the undisclosed expenditure added under section 69C is already part of the net income offered during the course of search. We have while deciding the similar issue for 2022-23 (refer our findings in the earlier part of this order) have placed reliance on the findings of the coordinate bench in AY 2021-22. i.e. The coordinate bench while confirming the relief given by the assessee has held that when the net income offered by the assessee, addition towards unexplained expenditure once again cannot be made. Further the coordinate bench has held that the disclosure of undisclosed income is the source for the expenditure and therefore it is the net income that needs to be taxed. During the course hearing the revenue did not bring any material on record for us to decide otherwise. Therefore respectfully following the decision of the coordinate bench we hold that there is no infirmity in the order of CIT(A) in giving relief to the assessee towards the addition made under section 69C of the Act. These grounds of the revenue are dismissed.

34. Ground No.4 of the revenue is regarding the disallowance of the claim of expenses @ 30% out of unaccounted business receipts offered by the Assessee. We have considered a similar issue for AY 2022-23 and by placing reliance on the findings of the coordinate bench for AY 2021-22 upheld the order of CIT(A) giving relief to the assessee. Since the facts are identical, we are of the view that our decision in AY 2022-23 is mutatis mutandis applicable to AY 2020-21 also. Further the revenue did not bring anything on record for the year under consideration to controvert the findings of coordinate bench in earlier years. Accordingly we see no reason to interfere with the decision of the coordinate bench. This ground of the revenue is dismissed.

35. In result the appeal of the revenue is dismissed and the appeal of the assessee is allowed.

ITA No.4480/Mum/2024 – Revenue's appeal

36. The revenue raised the following grounds of appeal:

“1. "Whether on the facts and in the circumstances of the case and in law the Id CIT(A) erred in deleting the addition of alleged receipts of Rs. 87,30,000/- by stating that on money collection is part of the siezed documents duly offered by the group entity M/s. Roshni Enterprises, therefore this cannot be taxed again in the hands of assessee without appreciating the fact that the assessee failed to provide the detailed breakup of the said transactions and also failed to substantiate its claim with any invoices or documentary evidences, there is also no mention of either buyer name or unit number in the narration of these entities?"

2. "Whether on the facts and in the circumstances of the case and in law the Ed CIT(A) erred in deleting the additions made u/s 69 C of Rs. 4,48,76,650/- without appreciating the fact that these expenses were not recorded in the books of accounts?"

3. "Whether on the facts and in the circumstances of the case and in law the Ld CIT(A) erred in deleting the additions made u/s 69 C of Rs. 4,48,76,650/- without appreciating the fact that the assessee had not submitted any details of bills/vouchers the nature of expenses and also had not submitted any evidences regarding the source of funds for the expenses?"

4. The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal if need be."

37. Ground No.1 is towards the additions of Rs. 87,30,000/- pertaining to on money collection. During the search, an image was found from the Samsung Mobile Phone of Mr. Kaustub Latke, Director of the Assessee which contained an excel sheet. It is seen from the said images that these are pictures taken of running ledger maintained in excel sheet. In response, Mr. Kaustub Latke replied that the transactions were both cash and in cheque but he did not have the exact details of those transactions. Further, he replied that he will furnish the same later on. In post-search proceedings, a date-wise explanation of said excel sheet was submitted to DDIT as well as to AO during the assessment proceedings. The AO made addition towards certain entries found in the message for the reason that there is no mention of either the buyer name or unit no in the narration of these entries and that the name mentioned in the narration is completely different from the buyer names as claimed by the assessee. Therefore, The AO did not accept the the claim of the assessee and made the addition. The assessee contended before the CIT(A) that these entries do not belong to the assessee but another group entity M/s.Roshini Enterprises and that the said entity has already offered the same is offered the amount to tax during AY 2018-19 during the search proceedings. The CIT(A) deleted the addition after examining the claim of the assessee based on the documentary evidences submitted.

38. We heard the parties and perused the material on record. The Id AR submitted that the coordinate bench while considering a similar issue in the case of another group entity DCIT vs M/S.GNP Realty LLP (ITA No.3105/2023 dated 29.05.2024) has held that –

9. Though the Revenue Department has claimed in the grounds of appeal that offer of additional income by M/s. GNP Consultancy & Solutions Pvt. Ltd. was not accepted by the AO and corresponding amount was reduced while passing the assessment order in the case of M/s. GNP Consultancy & Solutions Pvt. Ltd. for the A.Y. 2021-22 as evident from the computation of income. Further, the said income of Rs.2.75 crores was not accepted by the AO in the case of M/s. GNP Consultancy & Solutions Pvt. Ltd. and therefore the addition was made in the case of assessee. However, before us no such facts and/or documents were produced or demonstrated to strengthen this contention. As per Article 265 of the Constitution of India “no tax shall be levied or collected except by authority of law”. It is also the mandate of the law that the income offered cannot be taxed twice. As in this case, the income of Rs.2.75 crores may be rightly or wrongly by the sister concern of the assessee, has already been offered and even has also been considered and accepted by the Revenue Department as verified by the Ld. Commissioner as observed in impugned order, therefore the addition under challenge, if sustained, will amount to double taxation, which is not permissible at all.

Even considering the peculiar facts and circumstances of the case in totality and the specific findings of the Ld. Commissioner, we do not find any infirmity, impropriety and/or illegality in the decision arrived at by the Ld. Commissioner in deleting the addition of Rs.2.75 crores which is under consideration. Hence, the decision of the Ld. Commissioner for deleting of the addition under consideration is affirmed and the grounds raised by the Revenue Department pertaining to the issue under consideration stand dismissed/rejected.

39. We notice that in the above decision, the ratio basis which the coordinate bench upheld the decision of the CIT(A) is that same income cannot be twice and that the income offered to tax in the hands of one entity cannot be taxed again in another entity unless the revenue is able to substantiate that the income added is different. The facts in assessee's case is also similar wherein the CIT(A) has

deleted the addition after examining the records supporting the claim of the assessee that the impugned addition is already offered to tax in the hands of M/s.Roshini Enterprises. Even before us the revenue has not brought anything on record to substantiate the claim that the addition made in assessee's case is different from what is offered to tax in the hands of M/s.Roshini Enterprises. Therefore in our considered view, the ratio laid down by the coordinate bench is applicable to the impugned addition since there is nothing on record to show that the amount added is not the same income already offered to tax. Considering the peculiar facts and respectfully following the ratio laid down by the coordinate bench, we hold that there is no infirmity in the order of the CIT(A).

40. Ground No.2 & 3 of the department, pertains to CIT(A) deleting the addition made towards unexplained expenditure under section 69C of the Act. We in this regard notice that the CIT(A) gave relief to the assessee by holding that since the AO has duly considered the entire receipts found as business receipts u/s 28 of the Act, deduction of expenditure has to be granted and net income is to be estimated as discussed above and therefore separate addition in respect of unexplained expenditure cannot be made. Reliance in this regard was placed by the CIT(A) on the order of the Hon'ble Tribunal in the case of the assessee for earlier year. From the perusal of the facts pertaining to the issue and the findings of the CIT(A) we notice that the impugned addition under section 69C of the Act is identical to the similar additions made for AY 2021-22 and AY 2022-23. We have on the similar issue for AY 2022-23 have held that there is no infirmity in the order of CIT(A) by placing reliance on the ratio laid down by the coordinate bench for AY 2021-22 in assessee's case. For the year under consideration, nothing is brought on record for us to take a different view pertaining to the impugned issue. Therefore respectfully following the decision of the coordinate bench in assessee's

own case for AY 2021-22, we see no reason to interfere with the decision of the CIT(A). This ground of the revenue is dismissed.

41. In result appeal of the revenue is dismissed.

42. In result, appeals filed by Revenue for AY 2018-19, AY 2020-21 & AY 2022-23 are dismissed. The appeal of the assessee for AY 2020-21 is allowed and appeal of the assessee for AY 2022-23 is dismissed.

Order pronounced in the open court on 15-01-2025.

Sd/-
(AMIT SHUKLA)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai