

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No. 211/Srt/2023 (Assessment Year 2018-19)

(Physical hearing)

A.C.I.T., Central Circle-1, Surat, Aayakar Bhavan, Majura Gate, Surat-395001	Vs.	Shri Sanjaybhai Arjun Bhai Patel, 37, Shreeji Plaza, Tata Road No. 1, Opera House, Mumbai. PAN No. ADIPP 4533 G
Appellant/ Revenue		Respondent/ Assessee

ITA No. 79/Srt/2023 (Assessment Year 2018-19)

Shri Sanjay Bhai Arjun Bhai Patel, 37, Shreeji Plaza, Tata Road No. 1, Opera House, Mumbai, Maharashtra-400004. PAN No. ADIPP 4533 G	Vs.	A.C.I.T., Central Circle-1, Surat, Aayakar Bhavan, Majura Gate, Surat-395001.
Appellant/ Assessee		Respondent/ Revenue

Department represented by	Shri Ravi Kant Gupta, CIT-DR
Assessee represented by	Shri P M Jagasheth, C.A.
Date of hearing	28/10/2024
Date of pronouncement	23/01/2025

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. These cross appeals by the revenue as well as by the assessee are directed against the order of learned Commissioner of Income Tax (Appeals)-4, Surat [in short, the Id. CIT(A)] dated 11/01/2023 for the Assessment Year (A.Y.) 2018-19.

Revenue has raised following grounds of appeal;

- “1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.3,13,82,488/- as against addition of Rs.39,71,82,601/- made by the AO on account of unexplained investments in DKD Coins despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings and the assessee has failed to explain the transactions in respect of papers/material found during the course of assessment proceedings and also during appellate proceedings.

2. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.27,60,18,560/- made by the AO on account of unexplained investments in DKD Coins/lending DKD despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings and the assessee has failed to explain the transactions in respect of papers/material found during the course of assessment proceedings and also during appellate proceedings.*
3. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.33,51,040/- as against addition of Rs.85,44,151/- made by the AO on account of unexplained investments in ATS Coins despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings and the assessee has failed to explain the transactions in respect of papers/material found during the course of assessment proceedings and also during appellate proceedings.*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs. 18,55,130/- as against addition of Rs. 19,18,616/- made by the AO on account of unexplained investment in ATS Coins despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings and the assessee has failed to explain the transactions in respect of papers/material found during the course of assessment proceedings and also during appellate proceedings.*
5. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.85,50,954/-made by the AO on account of unexplained receipt from undisclosed business despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings and the assessee has failed to explain the transactions in respect of papers/material found during the course of assessment proceedings and also during appellate proceedings.*
6. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.50,12,212/- as against addition of Rs. 1,01,57,149/- made by the AO on account of unexplained expenditure in renovation of house despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings and the assessee has failed to explain the transactions in respect, of papers/material found during the course of assessment proceedings and also during appellate proceedings.*
7. *In addition to all above ground, on the facts and in the circumstances of the case and in law, the CIT(A) has granted relief dehorse provisions of section 292C of the Assessee.*
8. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A)- 4 ought to have upheld the order of the Assessing Officer.*
9. *It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.”*

2. The assessee in his cross appeal has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in referring for special audit u/sub. Section 142(2A) of the Income Tax Act, 1961 without any cogent reason.*
- 2. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating assessment proceedings and passing Assessment order u/s. 143(3) of the Act not in within time limit. It is contradictory to the limitation of the income Tax Act, 1961.*
- 3. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.3,69,68,256/- on account of alleged unexplained investments in Crypto-currency, Dekado, ATC and Bitconnect.*
- 4. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.50,12,212/- on account o: alleged unexplained expenditure for house renovation.*
- 5. On the facts and in the circumstances of the case as well as law on the subject the learned commissioner of the Income Tax (Appeals) has erred in initiating Penalty u/s.271AAB of the Income Tax Act, 1961.*
- 6. On the facts and in the circumstances of the case as well as law on the subject the learned commissioner of the Income Tax (Appeals) has erred in initiating Penalty u/s.271B of the Income Tax Act, 1961.*
- 7. It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.*
- 8. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”*

3. Brief facts of the case are that the assessee is an individual and partner in a firm Om Anand Exports. A search action under Section 132 of the Income Tax Act, 1961 (in short, the Act) was carried out in Surat on 23/01/2018 on a group dealing in Crypto Currency. The assessee was also dealing in Crypto Currency, thus the assessee was also covered in the search action. In the search action, various incriminating evidence in physical as well as digital form was found and seized. Statement of assessee was recorded during search action as well as in post search investigation on various dates. The assessee filed his return of income for the current assessment year on 03/10/2018 declaring income of Rs. 2,70,280/-. The case of assessee was selected for scrutiny. During the assessment, the AO

noted that the assessee has not shown investment in Crypto Currency in their books of account, thus, the investment in Crypto Currency by the assessee has escaped from taxation. Keeping in view the complexity of nature of transaction, volume of accounts and correctness thereof in specialized nature of business, the AO after obtaining proper approval from authorities concerned, made a reference to Special Auditor under Section 142(2A) of the Act. The reasons for special audit is recorded by the AO on page No. 4 of assessment order. The assessee made no objection against the reference to Special Auditor. No objection of assessee is scanned on page No. 8 of assessment order. The AO by referring various veracity of evidence found during the search in the form of loose paper sheet and other digital evidence noted that such evidence was admissible in evidence. The AO also recorded the modus operandi of transaction in Crypto Currency/virtual currency on page No. 5 to 16 of assessment order. On subsequent pages of assessment order, the AO noted about seized material vide Annexure-A-1 to A-10, & PA-1 to PA-8, BF/1 and BF/2 and the reply of assessee in respect of all the annexures/seized materials. The AO undertaken the assessment proceedings through Income Tax Business Application (ITBA) Portal, despite the fact that it was a case of assessment by the Central Circle. The AO (AO) at different places on various pages recorded the response of assessee in respect of various seized material.

4. During assessment, the AO noted that during search action at assessee premises various incriminating evidence in physical as well as in digital devices were found and seized, specifically with regards to DKD, ATC and Bitconnect. The assessee created several user IDs in series and through such series of IDs invested in DKD,

ATC and Bitconnect. DKD was operated through multilevel marketing strategy, wherein the investor would earn referral point received on adding new investor. DKD holder also had options of lending the coins for earning interest and gain on fluctuation in price/ value. Thus, the assessee earned income from referral, interest income from lending of coins and from staking. DKD coins were operated in pseudonymous ownership without any physical address. It functioned as scheme with lending and escrows. All such details were found from the personal Laptop of assessee "Snjay_hp_laptop_320_gb-", which was seized in search action. The assessee in his statement has admitted his investment in DKD Coins in his statement recorded under section 132(4). The AO also held that based on statement of assessee, it was proved that DKD investment digital files and transaction belongs and pertains to him. The assessee acquired and utilised DKD coins in four different ways, (i) Staking escrow, (ii) Staking Escrow-10, (iii) Non-Escrow and (iv) Lending account. Further, as per seized material the value of DKD is mentioned in the seized material in "B1-PO/HDD/OAE/Desktop/Personal", Personal acs.xls, Sheet3. The value of DKD was USD 9.79 or Rs. 734/- per coin. The said price of DKD was in December 2017. The IDs and investment made in all the avenues were separate, distinct, and independent of each other. The IDs of staking are not same from holding sheet, which cannot be claimed as unified. Based on her observation, the AO made summary of source of seized material, number of DKD coins and value thereof at page no. 131 of her order in the following manner;

DKD Escrow	194831.71		Rs.14,30,06,475/-	DKDFull.xls
DKD Escrow-10	153166		Rs.11,24,23,844/-	DKDFull(1).xls
DKD non Escrow	193123		Rs.14,17,52,282/-	DKDFull(2).xls
			Rs.39,71,82,601/-	
Lending DKD		4312790	Rs.27,60,18,560/-	DKDFull(2).xls
Total			Rs.67,32,01,161/-	

5. So far as addition regarding ATC Coins are concern, the AO held that the assessee was having two accounts i.e. ATC (Akash) and ATC (Jiyansh). Investment in ATC Akash & Jiyansh series was found and seized from the digital devise/ laptop of assessee and seized as "Snjay_hp_laptop_320_gb" / C drive/user/Sai/Downloads- a PDF file and ATC investment in "Jiyansh". Such series of devises are found in the laptop of the assessee. Further, an excel file was also found from the residence of assessee which was seized vide "B1-PO/HDD/OAE/D Drive/ Desktop/ATC". In response to the show cause notice the assessee denied of his investment in ATC. The AO held that all such evidence were found from the laptop of the assessee and are admissible evidences. The AO was of the view that total coin deposits in the account of assessee from ATC (Akash) was of 196,735.91 and bonus coins were of 41,975. Total coin of ATC (Jiyansh) was 1,50,213 and bonus coins were 39,794.84. The AO based on rate of ATC on website (<http://www.coinbase.com/price/atc-coin>) was of the view that rate of ATC as on 03/09/2017 was @ Rs. 34/- per coin, hence worked out the unexplained investment as table on page No. 147 of assessment order. The AO worked out investment in ATC coins at Rs.85,44,151/- and treated the same as unexplained investment. However, the bonus coins value worked out at Rs. 19,18,616/- as unaccounted income.

6. The AO further noted that assessee also made investment in Bitconnect Coins (BCC), the details of which were found from the residence of assessee in file seized from HDD vide B1-PO/HDD/OAE/D Drive/Desktop/Personal acs-a excel file in the name Sanjay Fuwa Final Sheet-41. On show cause the assessee denied his investment in BCC. The AO held that digital device was seized from the possession of the assessee, thus, transaction recorded in the seized material pertains to the assessee. The assessee failed to explain the source of such investment. The AO worked out amount of Rs. 3,79,598/- as unexplained investment as per table on page No. 152 of assessment order. On table at page 152 of assessment order, the AO recorded that the assessee made investment in BCC of 27.819 coin. The rate of investment worked out in BCC coin is not mentioned. On the basis of aforesaid observations, the AO made following addition in various cryptocurrencies in following manner;

Sr. No.	Nature of additions	Quantum of addition in Rs.
1	Additions on unexplained investment in various crypto currency	
	Dekado (DKD)	Rs. 67,42,01,161/-
	ATC Coins	Rs. 85,44,151/-
	Income from sales of ATC	Rs. 19,18,616/-
	Bitconnect (BCC)	Rs.3,79,598/-
		Rs.68,40,43,526/-
2	Addition of unaccounted business receipt	Rs.85,50,954/-
3	Addition of unexplained expenditure on house renovation	Rs. 1,01,57,149/-
	Total	Rs. 70,30,21,910/-

7. The AO further noted that during search action incriminating document Annexure A-3 was inventoried, which was found from the residence of the assessee. The assessee while explaining it claimed that it does not belongs to

the assessee. The assessee submitted that such document belongs to Manish Kumar M Patel. The document is diary of Manish Kumar M Patel, who has forgotten it at his place. The assessee also filed passport of Manish Kumar M Patel and evidence to show that his is employed with Dalipbhai in foreign country. The explanation/ reply of assessee was not accepted by AO. The AO held that such document seized as Annexure-A3 was seized from the residence of the assessee and it pertained to him. Further, from the laptop of assessee income and expenditure was found and seized from Sanjay_hp_laptop_320_gb/C Drive/user/ Sai/Documents. The AO worked out addition of unexplained investment as out of books at Rs. 51,71,766/- and Rs. 33,79,188/- on account of undisclosed business income, thereby made total addition of Rs. 85,50,954/-.

8. The AO also noted that during search action Annexure-A-5 and A-6 were also seized from the house of assessee. The AnnexureA-5 and Annexure-6 contained the details of unexplained expenditure in his home at C-605, Laurels, Bhartana, Vesu, Surat. The assessee was asked to explain the source of such expenditure. The assessee in response to the show cause notice explained the source of such expenditure and submitted that all the expenses are recorded in the books. The assessee submitted that expenses were incurred on furniture and fittings also filed ledger account of carpenter and fittings. The reply of the assessee was not accepted by AO by taking view that the assessee was required to match the details of expenditure with payments from bank. No such information is matching with payment through cheques or demand draft is furnished by assessee. The AO treated entire expenditure as unexplained

and made addition under section 69C of Rs. 1,01,57,149/-. The AO passed assessment order under section 143(3) on 11.06.2021. The assessment order is running into 198 pages. The assessment order does not contain specific contents of various show cause notice nor the dates of summary of various reply filed by the assessee.

9. Aggrieved by the additions in the assessment order, the assessee filed appeal before Id CIT(A)-Central Circle Surat. Before Id CIT(A) the assessee filed detailed written submission. The assessee in his submission submitted that a search action was carried out on assessee on 23/01/2018 with other persons in Surat, who were dealing in various Crypto Currency. The assessee submitted that during the search action, certain incriminating evidence was seized by the search party. During the assessment, the AO made a reference to Special Auditor under Section 142(2A) of the Act on 27/12/2011. Before making reference to Special Auditor, notice was issued to the assessee. The AO in the assessment, recorded that no compliance was made by the assessee and that no details pertaining to assessment were submitted. The assessee in response to show cause notice for proposed reference to Special Auditor, though the assessee consented. No special audit was required as no complexity in the books of account was pointed out by the AO before making such reference. The assessee further stated that the Special Auditor furnished his report on 17/06/2020. The AO was required to pass assessment order within 90 days, though the assessment order was passed on 11/06/2021. Thus, the assessment order is time barred. Against the addition on account of unexplained investment in various Crypto Currency, the assessee submitted

that during the assessment, the AO noted that in the search action, numerous physical and digital data maintained meticulously, note book, digital data found and seized. On the basis of certain documents seized, the AO was of the view that the assessee has made investment in Crypto Currency like Dekado (DKD), ATC and Bitconnect Coins (BCC). The assessee was asked to explain various sheets. The assessee explained all the transactions in Dekado and also furnished working sheet before the AO about his investment. The AO has not accepted the explanation of assessee and made addition of Rs. 68,40,43,526/- . The assessee furnished bifurcation of additions. On the source of investment in Dekado, the assessee submitted that he is partner in diamond manufacturing firm which is engaged in diamond business for more than four decades. The assessee made investment in Dekado coin in financial year (FY) 2017-18. The assessee purchased 1,93,123 Dekado coins at the rate Rs 130/- per coin in September 2017 under Escrow account. In dollar, the rate was 2 US dollars per coin. Noting of his investment is covered in excel sheet which is a part of seized material. The assessee purchased DKD coins before launching in market. Thus, the costing of coins purchased by assessee cannot be compared with coins launched in market. The assessee received such coins under ESCROW account, the assessee utilized the same coins to make investment in regular income scheme of DKD with different IDs with intention to get referral coin with bonus coins and interest coins. The assessee made a numerous IDs in a series and invested coins through such various IDs. Locking period of 4 months was in the scheme. Excel sheets containing same details in different sheets. The DKD platform was closed down in the months of

January 2018 and full investment of the assessee become nil. The assessee lost all his investment in DKD in the same year. The AO while making addition mentioned three excel sheets namely DKDFULL.xls, DKD FULL(I). xls, DKD FULL(2). xls in digital data and as per these sheets the assessee made investment in DKD in various occasions. The AO has not considered the sheets named "stake" from all excel sheets and added total coin in both sheets DKD Full and DKD FULL(1) and also added total sheets named "coins" from excel sheet DKD FULL(2). Xls. All three excel sheets contained the same details of DKD purchased by the assessee under ESCROW. The AO has mentioned three excel sheets DKD Coins details, DKD FULL (2) and email changed. There is duplicate entry of the same coin on both the sheets. The AO added all the coins mentioned in different sheets but actually all excel sheets are same with same coins, thus treating the different coins are not correct approach, such figure can be verified with IDs and number of coins. The assessee reiterated that he purchased only 1,93,123 Dekado coins at the rate Rs 130/- per coin under ICO of DKD. In investment in Dekado coins the assessee reiterated that he has withdrawn capital from Om Anand Exports for purchase of such coins. Copy of capital account from partnership firm Om Anand Exports along with ITR and balance sheet were filed. The assessee submitted that source of investment was explained. DKD platform was closed in the month of January 2018 and all investment of assessee become nil. The assessee lost all his investment in DKD in the same year. On the valuation made by the AO, the assessee stated there was no relation between investments made in open market in the month of December 2017 with investment made by assessee in

September 2017. The AO knowing the fact that the assessee purchased DKD coins before launching in open market, thus the cost of coins acquired by assessee cannot be compared with coins launched in open market. The assessee received such coins under ESCROW account and utilized the same coins to make investment in regular income scheme of DKD with different IDs to earn referral coin with bonus coins and interest coins.

10. Against the addition of DKD coins lending, the assessee submitted that the AO made addition on the basis of document "DKD Full (2).xls" found from the downloaded folder of assessee's laptop. The assessee submitted that the assessee made investment in Dekado coins in F.Y. 2017-18 which was before launching the coins in open market. The AO made addition of the same coins recorded in different sheets and also added value of lending of same coins in lending scheme. Once the AO made addition of value of total coins in ESCROW account and at the same time, he has also added the value of lending coins in dollars. The addition is made without verification of fact recorded in all excess sheets and disregarding the submission of assessee. The assessee has explained procedure of investment in DKD coins but the AO ignored all the procedure and made addition in all possible way of presumption in multiple way. The DKD platform was closed in the month of January, 2018 and entire investment of assessee had become NIL. The assessee lost all his investment in DKD in the same year. There is no question of making addition of unexplained investment in DKD in the same year.

11. Against the additions of investment in ATC coins, the assessee stated that he never made any investment in any other currency except DKD. In his without

prejudice submission, the assessee stated that in the downloaded folder of assessee's laptop "Sanjay_hp_laptop_320_gb", the assessee explained that in case any document is downloaded from e-mail or WhatsApp web or online side then such document is stored in downloaded folder. Staff of the assessee, who was sitting in the office, operated such laptop. There could be possibility that such file was downloaded in the laptop of assessee. The excel sheet which is made the basis of addition contained details of ATC coins on two different dates which is the same format of two tables of two different dates. The AO added coins written on both the dates. The assessee further stated that page No. 85-90 of Annexure-A/5, the assessee created various e-mails in the series of Jiyansh. The assessee submitted that such page does not pertain to assessee and is a dumb document left by unknown person in his office. It is only presumption of AO that IDs were created and handled for ATC. A number of persons were coming to the office of assessee for giving example of their investment in Crypto Currency. Since the assessee purchased DEKADO that does not mean that assessee purchased all Crypto Currency merely by making IDs will not establish that the assessee made investment in ATC. The AO made addition of unexplained investment of Rs. 85,44,151/- as unexplained investment in ATC coins, the assessee explained that as per the noting in the last page of PDF file found in the downloaded folder, number of ATC coins are 98560 and all these coins' party will receive 22575.40 coins as bonus coins. Similar details are written on different dates it means status of coins on two different dates. Thus, the question regarding source of investment should arise on purchase of coins and not of bonus coins. Further as per noting in sheet

No. 4 of excel sheet file found from B1-PO/HDD (hard disc of Renu Singh), total number of ATC coins purchased is 150213 and, on these coins, partly would have been received 39784 as bonus coins. The assessee submitted that he has not made any investment nor he was doing any brokerage services in such Crypto Currency, there is no occasion for making such addition.

12. Against the investment in BCC coins, the assessee submitted that the assessee has not made any investment in Bitconnect (BCC). The assessee made some IDs to invest in Bitconnect, however, the DKD was cheap as compared to Bitconnect. Hence, the assessee invested only in DKD instead of Bitconnect. The excel sheets "B1-PO/HDD/OAE/desktop/Personal/New Inv." is recovered from hard disc pertains to Renu Singh and details of folder was related to her. This sheet does not pertain to assessee. Such fact was explained before the AO. The assessee has also given her address and mobile number to AO during the assessment proceedings. No addition on account of investment in Bitconnect was to be made.

13. Against the addition on account of unaccounted business receipt, the assessee stated that excel sheet on the basis of which the AO made addition, such sheet does not belong to assessee. The assessee provided name and address of such person but the AO not accepted such explanation and made addition on account of sales and undisclosed business income out of books aggregating of Rs. 85,50,954/-. The assessee further stated that neither the assessee nor his family member is engaged in the business of cashew. The assessee also given the name of Manish Patel and mobile number, who was the manager of Dipakbhai, who was in the business of cashew in the foreign country and all

transactions are written in the diary as Annexure-A/3. Such diary/Annexure-A/3 is related to the business of Manish Patel. Despite informing the AO about all the details, she has not conducted any enquiry and made addition in the hands of assessee. In without prejudice submission, the assessee stated that that the diary contained turnover of 48,71,69,000/- of currency of Conakry, however, there is no transaction in this diary. Total transaction written in the diary is only 25,83,36,650/- in the currency of Conakry. The value of which in Indian rupees is only Rs. 17,90,803/-. So even it is assumption that the transaction relates to the assessee then the addition should be restricted to the profit earned on such business and not on the total sales.

14. On the addition of unexplained expenditure in house renovation, the assessee stated that during the search action Annexure-A/5 and A/6 was seized and as per such annexures, the assessee made expenditure of Rs. 1.01 crore. The AO made addition without considering the details furnished by the assessee. The AO assumed that no explanation was given regarding source of investment rather the assessee furnished his ledger copy of books. The AO has not accepted the submission of assessee and made addition on account of unexplained investment under Section 69C of the Act. The assessee submitted that he made expenditure on account of furniture work in his house. Both the annexures i.e. Annexure-A/5 and A/6 contains certain bills, delivery challan and details of other working during the construction work and numerous item is procured and returned due to change of plan. The assessee has not claimed that all such expenditure was incurred through banking channel only. Certain expenditure was paid in cash or by cheque to carpenter. The assessee

furnished complete details. The bills contained name of carpenter. The carpenter is also charging his labour bill on percentage basis on material use. The AO made addition by disregarding all the evidences. The expenditure is recorded in the books of account, the assessee furnished copy of ledger account with his reply.

15. The Id CIT(A) after considering the assessment order, the material placed before him and the submissions of the assessee granted partial relief to the assessee. On the additions of unexplained investment and unaccounted income in various Crypto Currencies, the Id CIT(A) held that DKD coin as a part of crypto currency was launched in Dubai on promising high returns to the investors. The assessee made investment in DKD in September 2017, when the initial Coin Offering (ICO) was made at \$ 2 per coin as per information is available in market. As per case of AO, it was multilevel marketing scheme wherein each investor was offered an incentive to bring more and more investors into the scheme. The investors were offered appreciation income in the value of coins, referral income and interest income, if coins are lent temporarily for a period of maximum of four months. The assessee created several investor IDs to get such benefit of scheme. The assessee also earned income on lending coins. The assessee dealt with this DKD coins for a period of five months, wherein he invested in the initial offering in the month of September, 2017 and referral and lending scheme remained in force till January, 2018. However, the contention of the assessee is that he merely invested in 193123 DKD coin and that too in initial coin offering in September 2017, which is evident from Escrow account found in search action. The coin

allotted were kept in escrow account till the lending scheme started in November, 2017. In November, 2017, the assessee started lending scheme wherein new investors were roped in by virtue of multi-level marketing. The AO relied upon three excel sheets of DKD FULL, DKD FULL1 and DKD FULL2. The Ld.CIT(A) on detailed verification of these sheets found that the coins acquired by assessee are found and different lots and can be identified with Escrow account of DKD coins. For instance, 19971 coins under name SAPI9801 found in the DKD FULL2.xls-coins find mention in DKD FULL-stake with same ID SAPI9801 and same number of coins of 19971. Similarly, the same coins are found mentioned in DKD FULL1-stake with same ID and same number of coins. Thus, the Ld.CIT(A) on verification of all three excel sheets found that total DKD coins purchased by the assessee are written with account ID in "DKD coin details" sheets. In second and third sheets, which is "DKD FULL1 and DKD FULL2". Same coins are shown with the same ID. All these sheets show that total investment by assessee in these coins are 193123 DKD which were allotted in ICO but were released in lots. There is no evidence that assessee acquired more than 193123 DKD coins. The AO has considered each sheet as a separate investment in DKD coins and made additions. But, the assessee has purchased only 193123 coins as a part of initial coin offering (ICO), as found in escrow account and no further evidence that any further coins were purchased. The coins which were acquired in ICO were lent by the assessee by creating different IDs to get the benefit of referral scheme as well as to get interest on coins lent which is evident from DKD FULL2.xls which is referred by the AO as Lending DKD. The AO treated these lending DKD Coins as

separate investment and brought to tax separately. But as seen from the incriminating material referred by the AO, the lending coins were same as the coins acquired by the assessee in ICO, as found in the ESCROW account warranting no separate addition. On the basis of above findings, the Id CIT(A) held that the total investment of the appellant was only 193123 DKD Coins which were acquired in ICO which is evident from the ESCROW account. The coins which are purchased in ICO are included in ESCROW account. Thus, the addition made by the AO in treating the three excel sheets DKD FULL, DKD FULL1 and DKD FULL2 as separate investment cannot be sustained. The Id CIT(A) also held that addition made by the AO with reference to the lending coins to be separate from the initial investment in coins cannot be sustained. What needs to be brought to tax in the hands of the assessee is the investment of 193123 DKD coins acquired in ICO. It was also held that benefits of bonus coins, interest or referral income were never realized by the assessee as the DKD coin was taken off from their website abruptly in January 2018. Hence, the income from these activities though as accrued on system initially but was never earned (reaped) by the assessee and hence, the same cannot be taxed in the hands of the assessee.

16. On the quantum of investment in 193123 DKD Coins, the Id CIT(A) noted that the assessee acquired these coins in the ESCROW account in September, 2017. DKD Coins were launched in September, 2017 in Dubai, the appellant had invested in the ICO for the said coins. It is the case of assessee that he invested at the rate of USD 2. Such fact is also evident from the investigation done by Crime Investigation Department (CID), Surat which is available in public

domain, copy of the First Information Report (FIR) lodged by one Girish Kumar Dhanjibhai Sheladiya on 10.01.2019 against Divesh Darji who claimed to be dealer in the DKD Coins in Surat. In such FIR, the investor who had lost his investment has complained against Divesh Darji that he had invested in DKD @ USD 1.00 per DKD Coin and lost it. The assessee made the investments in these coins in cash. No evidence of the actual investment was found during the course of Search. The AO has quantified the investment by the assessee on the basis of a sheet from the hard disk, of which is scanned by the AO in para 21.2.3.6 of the assessment order. The AO took the value of the DKD coins as on 01.12.2017 @ USD 9.79 which was equivalent to Rs.734/-. Though, it was argued before him that the assessee had invested in the DKD Coins in the month of September, 2017 and that too in ICO which is evident from the ESCROW account found during the course of Search. Thus, the lending in the said coin started in November, 2017 and thereafter, the price of DKD Coin started increasing and it reached USD 9.79 per coin on 01.12.2017. On the basis of the aforesaid observations, the Id CIT(A) held that investment made by the assessee at the price in September 2017 is to be considered for the purpose of investment. No evidence was found at the premises about the rate of investment in DKD coin in September, 2017. But the circumstances on the basis of FIR by investor in DKD suggest that in September 2017, the rate of DKD was ranging between 1 to 2 \$ (US Dollar). Yet, the Id CIT(A) estimated the investment @ 2.5\$ (USD). The rate of 2.5 \$ was taken at Rs. 162.5/- thus, the investment of assessee on 193,123 DKD was worked out at Rs. 3,13,82,488/-. Hence, the assessee was allowed part relief on the additions of

investment in DKD. Once, the Id CIT(A) held that benefits of bonus coins, interest or referral income were never realized by the assessee as the DKD coin was taken off from their website abruptly in January 2018. Hence, the income from these activities though as accrued on system initially but was never earned or realized by the assessee and hence, the same cannot be taxed in the hands of the assessee.

17. On the addition of first part of investment in ATC coin, the Id CIT(A) held that the AO made addition of Rs. 1,04,62,767/- on the basis of seized material "Sanjay_hp_laptop_320gb" wherein the bonus coin and invested coin has been shown as on 19.08.2017 and on 03.09.2017. The AO added both the coins shown as on 19.08.2017 and on 03.09.2017. The assessee stated that coin as on 19.08.2017 are carried forwarded to 03/09/2017 with minor changes of purchases and bonus and though, the figure of investment as on 03.09.2017 i.e. 98,560 coins only needs to be considered. So far as bonus coins are concerned, same is not out of investment of any funds and ultimately the assessee has got not benefit of such coins including the investment were lost. The Id CIT(A) on considering such contention estimated unexplained investment at Rs. 33,51,040/- (98,560 X Rs.34). Thus, the Id CIT(A) restricted the addition on investment of 98,560 coins @ Rs.34/- per coin. Thereby deleted the remaining addition of Rs. 71,11,727/- (1,04,62,767- 33,51,040)
18. On the second part of addition on the basis of excel sheet "Sanjay Fuwa final sheet-41-2", sheet two of Rs. 18,55,130/-. This addition is in respect of 1,50,213/- coins at level 1 to 9 @ Rs. 12.35 per coin. The Id CIT(A) noted that the AO has worked the total investment at Rs.18,55,130/- (1,50,213 coins [x]

Rs.12.35). Before the AO, the assessee submitted that these coins do not belong to him but did not specify the person to whom these coins pertain to / belong to. However, the AO held that as the evidence of holding these coins was found in the premises of the assessee, the onus was on the assessee to furnish the details and as the assessee has failed to furnish the details, as per the provisions of Section 132(4A) of the Act it will be held that the investment is made by the assessee. The Id CIT(A) concurred with the finding of AO and accordingly, the unexplained investment quantified by the AO of Rs.18,55,130/- was upheld.

19. With regards the bonus coins which were treated as sold by the AO and made an addition of Rs.19,18,616/-, the Id CIT(A) held that this addition cannot be sustained as there are no evidences in the seized material that these bonus coins, though were allotted to the assessee, were sold by him and realized gain hence, no addition is warranted on sale of bonus coins. Thus, the assessee was allowed relief of Rs. 19,18,616/-.

20. On third addition which relates to Bitconnect Coins (BTC), the Id CIT(A) held that as per "BI-PO/HDD/OAE/D Drive/Desktop/Personal/New Inv"., the AO estimated at Rs.3,79,598/-. The case of assessee is that these coins do not belong to him but belong to Ms. Renu Singh. However, the AO made the addition in the hands of the assessee as no evidence was provided by assessee during assessment that the investment was made by Ms. Renu Singh. The evidence of holding of these coins was found in the premises of the assessee. The onus was on the assessee to furnish the details and he has failed to furnish the details, and as per the presumption of provisions of Section 132(4A), the

investment is made by the assessee. The Id CIT(A) concurred with the finding of AO and upheld unexplained investment quantified by the AO of Rs.3,79,598/-.

21. Thus, the Id CIT(A) on the issue of total unexplained investment in all cryptocurrencies sustained to the extent of Rs. 3,69,68,256/- in the hand of assessee and allowed relief of Rs.64,70,75,270/- in the following manner:

Sr No.	Particulars	Value in Rs.
1	DKD Coins	3,13,82,488/-
2	ATC Coins first part	33,51,040/-
3	ATC Coins second part	18,55,130/-
4	Bitconnect Coins	3,79,598/-
5	Total	3,69,68,256/-

22. Against the addition of Rs.85,55,9547/- unexplained investment, unaccounted income and unaccounted expenditure outside the books of accounts relating to Cashew business undertaken abroad at Conakry, the Id CIT(A) held that the AO made this addition on the basis of seized material, an MS word document named income and expenditure statement was found and seized from "Sanjay_hp_laptop_320_gb\C Drive\ Users\Sai\ Documents". The Id CIT(A) noted that the AO made addition by taking view that the appellant is doing cashew business abroad worth USD 80282 as per incriminating material found in the laptop of the appellant. The incriminating material consisted of the statement which was drawn on 16.06.2017. During Search, another incriminating material which was inventorized as Annexure A-3, was found in the premises of the assessee. The assessee claimed that this sheet belongs to Manishkumar M. Patel. As per the said statement, the AO held that the

assessee had done the business worth USD 52684.57 (as per Guinea Frank the currency of Conakry it was 48,71,69,0007-). As per this incriminating material, the AO held that the assessee had done the business worth Rs.33,79,1887- (USD 52684.57 [x] Rs.64.10) Before the AO, the assessee contended that Annexure A-3 pertained to the Conakry (capital of West African country, Guine) undertaken by Dipalbhai, Nitinbhai and Manish Bhai who were known to the assessee and did the business in cashew. The seized materials indicate total sales/ receipts/turn-over of total income of GNF 48,71,69,0007- which the appellant had claimed to be not in Indian currency. The currency of Conakry is Guinea Franc (GNF). The assessee further contended that Manishkumar M. Patel has left (forgotten) such diary who was working for Deepalbhai. The assessee also furnished the copy of passport of Manishkumar M Patel before the AO as evidence that Manish Patel was working in the foreign country and assessee had nothing to do with the said business. Such contention of the assessee was not accepted by the AO. The AO treated the details as pertaining to the appellant's business and made the addition as under:

Sr. No.	Addition	Final Total
1	Addition on account of out of books sales as per Sanjay_hp_laptop_320_gb \ C Drive \ Users \ Sai \ Documents	51,71,766
2	Out of books sale of undisclosed business as per Annexure A-3	33,79,188
	TOTAL	85,50,954

23. The Id CIT(A) on considering the submissions of the assessee noted that information downloaded from the laptop of the assessee is allegedly contained the details of expenses, sales, purchases of business of cashew and jute bags

at Conakry and Buke. In the details the names of Deepakbhai, Manish Bhai, Vijaybhai and Nitinbhai are mentioned / written. The name of assessee is nowhere mentioned. At the end, there are details that these four people, who had started some cashew and jute bags business which resulted in loss. Even Annexure A-3 gives the details of the same cashew and jute business which is in Conakry currency for the period Mr. Manish Patel stayed in Conakry as per the stampings in his passport (from 03.05.2017 to 03.06.2017). The entries in the diary are pertaining to the same period 03.05.2017 to 03.06.2017. In none of the incriminating material, there is any reference about the assessee or his investment and therefore, in absence of any adverse inference to the assessee in the seized material, the details found cannot be treated to be that of the assessee and addition cannot be made. On the basis of aforesaid finding the Id CIT(A) deleted the entire addition of Rs.85,50,9547- and allowed full relief to the assessee.

24. On the addition of Rs.1,01,57,149/- which relates to unexplained expenditure for renovation of house, the Id CIT(A) noted that assessee has produced the party-wise bifurcation of expenses. On examination of the party-wise ledgers, it is found that the assessee has made the payments by cheques as well as cash to the said parties. All the payments made to the vendors which are recorded in the books and which is not recorded in the books are found in the incriminating material. For instance, an invoice dated 29.03.2017 from M/s OTTIMO Agency which is for purchase of white goods has the total of Rs.5,74,000/-. But the amount shown paid by cheque to M/s OTTIMO Agency dated 16.11.2017 is Rs.2,72,000/-, which shows that Rs.3,02,000/- is incurred

outside the books of accounts. Similarly, the total payment to M/s Veneer Point is dated 08.10.2017 is Rs. 40,000/- but the invoices from the said vendor is Rs. 73,300/-, which shows that Rs. 23,300/- is outside the books of account. On the basis of such observation, the Id CIT(A) held the expenditure incurred as per the incriminating material is partly recorded in the books and partly not recorded in the books. The expenditure recorded in books which finds mention in the incriminating material needs to be given credit to in determining the unexplained expenditure on furnishing and renovation of the flat. The AO has made an addition of Rs.1,01,57,149/- treating the entire expenditure as per the incriminating material to be unexplained expenditure. However, the total amounts debited in the impugned AY in the books of accounts of the assessee relating to renovation and furnishing is Rs.51,44,937/-, which needs to be given credit to. Thus, the unexplained expenditure on renovation and furnishing comes to Rs.50,12,212/- (1,01,57,149 minus 51,44,937/-). On the basis of above finding the Id CIT(A) partly upheld the addition of unexplained expenditure to the tune of Rs.50,12,212/- and allowed part relief of Rs.51,44,937/-. Aggrieved by the order of Id CIT(A), both the parties have filed their respective appeals.

25. The assessee in his appeal has challenged the action of AO in making reference to special auditor, assessment order is not passed in time and sustaining the part addition of investment in various crypto currency and part addition of unexplained expenditure on renovation of house. On the other hand, the revenue has challenged that action of Id CIT(A) in part sustaining the investment and unexplained income in various crypto currency, deleting the

addition of undisclosed business income of Rs. 85,50,954/- and in part restricting unexplained expenditure of Rs. 50,12,212/- on renovation of house.

26. We have heard the submissions of Id Commissioner of Income-tax / departmental representative (CIT-DR) for the revenue and the learned authorised representative (Id AR) of the assessee and with their assistance have gone through the orders of lower authorities. Ground Nos.1 to 5 in Revenue's appeal and Ground No.3 in assessee's appeal are inter-connected being related with additions on account of unexplained investment in various crypto-currencies. The Ld. CIT-DR for the Revenue submits that search action under section 132 was carried out at the residential and business premises of assessee on 23.01.2018. In the search action, several incriminating evidences in physical and digital form was found. The evidence found in the form of data in various files in personal computer and smart phone were found and seized. On the basis of various detailed available on record and considering the submission of assessee, the assessment was completed under section 143(3) of the Act on 11.06.2021 in assessing total income at Rs.70.30 crore against the declared income of assessee at Rs.2,70,280/-. The Ld.CIT-DR for the Revenue submits that during search action, it was revealed that assessee was primarily engaged in the activities of purchase, investment and sale of crypto-currencies like: Dekado (in short 'DKD'), ATC coin, Bitconnect coin. The assessee was also partner in a firm engaged in business of export of diamond, namely M/s Om Anand Exports. As the accounts of assessee were not accounted and keeping in view of complexity of transaction in various crypto-currencies, the AO proposed for making a reference to a Special Auditor. The

AO while passing assessment order made addition on account of unexplained investment in various crypto-currencies like DKD, ATC coin and Bitconnect of Rs.68.40 crore. All the additions were based on seized documents found during search action. It was also found that assessee was having undisclosed business in Conakry (Guinea) through Deepak Bhai, Nitin Bhai and Manishbhai. On the basis of seized materials, it was found that turnover of such business was at 48.71 crore in the local currency of that country. So, the value of transaction in Indian Rupee was worked out by AO at Rs.33,79,188/-. On the basis of various incriminating evidence, addition of Rs.85,50,954/- was made on account of income of undisclosed business. It was also noted that assessee has made renovation in its residential house and various incriminating evidences were found, which was not explained by assessee nor any satisfactory explanation of such details of expenses, to whom, such expenses were provided. So, AO made addition of such payment on account of house renovation of Rs.1.01 crores. Thus, making total addition of Rs.70.30 crore. On appeal before Ld. CIT(A), addition on account of unexplained investment in crypto-currencies was restricted to Rs.3.69 crores. The addition on account of undisclosed business of Rs. 85,50,954/- in Conakry was deleted. The addition on account of unaccounted expenses on house renovation, the addition was restricted to Rs.50,12,212/- thereby granted relief of Rs.51,44,937/-. Thus, Revenue is in appeal against the appeal in restricting addition on account of unexplained investment in various crypto-currencies, deleting addition of unaccounted business and restricting the addition of house renovation expenses.

27. On various additions on account of investment in crypto-currencies, the Ld. CIT-DR for the Revenue submits that assessee was engaged of specialized and complex activity of crypto-currency i.e. DKD, Bitconnect and ATC. During post search investigation and in assessment proceedings, summons under section 131 was issued for appearance of assessee and to explain the transactions. The assessee evaded summons and never appeared for examination and explanation of seized material. The assessee neither came forward nor explained such transaction find as per seized materials. Online explanation furnished by assessee in the assessment proceedings was also evasive, cryptic and broad in nature. Resultantly, there was no true and valid explanation to vague and oblique to discharge the onus upon the assessee. The so-called explanation, given by assessee led a clear conclusion that explanation assessee was lacking in substance. Therefore, a special audit was proposed and assessee remained non-cooperative with the special audit procedure. The Ld. CIT-DR for the Revenue submits that unlike physical cash or valuable crypto-currencies are not available for physical verification, the only evidence, like online bank transaction or the screen shot with transactions IDs. Hence, any screen shot or digital files found during search action, unless explained, is the evidence of transaction and unexplained unaccounted activities. It is impossible to dig out the identity of the person/entity behind the address/wallet and link to the person "X" with absolute 100% certainty. The circumstantial evidence and related facts would only guide the Revenue Authorities to fasten a person with a crypto-currency ID because by definition "crypto-currency" being unanimous and pseudonymous asset. So, the whole

point is this that there are huge transaction and it required specialized mind to understand such transaction. The assessee was allegedly keeping the crypto-currency in escrow account. Escrow is a third-party service that hold onto the crypto-currencies which means the crypto-currency is the seller of contemplated and proclaimed to sell to buyer; and buyer has made payment but has not yet received the virtual currency. Once the seller received payment, they can then release the virtual currency from escrow account and trade (transaction) is completed. These services secure transaction for both the buyers and the sellers, creating a safer trading environment for everyone. In such scenario, assessee made large purchases and investments of crypto-currencies during financial year 2017-18. During the time of investment, the market of crypto-currencies has been completely unregulated. The assessee purchased and made investment in Dekado/ATC crypto-currencies from market on a peer-to-peer basis (P2P) basis cash transaction and made unexplained investment therein. The Ld.CIT-DR for the Revenue submits that assessee purchased were three types of crypto-currencies, DKD, ATC, and BCC. The assessee created multiple user IDs and invested in crypto-currencies through those IDs. Making of IDs to make Gmail account and crypto-currencies transactions require only a mail ID. There was no need of KYC, no identity proof was required. On perusal of seized excel sheets, it was found during search action that all those 15/20 e-mail accounts and crypto-passwords of all e-mails were same. So, it is case of pseudonymous IDs that single person was operating all these IDs. IDs being created by assessee to get benefit of multi-level marketing scheme to earn bonus and referral accounts. As per evidence

at pages 85 to 89 of Annexure-A/5 various accounts have been created and handled by assessee for ATC (crypto-currencies) and altcoin purposes. Page 90 of Annexure-A/5 reflects and established "Shubhm" series of e-mail IDs created for crypto-currencies and altcoins transactions under pseudonyms. There was evidence of creation of fake accounts for crypto-currency and altcoin investment and business. The excel sheets pertaining to ATC coin transaction is named after assessee, Shri Sanjay Patel – named "ATC sanjay fuwa final sheet-41". During search action, from the laptop of assessee, excel sheets were found having name of assessee clearly established that it belonged to assessee. The assessee was engaged in multiple levels marketing scheme, having at highest level of scheme at level 10. Dekado excel sheet seized named Escrow-10, which prove that assessee was mastermind or next to mastermind at highest level in the scheme. The author of the file ATC-Sanjay fuwa file in the HDD is "Om Anand". The author "Om Anand" implies that file has been created on the computer of assessee with computer name/identity "Om Anand". Before AO, the claimed its ownership of his ex-employee. The ownership of disk is irrelevant, the data have been created on the system and terminals of the assessee and his concern. Hence, assessee is liable to own up and explain. All files were found from the laptop of assessee and total investment in ATC figure out by AO is of 6,06,172.922 coins and rupee value of investments Rs.79,47,999/-. The total value of Dekado (DKD) in the possession of assessee at the relevant time was (USD) \$ 9.79 or Rs.734/- as per seized documents. As all investments Dekado coin was worked out by AO (page 131 of his order) which included initial investment, bonus, lending and

interest coin aggregating as of 541,129.71 as prevailing rate of DKD coins were of Rs.734/- thereby the AO worked out total unexplained investment and undisclosed income of Rs. 67.32 crore.

28. Total unexplained investment in ATC coin was made at Rs.85,44,151/-. Such investment consists of ATC Jiyansh at Rs.18,44,130/- and ATC Akash at Rs. 66,89,020/- (18,44,130+ 66,89,020). Third addition relates to ATC coin which is based on excel sheet "B1 CPU/HDD desktop" which relates to total sales of bonus coins of 81,769.84 out of 39,794.84 @ Rs. 12.35/- and 41975 @ Rs.34/- per coin, which was worked out at Rs.19,18,616/-. Though the assessee claimed that such investment does not belong to him and belongs to someone else and no evidence produced by assessee.

29. The Id. CIT(A) in his order, restricted the addition of Dekado (DKD) by taking the value of investment as in September, 2017 @ 2.5 \$ thereby restricted the addition to the extent of Rs.3.13 crore and remaining addition on account of bonus as referral point and other income was deleted. The addition on account of undisclosed investment in ATC coins at Rs. 85.44 lacs were restricted to Rs.33.51 lakhs and addition of Rs. 19.18 lacs on account of unaccounted income from sale of ATC was deleted. The Ld. CIT-DR for the Revenue submits that AO made addition on the basis of incriminating materials found and seized during search action, which is admissible in evidence, Ld. CIT(A) deleted/addition restricted despite the fact that during assessment, assessee failed to explain such seized materials. The Id CIT-DR for the revenue prayed for restoring the additions made by AO in all cryptocurrencies' either made on

account of unaccounted investment or on sale, bonus, lending and interest coins.

30. On the addition of unaccounted business receipt of Rs.85.05 lakh, Ld. CIT-DR for the Revenue submits that during search action, excel sheets were found from the laptop of assessee. The AO made addition on account of unaccounted business receipt, which was not disclosed by the assessee. The Ld. CIT(A) deleted the addition just by taking passport of some third persons by taking view that such business does not belong to assessee. The assessee neither produced such persons nor brought any material on record to controvert the evidence found during search action. The Ld. CIT-DR for the Revenue submits that reinstate addition made by AO.

31. Against the addition of renovation of house, the Id. CIT-DR for the Revenue submits that assessee made unaccounted expenses and failed to substantiate by cogent evidence like invoice, payment receipt or other evidences to substantiate such expenses incurred by him. The AO allowed almost 50% relief on the basis of such receipt or evidence which were never brought before AO. The Id. CIT-DR for the Revenue submits that addition made by AO on investment in Dekado (DKD) investment in ATC coin and income on such referral point and investment in ATC coin may be upheld similarly the income of unaccounted business and renovation of house be restored by reversing finding of Id. CIT(A).

32. On the other hand, the Id AR of assessee, against ground No. 1, in his appeal submits that no Special Audit was required in the present case. The AO has not specified any defect in the books of assessee. A special audit was proposed

at the fag end of the time period of completion of assessment that is on 27/12/2019. The special auditor furnished his report to AO on 17th June 2020. The AO was required to pass assessment order within 60 days, from receipt of report of special auditor. Thus, the assessment order is liable to be quashed being passed beyond the limitation period. Against the addition of various investment in different in different cryptocurrencies, the learned AR of the assessee submits that during assessment the assessee was asked to explained seized material. The assessee explained each of the document seized during the search action. The AO disregarded the explanation furnished by the assessee. Against the addition of unexplained investments in various crypto currencies, the ld. AR of the assessee submits that during the search action, certain physical and digital data was found and seized. The assessee was to explained such seized material. The assessee explained each and every excel sheets found in the search action. The AO made addition by disregarding the submission of assessee. The AO made addition of unexplained investment in DKD currency of Rs. 67.32 crores. The assessee explained before the AO that rate of DKD currency in September, 2017 was between 1 to 2 US dollar per coin. To support such contention, the assessee also furnished copy of FIR made against Divesh Darji, who was the main operator, wherein the complainant, complained that he purchased DKD coin at 1.00 US dollar per DKD coin. The assessee purchased total 193123 DKD coin @ 2 US dollar per DKD in September, 2017. The rate of dollar at the relevant time was about Rs. 65/- per dollar. The assessee has purchased DKD coins before launching in the market. The assessee received such coin in escrow account. The purchase cost

of assessee cannot be compared with the coin launched in the market. Further the assessee received all such coins under Escrow account and utilized the same coin to make investment in regular income scheme of DKD with different IDs to earn interest and referral and bonus coins and interest coins. Therefore, to meet such requirement of referral coin, bonus coins and interest coins, the assessee created different IDs. There were locking period of four months in the scheme. Three Excel sheets seized in search action contained same details. The AO disregarded explanation of assessee about duplication of same details of DKD coins in different excel sheet. Though, the Id. CIT(A) appreciated such fact and considered total DKD coin at 193123. DKD platform was suddenly closed in the month of January, 2018 and entire investment of assessee have become NIL. The assessee lost all his investments in DKD. The assessee also explained the source of investment in DKD coin by furnishing capital account of his firm "Om Anand Exports". To substantiate the source of investment, the assessee explained that he has withdrawn amount from his capital account of Om Anand Exports, copy of Om Anand Export's capital account alongwith ledger and books of assessee were furnished before the AO. Thus, the source of investment was explained. The assessee made investment in DKD in F.Y. 2017-18 @ 2.00 US dollar per DKD Coin. The AO made addition by taking the current price of DKD as on December ,2017 @ \$ 9.79 per coin (Rs. 734 per coin). The Id. CIT(A) allowed part relief, despite recording the fact that rate of DKD coin at the time of acquisition by assessee was ranging from 1.00 to 2.00 US dollar, still restricted the addition @ 2.5 US dollar per DKD. Finding of Id. CIT(A) is contrary to his own observation. Since the actual rate at which the

assessee purchased was only at 2.00 Dollar per DKD. The Id. CIT(A) estimated on higher side despite the fact that the assessee furnished evidence of investment by other investor as well as in his own statement, stated that rate of DKD coin was only 2.00 US Dollar per coin. Thus, the investment in DKD coin at the worst may be restricted to 2.00 US Dollar per DKD for total DKD coin of 193123 coins. As the investment was made from withdrawal of capital from Om Anand Export, thus, it cannot be treated unexamined. If such investment is treated as unaccounted, the assessee be allowed credit in the account of firm "Om Anand Export".

33. On the unexplained investment in ATC coin, the Id. AR of the assessee submits that the assessee has not made any investment except DKD coin. The AO made addition on account of investment in ATC coin on the basis of download folder "Sanjay_hp_laptop_320_gb". The Id. AR of the assessee submits that in case any document is downloaded either from e-mail or WhatsApp or on online, it stored in download folder automatically. Various staffs of assessee were also sitting in his office and was operating laptop of assessee, there is possibility that such downloaded file was downloaded by staff of assessee. Before the AO, the assessee explained that her staff Miss Renu Singh was using such computer and such detailed found in download file does not belong to assessee and it was related to her. Addition was made on the basis of assumption that such details belong to assessee. There is no corroborative evidence to support such contention. Further, the sheet contained the details of ATC coin on different dates which is in the same format of two tables of two different dates. The AO added coins on both the dates. The AO treated this

sheet as it belongs to assessee only by the name of folder, merely the name of assessee was mentioned on the folder it cannot be assumed that it belongs to assessee. Though, there was a peon in the office of assessee in the name of Sanjay. The AO made addition of Rs. 85,44,151/- as unexplained investment in ATC coin. As per noting in the last page of PDF file, total coins of ATC purchase are 98560 and, on such coins, the parties have received bonus coins of 22575.40. Same details were written on same paper under different dates, it means status of coins on two different dates is written. Hence, the source of investment should only be for purchase of coins and not on bonus coins. Further on sheet No. 4 of excel sheet found from the hard disc of Renu Singh, total purchase of ATC coin is 150213 and bonus coin of 39784. Though, such sheets belong to Renu Singh and assessee consistently took his stand that he has not made any investment in ATC still the addition was made against the assessee. The AO made total addition on account of unexplained investment in ATC coin of Rs. 85,44,151/-. The AO also made addition on account of unaccounted income of ATC coin of Rs. 19,18,616/- aggregating of Rs. 1.04 crore. The Id. CIT(A) restricted the addition to the extent of Rs. 33,51,040/- by holding that figure of investment in ATC coin is only of 98560/- and the investment was made @ Rs. 30/- per coin, however remaining addition was deleted. There was no evidence either on sale or on bonus coins. Further there was no evidence that any bonus coin was allotted to the assessee or coins were sold by assessee.

34. On the addition of unaccounted business receipt of cashew, which was deleted by the Id. CIT(A). The Id. AR of the assessee supported the order of Id. CIT(A).

The Id. AR of the assessee submits that the AO made addition without any evidence of any business carried out by assessee. The evidence found in the premises of the assessee pertains to some other person whose details were provided to the AO. The assessee never visited such foreign country nor carried out any business. The assessee provided passport of Manish Kumar M Patel and other evidence that he was working in foreign company and assessee nothing to do with his business. The Id. CIT(A) after considering the submission of assessee, deleted the addition of unaccounted business receipt of Rs. 85,50,954/-. The Id. AR of the assessee submits that he supports the order of Id. CIT(A) on this issue.

35. Against the addition on account of unexplained expenditure in renovation of house. The Id. AR of the assessee submits that the AO made addition of Rs. 1.01 crore on account of unexplained expenditure in renovation of house. The Id. CIT(A) allowed part relief to the assessee. The Id. CIT(A) allowed relief of Rs. 51.44 lacs and remaining of Rs. 50.12 lacs were confirmed. The Id. AR of the assessee submits that he supports the order of Id. CIT(A) to the extent that the assessee was allowed relief even the remaining addition is not liable to be sustained as the assessee has furnished complete details of all the expenditure. The Id. CIT(A) also failed to appreciate the evidence furnished by the assessee. The assessee explained that in various bills, some party has given substantial concession in rates. The Id. CIT(A) confirmed the addition by taking view that certain expenditure was paid in cash and complete details were not furnished. The assessee made payment to carpenter. All such person belongs to unorganized sector and they received cash against their labourer.

It is not the case of assessee that entire expenditure was claimed through banking channel, it is known fact that in renovation expenses, various expenses are bound to be incurred in cash only. The Id. AR of the assessee submits that though no addition is to be sustained yet for want of full proof evidence, some token disallowance may be made to avoid the possibility of revenue leakage. Moreover, during the year under consideration, the assessee has substantial capital withdrawal from his business concern "Om Anand Export". The benefit of capital withdrawal was not allowed in investment in DKD Coins, if in case this bench does not agree to allow credit of such withdrawal, the same may be allowed against this addition. The Id. AR of the assessee finally submits that the AO taxed various additions under enhanced rate of tax under Section 115BBE of the Act. The provisions of Section 115BBE is not applicable as the investment made in DKD coins are from the capital withdrawn from the firm of assessee namely "Om Anand Export". All the investments in DKD is recorded in the books of assessee. Section 69 prescribed a situation where the assessee has made investment and the same is not recorded in the books of account and the assessee offers no explanation about the nature and source of such investment and such explanation is not found to be satisfactory. The assessee has shown capital withdrawal of Rs. 2.65 crores from capital account of Om Anand Export. The investment and capital withdrawal is duly recorded in the books of assessee, therefore, addition under on account of unexplained investment is not warranted. To support such submission, the Id. AR of the assessee relied upon the decision of Mumbai Tribunal in ACIT Vs. Rajmohan Appalacharya N. Chakravarty in ITA No.

2120/Mum/2023 and C.O. No. 118/Mum/2023 dated 17/01/2024. The assessee has also filed following documents on record;

- Details of utilization of DKD coins prepared for explanation.
- DKDFULL.XLS-"STAKE" (Digital Data, part of seized material)
- DKDFULL (1). XLS.XLS- "STAKE" (Digital Data, part of seized material)
- DKDFULL (2). XLS- "STAKE" (Digital Data, part of seized material)
- DKDFULL (2). XLS- "COINS" (Digital Data, part of seized material)
- DKDFULL (2). XLS- "RECTIFIED NEW SHEET" (Digital Data, part of seized material)
- Return of Income, Computation of Income, Capital Account, Balance sheet as on 31/03/2018, Ledger Account of assessee, Ledger Account of Om Anand Exports in the books of assessee, Ledger Account of assessee in the books of Om Anand Exports.
- ATC-HAN PDF 03/09/2017 (Digital Data Part of seized material)
- ATC Sanjay Fuwa Final Sheet-41- "Sheet2" (Digital Data, Part of seized material)
- ATC Sanjay Fuwa Final Sheet-41-'1-7' (Digital Data, Part of seized material)
- ATC Sanjay Fuwa Final Sheet-41- "8" (Digital Data, Part of seized material)
- ATC Sanjay Fuwa Final Sheet-41- "9" (Digital Data, Part of seized material)
- B1-PD/HDD/OAE/DESKTOP/Personal acs.xls, Sheet 2. (Investment Accounts in Bitconnect),
- Sheet Prepared Data, page No. and amount (Annexure-a/3) (In Currency of Conakry), Seized Material-Annexure-A/3 (Page No. 1 to 30), Passport of Manish Kumar Maheshbhai Patel,
- Ledger Account of Furniture and Fixture (New Flat) FY 2017-18,
- Invoice of Carpenter for furniture work dtd. 21/12/2017,
- Copy of FIR No. 01/2019 dated 10/01/2019 with its English Translation,
- Copy of order of Gujarat High Court in Bail Application/Criminal Misc. Application 16743 and 17068 of 2021 dated 06/09/2022.

36. We have considered the rival submissions of both the parties and have gone through the record carefully. We have also perused various seized material

and other evidence placed on record by the assessee. Ground No. 1 in revenue's appeal and ground No. 3 in assesses appeal are inter connected and relates to unexplained investment in cryptocurrency i.e. DKD, ATC and BTC. We find that the case of assessee is that he has acquired only 193123 DKD coins. Such coins were acquired in initial coin offering in September, 2017. The assessee received such coins in Escrow account, which were found during the course of search action. The AO relied on three excel sheets of DKD FULL, DKD FULL-1 and DKD FULL-2. It is also case of assessee that he created several investor IDs to get the benefit of referral scheme and dealt with such coins for a period of five months till January, 2018. The AO made addition on the basis of seized material found in the laptop of assessee particularly from the files being DKD FULL, DKD FULL-1 and DKD FULL-2. The AO further held that assessee acquired and utilized four different ways for the purpose of acquisition of DKD coins, in staking Escrow, staking Escrow-10, non-Escrow and in lending account. The AO considered total coins in Escrow account 194831.71, in DKD Escrow-10 of 153166 and in non-escrow 193122. The AO valued the investment at the rate of 9.79 Us Dollar and in Indian rupees at Rs. 734 per coin. The AO worked out total value of investment of Rs. 67,32,01,161/- in the following manner:

Sl. No.	DKD	USD	INR	Source/Seized material
DKD ESCROW	194831.71		14,30,06,475	DKD Full.xls
DKD ESCROW-10	153166		11,24,23,844	DKDFull (1).xls
DKD Non SCROW	193123		14,17,52,282	DKDFull(2).xls
Non Lending			39,71,82,601	
Lending DKD		4312790	27,60,18,560	DKDFull(2).xls
Total			67,32,01,161	

37. We find that the Id. CIT(A) on considering the submission of assessee held that DKD coins details were found in DKD FULL-1 and FULL-2 are the same coin and all total investment by assessee is only 193123. There is no evidence that assessee acquired more than 193123 DKD coins. The AO has taken each excel sheet as a separate investment. Thus, the addition if any to be made only in respect of total investment of 193123 DKD coin. The benefit of bonus coin and interest on referral income was never realized as DKD coins were abruptly taken off from the website. Thus, the assessee never reaped by the assessee, so such income cannot be taxed in the hands of assessee. As recorded above, the AO valued the investment on the basis of rate of DKD coin on 01st December, 2017. We find that the Id. CIT(A) despite recording the fact that as per allegation in the FIR against Devesh Darji, the complainant made allegation of investment in DKD at 1.00 Dollar per coin and lost it. The Id. CIT(A) also noted that prevalent rate of DKD in September, 2017 was ranging from 1.00 USD to 2.00 USD. We find that assessee also accepted that he made investment in DKD coin at the rate of 2.00 US dollar per coin. The Id. CIT(A) despite recording such fact estimated the value of unexplained investment in DKD at the rate of 2.5 US dollar i.e. Rs. 162.5/- and restricted the unexplained investment to the extent of Rs. 3.13 crore. We find that the Id. CIT(A) estimated the value of alleged unexplained investment at the rate of 2.5 US per dollar on higher side despite the fact that there is no evidence on record for such estimation. At the best, the addition has to be restricted on the basis of admission of assessee about such investment, which the assessee has admitted his investment at the rate of 2.00 US dollar per DKD coin, therefore,

we direct the AO to restrict the addition of unexplained investment at the rate of 2.00 US Dollar per DKD. Thus, the total investment in DKD coins is restricted to Rs. 2,51,05,990/- (193123 X 2 US Dollar [Rs. 130/-]). In the result, the ground No. 1 of revenue's appeal is dismissed and the ground No. 3 of assessee's appeal is partly allowed.

38. Now advertent to the addition of unaccounted sale of DKD coins in lending and non-lending account, which is subject matter of ground No. 2 of revenue's appeal. The AO made addition of Rs.27.60 crore by presuming that DKD coins in non-escrow, non-lending and lending are separate. The AO made addition on the basis of her working in table at page No. 131 of assessment order, which we have narrated in para- (37) supra of this order. The case of assessee is that benefit of bonus coin and interest on referral income was never realized as DKD coins were abruptly taken off from the website. We Id CIT(A) deleted the addition by taking view that benefit of bonus coin and interest on referral income was never realized as DKD coins were abruptly taken off from the website. We also find is also corroborated with the facts that assessee created various IDs to take benefits of referral and bonus coins. All the details of numerous e-mail IDs were also found from the computer of assessee during search action. Even, the Id CIT-DR for revenue also argued that numerous IDs were created by the assessee himself to take the benefit of referral and bonus. Thus, submissions of Id AR of the assessee are convincing that the assessee neither made separate investment in such coins nor the income from the coins in lending and non-lending account was realised by the assessee. No evidence was found during course of search action, to show existence of fact that

assessee ever received any benefit from lending or referral scheme. The AO has nowhere mentioned in her assessment order that any investigation of fact was carried out during assessment or in post search period, which may strengthen her case. Therefore, we can safely conclude that this addition is based on mere presumption. Hence, we affirm the order of Id CIT(A) with our additional observation.

39. Being a search case, we independently examined the facts related with the issue of unaccounted investment in DKD and / or the benefits if any realised by assessee on these DKD coins. On independent examination of facts, we find that there is no evidence on record that the assessee made investment in more than 193124 DKD coins or any benefits either on referral or on account of interest or on lending was ever realised by the assessee. No evidence was brought by the AO on record to support huge additions. Thus, we do not find merit in the ground No. 1 & 2 of the appeal of revenue.

40. Ground No. 3 & 4 in revenues appeal relates to the addition of unexplained investment and unaccounted income from ATC coins. The AO made addition total addition of Rs. 1.04 Crore against transaction in ATC coins, out of which Rs. 85.44 lacs on account of unexplained investment, which was restricted by Id CIT(A) to the extent of Rs. 33.51 lacs plus Rs. 18.55 lacs being subject matter of ground No.3. And second addition made by AO on account of unaccounted income on sale of ATC Coins of Rs.19,18,616/-, which was deleted by Id CIT(A) and is subject matter of ground No.4. We find that there is mistake in framing of ground No. 3 & 4 by AO in his appeal. In fact, ground No. 3 relates to restricting the addition of unexplained investment to the extent

of Rs.52.06 lacs (33.51+18.55) against addition of Rs. 85.44 lacs. And ground No. 4 relates to deleting entire addition of unaccounted income of Rs. 19.18 lacs on sale of bonus coin of ATC. The AO made these addition as per her observation on page 146 & 147 of assessment order. The AO made basis of these addition from seized document [ATC Sanjay Fuwa Final Sheet-41.xls]. As per seized material unexplained investment in ATC coin of Rs.85,44,151/-. Such investment consists of ATC Jiyansh at Rs.18,44,130/- and ATC Akash at Rs. 66,89,020/- (18,44,130+ 66,89,020). Third addition relates to ATC coin which is based on excel sheet "B1 CPU/HDD desktop" which relates to total sales of bonus coins of 81,769.84 out of 39,794.84 @ 12.35/- and 41975 @ 34/- per coins, which was worked out at Rs.19,18,616/-. Though the assessee claimed that such investment does not belong to him and belongs to someone else and no evidence produced by assessee. The AO disregarded the explanation of the assessee by holding that the evidence of unexplained investment and benefit earned on sale of such coins were found from the possession of assessee. Before Id CIT(A), the assessee again filed detailed written submissions and stated that AO has taken the investment from seized material "Sanjay_hp_laptop_320_gb" wherein invested coin bonus coin and total coins has been shown as on 19.08.2017 and on 03.09.2017. The AO added both the figures of coins as on 19.08.2017 and on 03.09.2017. The coins on 19.08.2017 were carried forward to 03.09.2017 with minor changes of purchase. Therefore, the figure of investment by purchases as 19.08.2017 which is 98,560/-is needs to be considered. The bonus coins were not out of investment of funds and ultimately all investment has lost. We find that the Id

CIT(A) after considering the submissions of the assessee accepted the contention of assessee and considered the investment in ATC coin as on 03.09.2017 at 98,560 coin and restricted addition of unexplained investment thereto only. The Id CIT(A) also worked out the figure of addition sustained by him at Rs. 33,51,040/- (98,560 X Rs.34). Thus, the addition of unexplained investment in ATC Akash at Rs. 66,89,020/- was restricted to Rs.33,51,040/-. We find that Id CIT(A) has rightly deleted the duplicate addition, which we affirm.

41. Second part of addition in ATC made by AO is based on excel sheet "Sanjay Fuwa Final sheet_41". The AO made this addition of 150,213 coins at Level 1 to 10. The AO worked out total investment at Rs. 18,55,130/- by taking rate of ATC @ Rs. 12.35/- (150,213 X 12.35). We find that before AO the assessee explained that this investment does not belong to him rather belongs to third person. The AO disregarded the contention of the assessee and held that evidence of holding of these coins were found from the possession of the assessee. We find that even before Id CIT(A) the assessee took similar plea. The Id CIT(A) concurred with the action of AO by confirming the view of AO that the assessee failed to furnish the details as per provisions of section 132(4A) of Income Tax Act. We find that the assessee has failed to substantiate his plea that investment in ATC belongs to third person. No supporting evidence was filed by the assessee either before lower authorities or before us. Therefore, we do not find any reason to interfere with the finding of Id CIT(A) on this part of addition. Resultantly, ground No. 3 of revenues appeal is dismissed.

42. So far as deleting the addition of unaccounted income of Rs. 19,18,616/- is concerned, we find that the AO made addition by taking view that the assessee earned unaccounted income on sale of ATC coin. The Id CIT(A) deleted the addition by taking view that there is no evidence in the seized material that the assessee sold bonus coins of ATC. We find that the Id CIT(A) has rightly held that in absence of any such evidence about the sale of bonus coins no addition on account of sale of ATC coins is warranted. Even, before us, the Id CIT-DR for the revenue failed to bring any evidence to our notice that the assessee is beneficiary of sale of ATC coins. Hence, we do not find merit in the ground No. 4 of the appeal of revenue.

43. In the result, ground No. 3 as well as ground No.4 is dismissed.

44. Ground No. 5 in revenues appeal relates to deleting the addition of undisclosed business income of Rs. 85.50 lacs. The AO made addition of undisclosed business income on the basis of incriminating material found in the laptop of the assessee. The assessee explained that the seized documents on the basis of such additions was proposed does not pertain or belongs to rather pertains to third person namely Manish Kumar M. Patel has left such diary. Manish Kumar M Patel was working for Deepalbhai. The assessee also furnished the copy of passport of Manish Kumar M Patel. The assessee had nothing to do with the said business. Such contention of the assessee was not accepted by the AO. The AO disregarded the submissions of assessee and worked out the income of unaccounted business income as per her finding at page No. 163 to 167 of assessment order. We find that the Id CIT(A) deleted the entire addition of such unaccounted business income by taking view that

information downloaded from the laptop of the assessee is allegedly contained the details of expenses, sales, purchases of business of cashew and jute bags at Conakry and Buke. In the details the names of Deepalbhai, Manish Bhai, Vijaybhai and Nitin Bhai are mentioned / written. The name of assessee is nowhere mentioned. At the end, there are details that these four people, who had started some cashew and jute bags business which resulted in loss. The Id CIT(A) also held that even Annexure A-3 gives the details of the same cashew and jute business which is in Conakry currency. During such period Mr. Manish Patel stayed in Conakry as per the stampings in his passport (from 03.05.2017 to 03.06.2017). The entries in the diary are pertaining to the same period 03.05.2017 to 03.06.2017. In none of the incriminating material, there is any reference about the assessee or his investment and therefore, in absence of any adverse inference to the assessee in the seized material, the details found cannot be treated to be that of the assessee and addition cannot be made.

45. We find that there is no independent or corroborative evidence on record to prove that facts that the assessee carried out such undisclosed business or any income was ever accrued, aroused or credited in the books or in the bank account of the assessee. We find that the assessee provided the copy of passport of the person who was carrying such business, however, the AO neither examined such person nor further investigated the facts to bring any evidence to support her view. Thus, with our aforesaid additional observation, we affirm the order of Id CIT(A). In the result, ground No. 5 of revenues appeal is dismissed.

46. Ground No. 6 in revenues appeal and ground No. 4 in assesses appeal are interconnected being related with the unexplained expenditure in renovation of house. The AO made total addition of Rs. 1.01 crore, which was restricted by Id CIT(A) to Rs. 50.12 lacs. We find that the AO made addition of Rs. 1.01 crore by taking view that during search action Annexure-A-5 and A-6 were also seized from the house of assessee which contained the details of unexplained expenditure in his home at C-605, Laurels, Bhartana, Vesu, Surat. During assessment the assessee was asked to explain the source of such expenditure. The assessee in response to the show cause notice explained the source of such expenditure and submitted that all the expenses are recorded in the books and that expenses were incurred on furniture and fittings also filed ledger account of carpenter and fittings. We find that reply of the assessee was not accepted by AO by taking view that the assessee was required to match the details of expenditure with payments from bank and that the details and evidences furnished by assessee are not matching with payment through cheques or demand draft is furnished by assessee. The AO treated entire expenditure as unexplained and made addition under section 69C of Rs. 1,01,57,149/-. We find that before Id CIT(A) the assessee again filed detailed reply and submitted that Annexures i.e. Annexure-A/5 and A/6 contains certain bills, delivery challan and details of other working during the construction work and numerous items were procured and subsequently returned due to change of plan. The assessee has not claimed that all such expenditure was incurred through banking channel only and that certain expenditure was paid in cash or by cheque to carpenter. The assessee furnished complete details. The bills

contained name of carpenter. The carpenter is also charging his labour bill on percentage basis on material use. The AO made addition by disregarding all the evidences. We find that the Id CIT(A) on considering the explanation and evidences of assessee restricted the addition to the extent of Rs. 50.12 lacs by taking view that the Id CIT(A) noted that assessee has produced the party-wise bifurcation of expenses. Ld CIT(A) also given certain instances that on examination of the party-wise ledgers, he found that the assessee has made the payments by cheques as well as cash to the said parties. All the payments made to the vendors which are recoded in the books and which is not recorded in the books are found in the incriminating material. While considering one invoice dated 29.03.2017 from M/s OTTIMO Agency, which is respect of purchase of white goods, shows total of value of Rs.5,74,000/-. But the amount shown paid by cheque to M/s OTTIMO Agency dated 16.11.2017 is Rs.2,72,000/-, which shows that Rs.3,02,000/- is incurred outside the books of accounts. Similarly, the total payment to M/s Veneer Point is dated 08.10.2017 is Rs. 40,000/- but the invoices from the said vendor is Rs. 73,300/- , which shows that Rs. 23,300/- is outside the books of account. On the basis of such observation, the Id CIT(A) held the expenditure incurred as per the incriminating material is partly recorded in the books and partly not recorded in the books. The expenditure recorded in books which finds mention in the incriminating material needs to be given credit to in determining the unexplained expenditure on furnishing and renovation of the flat. The Id CIT(A) held that the AO has made an addition of Rs.1,01,57,149/- treating the entire expenditure as per the incriminating material to be unexplained expenditure.

But the total amounts debited in the impugned AY in the books of accounts of the assessee relating to renovation and furnishing is Rs.51,44,937/-, which needs to be given credit to.

47. Before us, the Id AR of the assessee vehemently argued that he furnished complete details of all the expenditure, yet the lower authorities failed to appreciate the evidence furnished by the assessee. The assessee explained that in various bills, some party has given substantial concession in rates at the time of payment. The Id. CIT(A) sustained part addition by taking view that certain expenditure was paid in cash and complete details were not furnished. The assessee made payment to carpenter. All such person belongs to unorganized sector and they received cash against their labourer. It is not the case of assessee that entire expenditure was claimed through banking channel, it is known fact that in renovation expenses, various expenses are bound to be incurred in cash only. It was urged that no addition is to be sustained yet for want of full proof evidence, some token disallowance may be made to avoid the possibility of revenue leakage. It is also plea of the assessee that during the year under consideration, the assessee has substantial capital withdrawal from his business concern "Om Anand Export". The benefit of capital withdrawal was not allowed in investment in DKD Coins, if in case this bench does not agree to allow credit of such withdrawal, the same may be allowed against this addition.

48. We find that Id CIT(A) in his finding accepted that the assessee has debited total amount on renovation expenses in the impugned AY in the books of accounts of the assessee relating to renovation and furnishing is

Rs.51,44,937/-, credit of which has been allowed. We find that the AO made addition simply on the basis of Annexure A-5 & 6, without verifying the facts from the seller of various parties or from carpenter. The AO added entire figure of both the Annexures as unexplained expenditure without giving credit of the expenses incurred through banking channel. Though, the Id CIT(A) allowed relief to the extent of amount debited in the books of account only. It is known fact that in renovation and in furniture payment against material or to the labour are paid in cash, which is commonly known facts. Moreover, such expense is not claim for the purpose of business, rather it was incurred in house from personal withdrawal. To substantiate the withdrawal the assessee has furnished capital account. Therefore, in our view the huge addition on account of unexplained expenditure is not justified. Though, on the basis of facts and evidence on record, we are conscious of the fact that the assessee has also not been able to fully substantiate the entire expenses, hence, in order to avoid the possibility of revenue leakage, ad hock disallowance @ 25% of total addition made by AO would be sufficient to meet the end of justice. In the result, the ground No. 6 of revenues appeal is dismissed and grounds No. 4 raised by the assessee are partly allowed.

49. Ground No. 7 to 9 in revenues appeal and ground No. 5 to 8 in assesses appeal are general and needs no specific adjudication and dismissed as such.

50. Ground No. 1 in assesses appeal relates to reference made to special auditor and Ground No. 2 relates to limitation period for passing assessment order. We find that Id AR of the assessee has not made specific submissions except

making simple submissions without specific reference on both the issues. Thus, such grounds of appeal are also dismissed as not pressed.

51. In the result, the appeal of the revenue is dismissed and the cross appeal of the assessee is partly allowed.

Order announced in open court on 23rd January, 2025.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 23/01/2025

**Ranjan*

Copy to:

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2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat