

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 1450/Del/2024 (A.Y 2012-13)

ITA No. 820/Del/2024 (A.Y 2017-18)

ACIT 1001, E-2 Block, Civic Centre, 10, New Delhi,	Vs.	Trilok Chaudhary, 39 CDR Farms, Gadaipur Mehrauli, South Delhi, New Delhi PAN No:AAEPC0683P
(Appellant)		(Respondent)

C.O No. 97/Del/2024 (A.Y 2012-13)

Trilok Chaudhary, 39 CDR Farms, Gadaipur Mehrauli, South Delhi, New Delhi PAN No:AAEPC0683P	Vs.	ACIT 1001, E-2 Block, Civic Centre, 10 New Delhi,
(Appellant)		(Respondent)

Appellant by	Advocate C.S. Anand and Advocate Sarthak Upadhaya,
Respondent by	Sh. Dayainder Singh Sidhu, CIT (DR) &Sh. Om Prakash, Sr. DR

Date of Hearing	19/12/2024
Date of Pronouncement	14/02/2025

ORDER

PER YOGESH KUMAR U.S.:

The above two captioned appeals are filed by the Department against the order of the Ld. CIT(A) dated 31/01/2024 (A.Y 2012-13) and order dated 06/12/2023 (A.Y2017-18). The Assessee has also filed Cross Objection No.

97/Del/2024 directing against the order of the Ld. CIT(A) dated 31/01/2024 pertaining to Assessment Year 2012-13.

ITA 1450/Del/2024 (Revenue), C.O 97/Del/2024 (Assessee)-A.Y 2012-13.

2. Brief facts of the case for Assessment Year 2012-13 are that, the Assessee filed return of income on 31/03/2014 declaring income at Rs. 7,28,94,070/-. A search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was carried out on 11/09/2013 and 17/09/2013 in the case of AKN Group of cases. The Assessee's case was also covered in the said search. During the search, documents and data storage devices etc. belonging to the Assessee were found and seized. The Assessee made a total surrender to Rs. 15 crore during the said search operation. Consequently, the search a notice u/s 153A of the Act was issued to the Assessee to furnish the return of income and in response, the Assessee filed return of income u/s 153A of the Act on 31/03/2014 declaring income of Rs. 7,28,94,070/- which was declared in the original return of income filed u/s 139 of the Act. An Assessment Order came to be passed u/s 153A r.w. Section 143(3) of the Act on 31/03/2016 determining the total income of the Assessee at Rs. 39,51,87,439/- by making addition of Rs. 2,22,93,369/-(Rs. 1,97,93,369/- + Rs. 25,00,000/-) by applying the provisions of Section 2(22)(e) of the Act and Rs. 30,00,00,000/- on account of undisclosed income u/s 68 of the Act. Aggrieved by the assessment order dated 31/03/2016, the Assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 27/06/2017

partly allowed the Appeal of the Assessee by restricting the addition made u/s 2(22)(e) of the Act from Rs. 2,22,93,369/- to Rs. 6,67,610/- by granting relief of Rs. 2,16,25,759/- and dismissed the Appeal of the Assessee on the addition of Rs. 30,00,00,000/- made u/s 68 of the Act.

3. Aggrieved by the order of the Ld. CIT(A) dated 27/06/2017, the Assessee preferred an Appeal before the Tribunal in ITA No. 5871/Del/2017 and the Co-ordinate Bench of the Tribunal vide order dated 20/09/2018, partly allowed the Appeal by deleting the addition of Rs. 20 crore which was confirmed by the Ld. CIT(A) in the hands of the Assessee on the basis of recovery of MOU dated 14/12/2011, further remanded the matter on the issue of addition of Rs. 10 crore to the file of the A.O. with a direction to re-decide the said issue in accordance with law. Further also restricted the additions u/s 2(22)e of the Act to Rs. 5,78,628/-, which was determined by the Ld. CIT(A) at Rs. 6,67,610/-.

4. In compliance of the order of the Tribunal dated 20/09/2018, an assessment order came to be passed on 05/12/2019, wherein the Ld. A.O. computed the revised taxable income of the Assessee at Rs. 17,34,72,693/- as against returned income of Rs. 7,28,94,070/-. Aggrieved by the assessment order dated 05/12/2019, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 31/01/2024, deleted the additions. Aggrieved by the order of the Ld. CIT(A) dated 31/01/2024, the

Department of Revenue preferred the present appeal on the following grounds:-

“1) Whether on the facts and circumstances in this case, the Ld.CIT(A) has erred in deleting addition of Rs.10 crores made on account of unexplained case, ignoring the fact that the assessee had failed to prove the identity and creditworthiness of the creditors and genuineness of the transactions.

2. Whether on the facts and circumstances in this case, the Ld.CIT(A) has erred in not affording an opportunity to Revenue to examine the additional evidence submitted by assessee during course of appellate proceedings thereby violating provision of Rule 46A of IT Rules.

3. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of hearing of the appeal.”

5. The Assessee has also filed Cross Objection against the order of the Ld.

CIT(A) dated 31/01/2024 on following Grounds: -

“1. On the facts of the case and in law, the assessment order dt. 05.12.2019 passed by the learned AO u/s 254/254/250/153A r.w.s. 143(3) is liable to be quashed/annulled because the assessment order for the same assessment year had already been passed on 25.02.2019 u/s 254/250/153A/143(3).

2. On the facts of the case and in law, the assessment order dt. 05.12.2019 passed by the learned AO u/s 254/254/250/153A r.w.s. 143(3) is liable to be quashed/annulled because the Document Identification Number (DIN) pertaining to the said order was not mentioned on the said assessment order.

3. On the facts of the case and in law, the assessment order passed by the learned AO u/s 254/254/250/153A r.w.s. 143(3) is liable to be quashed/annulled because on the peculiar facts of the case (the document on the basis of which the addition of Rs. 10 crores was made, had not been seized from the premises of the assessee but had been seized from the premises of third party), the assessment order could have been passed only in terms of the provisions of Section 153C.

4. On the facts of the case and in law, the assessment order dt. 05.12.2019 u/s 254/254/250/153A r.w.s. 143(3), is liable to be quashed because the same had been passed by the learned AO, without obtaining the prior approval from the Joint/Additional Commissioner of Income Tax, as per the provisions of section 153D.”

6. The Ld. Counsel for the Assessee has not pressed the Ground No. 2 of the Cross Objection which is regarding non-mentioning of DIN Number in the assessment order, accordingly, Ground No. 2 of the Cross Objection is dismissed as not pressed.

7. The Ld. Departmental Representative addressing on the Ground No.1 of the appeal, submitted that after the order of the Tribunal, the Ld. A.O. has issued a notice dated 11/07/2019 u/s 142(1) of the Act seeking certain details/evidence which has been replied by the Assessee on 16/09/2019, but submitted no evidence. Further one more notice has been issued on 20/11/2019 by calling upon to provide information/documents regarding six points but the Assessee has submitted information on Point No. 1 to 3 of the Notice, however, not filed any requisite documentary evidence on Point No. 4 to 6 of the notice. Further submitted that the A.O. has also issued notice u/s 133(6) of the Act to Smt. Saroj Sharma and to Megatech Realities Pvt. Ltd. but both the notices issued to those persons have return as returned with an endorsement “Koi Jankari nahi” and left without address,” as those persons are not available in the address. Further submitted that even the person named Sh. Kulbhushan Jain, mentioned in MOU could not be located in the

absence of particulars of MOU and all the above persons have not been produced by the Assessee. The Ld. Departmental Representative relying on the Assessment Order, submitted that the Ld. CIT(A) has committed error in deleting the addition, accordingly sought for setting aside the order of the Ld. CIT(A).

8. Per contra, the Ld. Assessee's Representative vehemently submitted that the correctness of the MOU and subsequent agreement to sell have not been disputed by the Department. The Assessee had received Rs. 10 Crore from M/s Megatech Realities Pvt. Ltd. for the work specified in the MOU and subsequently gave the said amount to Smt. Saroj Sharma and ors. As per the MOU, the Assessee was responsible to acquire the said land and hand over to M/s Megatech Realities Pvt. Ltd. As per Section 69 of the Act, addition can be made only if the Assessee is found to be owner of any money which is not recorded in the books of accounts, if explanation offered about the nature and source of acquisition of money by him is not satisfactory in the opinion of the A.O. In the present case, the Assessee received money from M/s Megatech Realities Pvt. Ltd., retained the same for few days and then handed over to Smt. Saroj Sharma and ors. Since the money was received from someone for a limited purpose of transferring it to a third person, the Assessee cannot be considered as owner of such money ultimately the money received was with a pre-condition and pre-determined purpose. The Ld. CIT(A) has appreciated the stand taken by the Assessee that at the best, the Assessee can only

treated as custodian of such money for some duration and, therefore, cannot be considered as owner. The Assessee's Representative further submitted that the Assessee being an aggregate/broker/real estate agent for a particular transaction, which has been established based on the documents which are on record, the Ld. Assessee's Representative relying on the findings and the conclusion of the Ld. CIT(A), sought for dismissal of the Appeal of the Revenue.

9. We have heard both the parties and perused the material available on record. During the first round of litigation, the Tribunal vide order dated 20/09/2018 deleted the partial addition and remanded the issue regarding the addition of Rs. 10 crore to the file of the A.O. in following manners: -

“15. The AO made further addition of Rs. 10 crores in the hands of the assessee on the basis of MOU dated 14.12.2011 (PB 105) which is recovered during the course of search. This MOU is executed between assessee and M/s Meghatech Realtors Pvt. Ltd. According to this MOU assessee was responsible to acquire the land at Village Harchandpur, Gurgaon from Smt. Saroj Sharma and others and shall transfer the same to M/s Meghatech Realtors Pvt. Ltd. in consideration to this MOU. M/s Meghatech Realtors P. Ltd. paid Rs. 10 crores to the assessee. This MOU is attested by Notary Public and also attested by the witness. As per the agreement assessee has paid the same amount of Rs. 10 crores to Smt. Saroj Sharma on behalf of M/s Meghatech Realtors P. Ltd. Both MOU and agreement are filed at PB 105 and PB 338. Since presumption is rebuttable, therefore, the case is to be examined on the basis of material on record. The assessee in his initial statement recorded by investigation wing dated 17.09.2013 (PB 276) has explained that he has received Rs. 10 crores from M/s Meghatech Realtors P. Ltd. for purchase of the land through Sh. J.K. Jain. The assessee similarly filed complaint to the police against Smt. Saroj Sharma and others and also filed letter to the Sub-Registrar, Sohna, Gurgaon so that no further sale deed is executed in favour of others. PB143 is statement of Sh. Kulbhushan Jain recorded by investigation wing on

18.10.2013 in which he has confirmed that he has arranged the deal of the assessee with M/s Meghatech Realtors P. Ltd. The Hon'ble Supreme Court in the case of DCIT vs. T. Jai Chandaran in Civil Appeal No. 4341/2018 arising out of SLP No. 22112/2013 dated 24.04.2018 considered the issue, whether additional interest payable to PSU cannot be assessed as income of respondent? It was held that in the given facts the respondent had acted only as broker and, as such, the amount in question could not be termed as income of the respondent. The AO, therefore, should have verified the facts from all the concern persons and should have examined Smt. Saroj Sharma and others and witness to the MOU before arriving at the finding of fact in the matter. The assessee further explained that report of the Inspector was not confronted to him, therefore, such evidence cannot be read in evidence against the assessee. No efforts have been made by the AO to verify the facts from the AO of M/s Meghatech Realtors P. Ltd. The AO also ignored balance sheet of this company filed with ROC to verify the amount of advance shown of Rs. 10 crores. These facts clearly show that despite corroborating material available on record, the AO merely made the addition against the assessee because the Directors of M/s Meghatech Realtors P. Ltd. were not produced for examination before the AO. However, the fact remained that sufficient material was available on record that assessee acted on behalf of M/s Meghatech Realtors P. Ltd. and assessee while acting on their behalf executed agreement to sell with Smt. Saroj Sharma and others. However, Smt. Saroj Sharma and others did not complete deal with the assessee, assessee has taken action against her with the police as well as in the court of law with Sh. Devender Kumar. Therefore, facts shall have to be verified from all the concerned parties including Smt. Saroj Sharma and witnesses to the MOU etc. It appears to us that AO has not conducted proper investigation on this issue and merely made addition for non production of Director of Company. Therefore, the matter requires reconsideration and the level of the AO. We, accordingly, set aside the orders of the authorities below and restore this issue to the file of AO with direction to re-decide this issue in accordance with law and as per observations in the order by giving reasonable opportunity of being heard to the assessee. The AO shall made all efforts to enquire from all concern parties about the facts of execution of MOU for M/s Meghatech Realtors P. Ltd. and shall pass the reasoned order.

16. In the result, this ground of appeal of assessee is allowed for statistical purposes.

17. As regards, the addition on account of deemed dividend, the assessee pleaded that advance was received for purchase of land for the company in ordinary course of business. However, during the course of arguments Ld. Counsel for the assessee has not been able to refer to any evidence to support such contention. Therefore, this point was rightly rejected by the authorities below. However, Ld. Counsel for the assessee submitted that addition for deemed dividend could be made to the extent of accumulated profits of the lender company. The Ld. CIT(A) following his order dated 31.03.2017 for AY 2013-14 and 2014-15 accepted the plea of the assessee and directed the AO to make addition u/s 2(22)(e) i.e. addition made are restricted to the extent of accumulated profits. Ld. Counsel for the assessee referred to the remand report filed by the AO before Ld. CIT(A), PB 250 i.e. on 31.03.2012, the accumulated profit in case of M/s Dream Green Land Realtors P. Ltd. and M/s Rosemary Properties P. Ltd. were Rs. 4,26,330/- and Rs. 2,41,280/- . He has further submitted that the order of Ld. CIT(A) need to be modified as accumulated profit taxed as deemed dividend in earlier year need to be excluded i.e. in the case of Dream Green Land Realtors P. Ltd. for AY 2008-09 was Rs. 2,871/- and in case of M/s Rosemary Properties Ltd. in AY 2009- 10 it was Rs. 86,111/-. We, accordingly, direct the AO to take into consideration the above facts and submission of the assessee while passing the appeal effect order in the matter. With these modifications this ground of appeal of the assessee is partly allowed for statistical purposes.”

10. The Ld. A.O. while sustaining the addition of Rs. 10 crore observed that the Assessee even after giving opportunities of being heard could furnish any reply, therefore, the entire amount to Rs. 10 Crore has been treated as unexplained cash in the hands of the Assessee out of his income from undisclosed sources, accordingly, computed the taxable income of the Assessee at Rs. 17,34,72,693/- vide assessment order dated 12/12/2019. During the appeal proceedings the Ld. CIT(A) deleted the addition.

11. The present case being a search and seizure, the addition has been made based on the MOU found and seized during the course of the search. As per the MOU the Assessee received Rs. 10 Crores in cash from M/s Megatech Realities Pvt. Ltd. further the Assessee has paid the said amount to Rs. 10 Crore to Smt. Saroj Sharma and ors. as per the agreement to sell. The correctness of the MOU has neither been disputed by the Assessee nor by the Department at any stage. Sole basis for making the addition by the A.O is also the very same MOU unearthed during the search. The Tribunal in an earlier occasion in ITA No. 5871/Del/2017 also highlighted the presence of agreement to sell through which the Assessee has paid Rs. 10 Crore to Smt. Saroj Sharma and ors. At no point of time the Department has raised any doubt about the existence of the either the MOU or the agreement to sell, thus, it is an undisputed fact that there was an MOU between the Assessee and M/s Megatech Realities Pvt. Ltd. and also an agreement to sell between Saroj Sharma and ors. Apart from the same, there is a legal presumption that the documents found during the course of search are true and correct and pertaining to the Assessee.

12. The silent features of the MOU dated 14/12/2011 entered into between the Assessee and M/s Megatech Realities Pvt. Ltd. are reproduced as under:-

“1. Sh. Trilok Chand was responsible to acquire the above said land and handover to M/s Megatech Realtors Pvt. Ltd.

2. M/s Megatech Realtors Pvt. Ltd has agreed to ready to purchase the 125 Acre approx Land of Village Harchand Pur, Tehsil Sohna, Distt. Gurgaon, Haryana, form the (1) Saroj Sharma, wife of Shri Ved

Prakash Sharma, (2) Shri Ved Prakash Sharma, son of Shri Rajveer Sharan Sharma, (3) Smt. Pushpa Sharma, wife of Shri Rakesh Kumar Sharma (4) Shri Rakesh Kumar Sharma, son of Shri Ved Prakash Sharma all residents of 146 Khatri Bada, old Faridabad, Haryana, (undivided 2/5 share each), (5) Shri Ram Gopal Sharma, son of Shri R.S. Sharma, resident of 1/10946, Gali no 7 Subhash Park Shahdara. Delhi undivided 1/14 share) (6) Shri Sushil Kumar Sharma, son of Shri R.G. Sharma (7) Smt. Shakuntla Devi W/O Sh. R.G. Sharma (8) Sh. Sushil Kumar Sharma S/O Sh. R.G. Sharma, (9) Smt. Vijay Sharma W/O Sh. Sunil Kumar Sharma, (10) Sh. Rattan Sharma W/O Sh. S.K. Sharma all residents of Shahdara, Delhi, (undivided 5/14) share each) (11) Smt. Vandna Bhardwaj W/O Sh. Chander Shekhar Bhardwaj R/O Yamuna Vihar, Delhi, (undivided 1/14 share) (12) Sh. Chander Shekhar Bhardwaj S/O Sh. Ravi Dutt R/O C/10, House no. 105, Yamuna Vihar, Delhi (undivided 1/10 share) nominee M/S S.K. Land Finance Company Redg. Office 41, Aggarwal Chamber, Second Floor, Vikas Marg, Delhi.

3. Sh. Trilok Chand has agreed to provide the above-mentioned land to M/s Megatech Realtors Pvt. Ltd and M/s Megatech Realtors Pvt. Ltd have also agreed to purchase the above-mentioned land at the rate of 16,00,000/- per acre and the first party has been received Rs. 10,00,00,000/- (Rupees Ten Crore Only) in cash from M/s Megatech Realtors Pvt. Ltd as earnest money, and the balance amount shall be paid by the M/s Megatech Realtors Pvt. Ltd to Sh. Trilok Chand at the same time of possession and at the time of registration of the completion of the said transaction on or before 31.12.2012.

4. That the period for the completion of the said transaction and the registration of the Sale Deed is fixed between the parties up to 31.12.2012 and within the stipulated period, the first party shall be liable to execute and sign proper transfer document, Sale Deed(s) and documents for the transfer of the above mentioned property from the actual owners of the said property in favor of the Second Party or his/her nominee(s) and shall get the same registered in the office of the Sub-Registrar Gurgaon (Haryana) to the entire satisfaction of the Second Party, after the receipt of the balance consideration amount.

5. That all the expenses of the Sale Deed or transfer documents shall be paid and borne by the Second Party.

6. That the First Party shall deliver the actual physical vacant possession of the above- mentioned property of the Second Party at the time of completion of the said transaction.”

13. The Ld. CIT(A) considering the conduct of the Assessee, the purpose of MOU, subsequent action in the form of agreement to sell and the statement of the Assessee during the course of search/post search found that the Assessee worked as an aggregator to ensure the purchase/sale transaction of the land at Village Harchandpur on behalf of M/s Megatech Realities Pvt. Ltd. The Tribunal in its earlier order has also observed that there was a dispute between the Assessee and Smt. Saroj Sharma which has been corroborated from the police complaint filed by the Assessee, later correspondence to the Sub-Registrar Shobhna, Gurgaon, and ongoing civil dispute in the Civil Court between Assessee and Smt. Saroj Sharma and ors to whom the Assessee paid consideration of Rs. 10 Crore in cash.

14. The Ld. A.O. during the second round of assessment proceedings after the remand from the Tribunal, confirmed the addition only on the ground that neither the Directors of M/s Megatech Realities Pvt. Ltd. were available during the assessment proceedings, nor the Assessee could produce them during the investigation/assessment proceedings nevertheless the A.O. has not disputed the existence of MOU and the fact that the Assessee has received cash amounting to Rs. 10 Crore of M/s Megatech Realities Pvt. Ltd. From the above, it is found that, the Assessee has received Rs. 10 Crore from

M/s Megatech Realities Pvt. Ltd. for the work specified in the MOU and subsequently gave the said amount to Smt. Saroj Sharma and Ors as per the said MOU seized during the search. The Assessee was responsible to acquire the said land and hand over to M/s Megatech Realities Pvt. Ltd. The Ld. A.O. after the remand from the Tribunal, made enquiries as per the directions made enquiries as per the direction of the Tribunal and made addition of Rs. 10 crore treating the same as unexplained cash in the hands of the Assessee out of his income from undisclosed sources as per Section 69A of the Income Tax Act. An addition u/s 69A can be made if the Assessee is found to be the owner of any money which is not recorded in the books of account, if explanation about the nature of source of acquisition offered by him has not satisfactory in the opinion of the A.O.

15. In the present case, the Assessee received money from M/s Megatech Realities Pvt. Ltd. and retained it for few days and thereafter handed over to Smt. Saroj Sharma and ors. Considering the above facts, the Ld. CIT(A) observed that since the money was received from someone for transferring it to someone else, the Assessee cannot be considered as owner of such money and the money received was without pre-condition and pre-determined purpose which has been reduced into writing in the MoU. Thus, the Assessee can only be treated as custodian of such money and cannot be considered as owner. The Ld. A.O. has not brought anything on record to prove that the said money is belongs to the Assessee which was received through M/s

Megatech Realities Pvt. Ltd. being non existing entity or no evidence brought on record to prove that the Assessee was actual owner of cash amounting to Rs. 10Crore for invoking the provisions of Section 69A of the Act. The deeming effect of the provision will only apply to the Assessee if he is the owner of the impugned money.

16. The Hon'ble Supreme Court in the case of D N Singh (2023) 150 Taxman.com 301 (S.C) dealt with the said issue elaborately and held that for Section 69A to apply, it is indispensable that the Assessing Officer must find that the articles/ goods enumerated and covered under Section 69A of the Act, are owned by the Assessee. A person may own contraband or prohibited articles and still be within the embrace of Section 69A. However, without finding ownership, or in a case where it is obvious that someone else is the owner, a person who is found to be in illegal possession of goods cannot be said to be the owner under Section 69A and when the ownership of the goods did not pass to the assessee, who was a mere carrier of goods and whose possession of bitumen began as a bailee. Thus, the Hon'ble Supreme Court held that the Assessee thereon could not be said to be the 'owner' of bitumen so as to attract Section 69A.

17. In the present case, the Assessee has acted as an aggregate/broker/real estate agent for a particular transaction, as per the MoU the Assessee received amount in cash for purchase of land in a specified area and as per the MOU, the Assessee was accepted to receive the difference between purchase and sale price. As per the documents, the Assessee booked purchase at Rs. 15,50,000/- per acre from Smt. Saroj Sharma and ors and to be sold it to M/s Megatech Realities Pvt. Ltd. at Rs. 16,00,000/- per acre. The said transaction if materialized, it would fetch in a profit of Rs. 50,000/- per acre to the Assessee. As the said transaction was not materialized as the sale never took place, which would have provided the Assessee of Rs. 50,000/- per acre and the same would have been his income.

18. The Hon'ble Supreme Court in the case of C.H. Atchiaiah (1996) 84 Taxman 630 (S.C) held that the A.O can and must tax that person alone who is liable to be taxed according to law with respect to a particular income. In the present case, as per the seized document itself the Assessee received the amount from M/s Megatech Realities Pvt. Ltd. as business receipt and M/s Megatech Realities Pvt. Ltd. as an agent to transfer to a third person, M/s Megatech Realities Pvt. Ltd. being, owner of unexplained money and the addition had already been made in the hands of M/s Megatech Realities Pvt. Ltd. u/s 153C of the Act. Further, the said amount in the hands of the Assessee will remain as a business receipt which was subsequently

transferred to Smt. Saroj Sharma and therefore, no ownership is vested with the Assessee to direct the provision of Section 69A of the Act.

19. It is also observed that in the initial statement recorded by the Assessee by the Investigation Wing dated 17/09/2013, explained that the Assessee has received Rs. 10 Crore from M/s Megatech Realities Pvt. Ltd. for purchase of land through Sh. J. K. Jain. The A.O. made no effort to verify the fact from M/s Megatech Realities Pvt. Ltd. on the other hand A.O. sent the notices u/s 133 (6) of the Act to incorrect Addresses and no serious effect has been made to secure the presence or statement of the parties in compliance with the order of the Tribunal. Further the A.O. has not taken cognizance of the balance sheet of Company filed with ROC to verify the amount of advance shown at Rs. 10 Crore. Thus, the Ld. CIT(A) has rightly observed that the A.O. has not conducted proper investigation on the issue and merely made addition for non-production of Directors of the Company. Sufficient material was available on record to infer that the Assessee has acted on behalf of M/s Megatech Realities Pvt. Ltd. and the Assessee while acting on behalf of M/s Megatech Realities Pvt. Ltd., executed agreement to sell with Smt. Saroj Sharma and the said Smt. Saroj Sharma did not complete the deal with the Assessee and the Assessee has taken action against her by filing police complaint and also filing a civil suit against Smt. Saroj Sharma.

20. The Ld. A.O. in the first round of the assessment proceedings, made the addition of Rs. 30 Crore on account of unexplained cash in the hands of the Assessee and remanded the issue of Rs. 10 Crore to the file of the A.O. which has been confirmed by the Hon'ble High Court. During the second round of assessment, the Ld. A.O. made the addition of Rs. 10 Crore vide order dated 05/12/2019 which has been deleted by the Ld. CIT(A). The Department in its Ground No. 1 of the Appeal contended that the Ld. CIT(A) erred in deleting the addition of Rs. 10 Crore made on account of unexplained cash ignoring the fact that the Assessee had failed to prove the identity and creditworthiness of the creditors and genuineness of the transaction. The said ground of the Revenue is self-contradictory as there is a separate provision for unexplained cash i.e. Section 69A of the Act and unexplained cash credit i.e. Section 68 of the Act. The Ld. A.O. has not made any addition of a loan or a share application money where the Assessee is required to prove the identity, genuineness and creditworthiness of the transaction. The impugned amount received by the Assessee being a business transaction, where the advance was obtained for future sale of property. As per the direction of the Tribunal the A.O. was required to verify as to whether the role of the Assessee was that of the broker/aggregate with regard to the property transaction which is the subject matter of the MOU. It is undisputed fact that the MOU seized during the search and seizure operation depicts that M/s Megatech Realities Pvt. Ltd. extended an advance of Rs. 10 Crore for a property transaction and there is no evidence to prove

that the said money was either owned by the Assessee or was belongs to the Assessee. Thus, from the Assessee's point of view, the Assessee had a business transaction with M/s Megatech Realities Pvt. Ltd., whose creditworthiness was neither required to be established nor could be established. For a business receipt, the Assessee is not required to establish the creditworthiness of the party extending advance to him and the role of the Assessee in entire transaction was to earn some profit on the said property transaction. Since, the transaction is not materialized it had not resulted in any income for the Assessee. Since, the transaction is not metalized and there is no evidence of receipt to any brokerage income or commission income earned by the Assessee and the Assessee's income can only be a profit earned on his property transaction, thus Section 69A of the Act is not applicable in the present case.

21. The Ld. A.O. made addition only on the basis of MOU seized during the search and the contents of the MOU or the genuineness of the MOU has not been disputed by either the Assessee or the Department. The seized documents is required to be considered in its entirety and, therefore, the cash advance which was received from M/s Megatech Realities Pvt. Ltd. for a particular purpose of purchasing the land owned by Smt. Saroj Sharma and ors cannot be disputed. The law requires determination of 'real income' on the basis of ordinary commercial principles of accountancy. Only real income, if any accrued in the hands of the Assessee is required to be taxed in

the hands of the Assessee. The Hon'ble Supreme Court in the case of C. H. Atchiaiah (1996) 84 Taxman held that 'A.O. can and must tax that person alone who is liable to be taxed according to law with respect to particular income.'

22. Admittedly the Assessee received the cash advance from M/s Megatech Realities Pvt. Ltd. and as per the MOU and the same was passed on to Smt. Saroj Sharma by looking into the said transaction, no real income arose in the hands of the Assessee as the receipt and payment amount is the same. Any income out of the said transaction would have accrued as and when the sale transaction is completed and the difference in purchase and sale would have been the income of the Assessee if the sale transaction was materialized. Further both the receipt and payment of cash advance took place in the same Financial Year, therefore, cannot be any business income against this transaction during the year as per the MOU dated 14/12/2011. It is true that even the Assessee could not produce its Directors after the order of remand in ITA No. 5871/Del/2017 dated 20/09/2018. After the gap of nearly eight years. On the other hand, even the A.O. has not made serious effort to bring the Directors to get the statement, the Notices have been sent by the A.O. to incomplete addresses. Moreover, the Assessee has also pursuing his claim as established through the agreement to sell with Smt. Saroj Sharma and Ors. before the Civil Court. If the Assessee either receives the land or the money on the subsequent dates, then only real income would

accrue to the Assessee and as such amount would be taxable in the year of receipt and no deduction would be allowable against the same for the advance of Rs. 10 Crore received from M/s Megatech Realities Pvt. Ltd. Considering the above facts and circumstances we are of the opinion that the Ld. CIT(A) has rightly held that the amount in question cannot be termed as income of the Assessee. Thus, we find no error or infirmity in the order of the Ld. CIT(A) and finding no merit in the Ground No. 1 of the Revenue, we dismiss the Ground No. 1 of the Revenue.

23. In Ground No. 2 of the Revenue, the Department contended that the Ld. CIT(A) erred in not affording an opportunity to the Revenue to examine the additional evidence submitted by the Assessee during the course of Appeal proceedings thereby violated of provision of Rule 46A of the I.T. Rules.

24. The Ld. Departmental Representative agued on the ground No. 2 of the Revenue submitted that the Ld. CIT(A) called for certain documents, to be produced by the Assessee and by relying on those documents, deleted the additions without calling for the Remand Report from the A.O which is shear violation of Rule 46A of I.T. Rules, thus sought for setting aside the order of the Ld. CIT(A).

25. The Ld. Assessee's Representative on the other hand, submitted that at no point of time the Assessee field any application under Rule 46A of I.T. Rules, on the other hand, it is the Ld. CIT(A) during the appellate

proceedings, directed the Assessee to produce certain documents which have been promptly produced to avoid any adverse inference might have drawn against the Assessee, in such event, the Rule 46A of IT Rules, will not come to play. Further submitted that, the Assessee has only produced the copies of the Panchnama and the Ld. CIT(A) has relied on the MOU and agreement and pre-recorded statements and the orders pertaining to the first round which were forming part of the record, therefore, the Ld. Assessee's Representative sought for dismissal of Ground No. 2 of the Revenue.

26. We have heard both the parties and perused the material available on record. It is fact on record that the Ld. CIT(A) during the first appellate proceedings, directed the Assessee to provide the Panchnama drawn on 18/09/2013 in the name of M/s CDR Estate Pvt. Ltd. and also the Panchnama drawn by the Department of Revenue on 18/09/2013 of the Assessee which have been considered by the Ld. CIT(A). Further, the Ld. CIT(A) has also considered the MOU dated 14/12/2011 and agreement dated 17/12/2011 and certain pre-recorded statements and other statements, which were part and parcel of the first round. None of the documents referred by the Ld. CIT(A) have been produced by the Assessee on an application filed under Rule 46A of the Income Tax Rules, 1962, on the other hand, the documents have been directed to be produced by the Ld. CIT(A) to enable him to dispose of the appeal. For the sake convenience Rule 46A of the I.T. Rules are reproduced as under:-

“46A. Production of additional evidence before the Deputy Commissioner (Appeals) and Commissioner (Appeals).

(1)The appellant shall not be entitled to produce before the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely :-

(a)where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or

(b)where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or

(c)where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or

(d)where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2)No evidence shall be admitted under sub-rule (1) unless the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3)The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall not take into account any evidence produced under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity-

(a)to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b)to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4)Nothing contained in this rule shall affect the power of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.”

27. On a plain reading of Rule 46A, it is clear that this Rule is intended to put fetters on the right of the appellant to produce before the Appellate Assistant Commissioner any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the Income-tax Officer, except in the circumstances set out therein. It does not deal with the powers of the Appellate Assistant Commissioner to make further enquiry or to direct the Income-tax Officer to make further enquiry and to report the result of the same to him. This position has been made clear by Sub-rule (4) which specifically provides that the restrictions placed on the production of additional evidence by the appellant would not affect the powers of the Appellate Assistant Commissioner to call for the production of any document or the examination of any witness to enable him to dispose of the appeal.

28. Under Sub-section (4) of Section 250 of the Act, the Appellate Assistant Commissioner is empowered to make such further inquiry as he things fit or to direct the Income-tax Officer to make further inquiry and to report the result of the same to him. Sub-section (5) of Section 250 of the Act empowers the Appellate Assistant Commissioner to allow the appellant, at the hearing of the appeal, to go into any ground of appeal not specified in the grounds of appeal, on his being satisfied that the omission of the ground from the form of appeal was not willful. It is clear from the above provisions that the powers of the Appellate Assistant Commissioner are much wider than the powers of an

ordinary court of appeal. The scope of his powers is coterminous with that of the Income-tax Officer. He can do what the Income-tax Officer can do. He can also direct the Income-tax Officer to do what he failed to do.

29. The power conferred on the Appellate Assistant Commissioner under Sub-section (4) of Section 250 being a quasi-judicial power, it is incumbent on him to exercise the same if the facts and circumstances justify. If the Appellate Assistant Commissioner fails to exercise his discretion judicially, and arbitrarily refuses to make enquiry in a case where the facts and circumstances so demand, his action would be open for correction by a higher authority.

30. On a combined reading of Section 250 of the Act and Rule 46A of the rules, it is clear that the restrictions placed on the appellant to produce evidence do not affect the powers of the Appellate Assistant Commissioner under Sub-section (4) of Section 250 of the Act. The purpose of rule 46A appears to be to ensure that evidence is primarily led before the Income-tax Officer.

31. First appellate authority has wide powers over the order of assessment appealed against before him. In the course of exercise of such power the first appellate authority can direct the Assessee to produce any evidence, information or material that was not produced before or considered by the assessing officer. The purpose of rule 46A is to place fetters on the rights of an appellant to produce additional evidence before the first appellate authority

and not the rights of the first appellate authority to call for production of any fresh evidence or information. This aspect of the provisions of rule 46A is clear from the provisions of Sub-rule (4) of rule 46A itself that nothing contained in rule 46A shall affect the power of first appellate authority to direct the production of any document or examination of any witness to enable him to dispose of the appeal or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the assessing officer).

32. In the present case, the MOU dated 14/12/2011 agreement dated 17/12/2011 and pre-recorded statements and other documents which are part of first round of litigation and also forming part of the assessment records. Further it is also noted that as per the direction of the Ld. CIT(A) issued under Sub-rule (4) of rule 46A of the Rules, the Assessee has produced Panchnamasand other documents which have been considered by the Ld. CIT(A) while deciding the Appeal. It is also not the case of the Department that even before us that those documents produced by the Assessee before the Ld. CIT(A) are not genuine. The Department has not come with any such plea before us. The Department could have very well disputed the genuineness of those documents even before us if at all those documents are not genuine. Considering the fact that the Ld. CIT(A) himself has called for the certain documents in exercise of power conferred under Sub rule (4) of

Rule 46A of the Rules, we find no merit in the Ground No. 2 of the Revenue. Accordingly, Ground No. 2 of the Revenue is dismissed.

33. In the result, Revenues' Appeal in ITA No. 1450/Del/2024 is dismissed.

C.O No. 97/Del/2024

34. Since, we have dismissed the Appeal of the Department, the Cross Objection No. 97/Del/2024 filed by the Assessee becomes in-fructuous, accordingly, Cross Objection filed by the Assessee is dismissed.

Revenue's Appeal in ITA No. 820/Del/2024 (Assessment Year 2017-18).

35. The Revenue has raised following Grounds of appeal:-

"1. That on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,04,47,500/- made by the AO on account of unexplained transactions and exempt agriculture income Rs.6,90,000/-. The assessee failed to explain the nature of transactions made with the parties/persons/companies appearing in the bank statements and also failed to furnished details in regard to agricultural income, therefore the same remained questioned and unexplained

2 Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in law and in facts in not affording an opportunity to Revenue to examine the additional evidence submitted by assessee during course of appellate proceedings thereby violating provision of Rule 46A of the ITRules."

36. There is a delay of 15 days in filing the present Appeal and an application for condonation of delay has been filed by the Revenue contending that due to handling of heavy number of time barring matters, the Department could not prefer the appeal on time, thus sought for condoning

the delay in filing the Appeal. For the reasons stated in the application for condonation of delay filed by the Revenue, the delay of 15 days in filing the present Appeal is condoned.

37. Brief facts of the case are that, the Assessee filed return of income for Assessment Year 2017-18 by declaring total income at Rs. 6,61,620/-. The return of the Assessee was processed u/s 143(1) of the Act. The case of the Assessee was selected for scrutiny under CASS and an assessment order came to be passed on 22/12/2019 by making an addition of Rs. 1,71,64,500/- u/s 68 of the Act being cash deposit before demonization and Rs. 1,32,83,000/- u/s 68 of the Act on account of cash deposits made by the Assessee during the demonetization period, in total made addition u/s 68 of the Act to the tune of Rs. 3,04,47,500/-. Further also made addition of Rs. 6,90,000/- by disallowing the claim of the Assessee that the said amount is an agriculture income. Aggrieved by the assessment order dated 22/12/2019, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 06/12/2023, deleted the addition of Rs. 6,90,000/- by treating the same as an agriculture income. Further deleted the addition of Rs. 3,04,47,500/- made by the A.O. u/s 68 & 69 of the Act. Aggrieved by the order of the Ld. CIT(A) dated 06/12/2023, the Department of Revenue, preferred the present Appeal on the grounds mentioned above.

38. The Department's Representative for the Department of Revenue adding on the Ground No. 1 contended that the Ld. CIT(A) erred in deleting the addition of Rs. 3,04,47,500/- made by the A.O. on account of unexplained transactions and exempt agriculture income of Rs. 6,90,000/-, though the Assessee has filed to explain the nature of the transaction made with the parties/persons companies appearing in the bank statement and also fail to furnish the details in regard to agriculture income, therefore, the same remained unexplained, therefore, the Ld. CIT(A) committed error in deleting the additions. thus, sought for allowing the Appeal by sustaining the additions made by the A.O.

39. The Ld. Counsel further submitted that the Ld. CIT(A) considering the availability of cash of Rs. 2,26,06,477/- as on 17/09/2013 out of the total surrender of Rs. 15 Crore which was made during the search operation u/s 132 in the month of September 2013, tabulated the availability of cash in hand by adopting the opening cash as on 17/09/2013 at Rs. 2,26,06,477/- and based on such working carried out by the Ld. CIT(A) after considering the cash withdrawal and cash deposited during the period of 17/09/2013 to 30/03/2017, rightly came to a conclusion that even after the cash book of earlier years are ignored, the Assessee was in possession of adequate cash in hand all through the year to make cash deposits in the bank account. The Ld. Counsel relying on the order of the Ld. CIT(A) sought for dismissal of Ground No. 1 of the Revenue.

40. We have heard both the parties and perused the material available on record. It was found by the A.O. that huge cash deposits amounting to Rs. 2,65,66,000/- in the demonetized notes to Rs. 500/- and 1000/- in his bank accounts. During the course of the assessment proceedings, the Assessee has been asked to explain debit/credit entry in the bank accounts and evidence in the agriculture income shown by the Assessee in following manners: -

"Vide reply dated 07/10/2019, you have, as per note on business activity, has stated that you did not had any business activity and had interest income of Rs.8,26,616/- form FDR and agricultural income of Rs. 6,90,000/-. However, it has been found that you have made huge transactions through your bank account in Corporation Bank (A/c No.7042597749), Yes Bank (A/c No.008484000000423) and Syndicate Bank (A/c No.901610100002450). You are requested to furnish complete details of all debit/ credit entries showing complete names, addresses, PAN of the parties, nature of transactions made viz. loans/ advance/ sale/ purchase/ investment etc. and tax implication on such transactions.

ii. You have shown agricultural income of Rs.6,90,000/-. You are requested to furnish complete details of agricultural activities done, type of crops produced, name and address of persons engaged in agricultural activities, purchase of agricultural items necessary for production/ cultivation, mode of transaction of produce from the field to the Mandi, Receipts/ Form-J against the sale of produce and gross receipts from sale of crops/ produce."

41. Vide reply dated 20/12/2019, the Assessee filed reply to the notice issued by the A.O., wherein the Assessee produced the cash book for the Assessment Year 2016-17 which has been annexed at page No. 1 to 3 of the said reply. The Assessment Order came to be passed on 22/12/2019 by making the addition on account of cash deposits, finding that the reply of the

Assessee is very vague, without any evidence and failed to explain the source and the nature of the cash deposits in the bank. Further also found that the Assessee failed to explain by way of submission/evidence in support of claim of agriculture income of Rs. 6,90,000/-.

42. It was the case of the Assessee that the cash deposited has been sourced from the cash available out of cash in hand as per the cash book as on 01/04/2016 and subsequent withdrawal from the bank. As per the reply dated 20/12/2019 filed by the Assessee before the A.O. the total cash deposited was out of the cash available in the books of accounts of the Assessee and the copy of the cash book was Annexed/provided during the course of the assessment proceedings. It is fact on record that the A.O. neither rejected the cash book nor highlighted any anomaly in the opening cash in hand as well as in the cash book filed by the Assessee. The only reason mentioned by the A.O. for making the addition that the Assessee has failed to explain the nature and source of cash deposit in the bank accounts and further observed that the Assessee is having a meager agricultural income and therefore, a cash deposited amounting to Rs. 3,04,47,500/- is not justified.

43. It is an undisputed fact that during the search and seizure operation dated 17/09/2013, the Assessee made a total surrender of Rs. 15 Crore during the course of search operation which could be corroborated from the

assessment order for Assessment Year 2014-15 dated 31/03/2016 in Assessee's own case. It is relevant to mention that, the said assessment order dated 31/03/2016 has been made prior to the demonetization period. Out of the 15 Crore a surrender of Rs. 6.5 Crore was pertaining to Assessment Year 2014-15 which includes seized cash of Rs. 2.95 Crore from the office of CDR State, jewellery of Rs. 87,93,523/- and Rs. 41 lakhs of advances during the year. Thus, out of the total cash surrender of Rs. 6.5 Crore an amount of Rs. 2,26,06,477/- was the income surrender which was not attached to any specific head. The cash book produced by the Assessee during the assessment proceedings in question mentioned opening balance of cash in hand as Rs. 4,59,93,124/- as on 01/04/2016. During the course of appellate proceedings, the Assessee was asked by the Ld. CIT(A) to provide the cash book from Assessment Year 2013-14 onwards along with the supporting bank statements to verify the correctness of the opening balance. The Ld. CIT(A) after perusing the cash book, observed that the Assessee had taken into account the income surrendered amounting to Rs. 2,26,06,477/- as on 17/09/2016. Therefore, observed that the income surrendered during the course of search, was correctly made a part of cash in hand on the date of search. As observed earlier, the A.O. neither disputed the correctness of opening cash as on 01/04/2016 nor highlighted any anomaly in the cash book filed by the Assessee. Thus, there was no justification on the part of the A.O. to doubt the correctness of the opening balance in the cash book as on 01/04/2016 and make the addition.

44. The Ld. CIT(A) while deciding the Appeal, made one more effort to find out taxable income by analyzing the availability of cash during the assessment year in consideration. The Ld. CIT(A) considering that, assuming there is no cash in hand except surrendered cash, available with the Assessee as on the date of the search i.e. 17/09/2013, keeping Rs. 2,26,06,477/- as opening cash in hand as on 17/09/2023 and incorporating cash deposits and cash withdrawal figured in all the bank accounts of the Assessee, found that the same would further ascertain the availability of cash in hand during the year. The said exercise done by the Ld. CIT(A) are as under: -

**Cash withdrawn and cash deposited during the period 17.09.2013 to 31.03.2017
in all the bank accounts of the Assessee.**

Date	Bank	Cash withdrawn	Cash Deposited	Balance
17. 09.2013	Income surrendered in search and incorporated in the cash book of the appellant on the date of search 1			22606477
19.11.2013	Syndicate Bank	50000		22656477
23.01.2014	Syndicate Bank	1000000		23656477
12.02.2014	Yes Bank	1000000		24656477
26.07.2014	Syndicate Bank	400000		25056477
29.10.2014	Syndicate Bank	1000000		26056477
19.11.2014	Syndicate Bank	1160000		27216477
10.01.2015	Syndicate Bank	500000		27716477
03.03.2015	Syndicate Bank	46000		27762477
27.03.2015	Syndicate Bank	1000000		28762477
25.05.2015	Syndicate Bank	5000000		33762477
20.07.2015	Syndicate Bank		150000	33612477
01.10.2015	Syndicate Bank		1000000	326.12477
06.10.2015	Syndicate Bank		100000	32512477
12.10.2015	Syndicate Bank	1000000		33512477
19.10.2015	Syndicate Bank		1000000	32512477
09.11.2015	Syndicate Bank	800000		33312477
02.12.2015	Syndicate Bank	100000		33412477
14.12.2015	Syndicate Bank		4000000	29412477

17.12.2015	Syndicate Bank		200000	29212477
17.12.2015	Syndicate Bank		800000	28412477
22.12.2015	Syndicate Bank		400000	28012477
12.01.2016	Syndicate Bank	600000		28612477
18.01.2016	Syndicate Bank	100000		28712477
01.02.2016	Syndicate Bank		500000	28212477
11.02.2016	Syndicate Bank		10000000	18212477
11.02.2016	Syndicate Bank		1000000	17212477
12.02.2016	Syndicate Bank		3700000	13512477
29.02.2016	Syndicate Bank		100000	13412477
01.03.2016	Syndicate Bank		500000	12912477
05.03.2016	Syndicate Bank	200000		13112477
09.03.2016	Syndicate Bank	700000		13812477
15.03.2016	Syndicate Bank	400000		14212477
23.03.2016	Syndicate Bank	5000000		19212477
02.04.2016	Syndicate Bank		50000	19162477
02.04.2016	Yes Bank	950000		20112477
13.04.2016	Syndicate Bank	400000		20512477
13.04.2016	Syndicate Bank	300000		20812477
16.04.2016	Syndicate Bank	100000		20912477
18.04.2016	Syndicate Bank		1000000	19912477
19.04.2016	Syndicate Bank	100000		20012477
19.04.2016	Syndicate Bank	1000000		21012477
28.04.2016	Syndicate Bank		3000000	18012477
10.05.2016	Syndicate Bank	300000		18312477
03.06.2016	Syndicate Bank	200000		18512477
10.06.2016	Syndicate Bank	500000		19012477
10.06.2016	Syndicate Bank	500000		19512477
14.06.2016	Syndicate Bank	300000		19812477
15.06.2016	Syndicate Bank	300000		20112477
20.06.2016	Syndicate Bank		1500	20110977
23.06.2016	Corporation Bank		5000	20105977
28.07.2016	Corporation Bank		4000000	16105977
30.08.2016	Corporation Bank		3000000	13105977
30.08.2016	Corporation Bank		8000	13097977
16.09.2016	Corporation Bank		6000000	7097977
01.10.2016	Corporation Bank	950000		8047977
24.10.2016	Corporation Bank	5000000		13047977
29.11.2016	Corporation Bank		3792000	9255977
30.11.2016	Corporation Bank		2996000	6259977
30.11.2016	Corporation Bank	50000		6309977

03.12.2016	Corporation Bank		4000000	2309977
05.07.2016	Corporation Bank		2495000	-1850.23
07.02.2017	Corporation Bank	100000		-85023
30.03.2017	Syndicate Bank		100000	-185023

45. From the above analysis done by the Ld. CIT(A) even if it is presumed that no other opening cash in hand was available with the Assessee other than the surrendered cash, even then the Assessee had sufficient cash in hand to make deposits of cash in bank account during the Assessment Year 2017-18. Considering the above analysis an amount of Rs. 1,85,023/- of negative balance available as on 05/12/2016 which requires no adverse consideration as during the year the Assessee had agriculture income in cash and the same is not deserved to be accounted. Thus, the Ld. CIT(A) rightly observed that the even if the cash book of earlier years are ignored, then also the Assessee was in a position of adequate cash in hand, all through the year to make cash deposits in the bank account/s.

46. The Jurisdictional High Court in the case of Kulwant Rai (2007) 163 Taxman 583(Del), while upholding the order of the Tribunal in deleting the addition, held as under:-

“16. This cash flow statement furnished by the assessee was rejected by the Assessing Officer which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of Assessing Officer as well as Commissioner of Income-tax are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lakhs on 4-12-2000 and there

was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case, the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or Commissioner of Income-tax (Appeals) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lakhs is legally not sustainable under section 158BC of the Act and the same was rightly ordered to be deleted."

47. In the present case, the Assessee had sufficient cash to deposit during the Assessment Year 2017-18 considering the surrender made by the Assessee during the search carried out on 17/09/2013. Apart from the same, the cash book produced by the Assessee has not been rejected by the Assessee has not been rejected or doubted by the A.O. Further the Department has not brought on record any material to prove that the cash withdrawn/available in the hands of the Assessee has been put to use for any other purpose. The Ld. A.O. made addition of Rs. 1,71,64,200/- u/s 68 and Rs. 1,32,83,000/- u/s 69 of the Act for cash deposit in the bank accounts during the year under consideration. Therefore, in our considered opinion, the Ld. CIT(A) committed no error in deleting the addition of Rs. 3,04,47,500/- made by the A.O.

48. In so far as addition of Rs. 6,90,000/- claimed by the Assessee as exempt income being agriculture income, it is not in dispute that the Assessee has been declaring agriculture income over the years and the same was being accepted by the Department and no adverse action was taken

against the Assessee in the earlier years. The Ld. CIT(A) while deleting the said addition observed that in the last three years the Assessee had agriculture income range from Rs. 4,85,000/- to Rs. 5,90,000/-, the Ld. A.O. has not disputed regarding the existence of agriculture income. The only reason for issuing the notice was declaring higher agriculture income in the year under consideration. Considering the agriculture income declared by the Assessee in earlier years, there was only a marginal increase in the agriculture income during the year under consideration. Thus, there is no reason to doubt the claim of the Assessee. Therefore, we find no error or infirmity in the order of the Ld. CIT(A) in deleting the addition of Rs. 6,90,000/-. Finding no merit in Ground No. 1 of the Revenue, we dismiss the Ground No. 1 of the Revenue.

49. In Ground No. 2, the Department contended that the Ld. CIT(A) has erred in law in not affording opportunity to Revenue to examine the additional evidence submitted by the Assessee during the course of appellate proceeding thereby violated Rule 46A of the I.T. Rules.

50. During the appellate proceedings the Ld. CIT(A) has directed the Assessee to produce certain documents in exercise of power conferred under Sub-rule (4) of rule 46A of the Rules. The Assessee in compliance with the direction of the Ld. CIT(A), produced cash book, bank statement for earlier three years, which have been considered and analyzed by the Assessee Ld. CIT(A) while deciding the issue involved in the Appeal.

51. Similar issue had already been elaborately discussed and decided while deciding the Ground No. 2 in ITA No. 1450/Del/2024 (A.Y 2012-13) (supra) and found no merit in the Grounds of appeal of the Revenue. Since the issue, facts & circumstances and the arguments of parties are being identical, applying the very same ratio and the reasoning given thereon, we dismiss Ground No. 2 of the Revenue's Appeal, according the Ground No. 2 of the Revenue is dismissed.

52. In the result, Appeal of the Revenue in ITA No. 820/Del/2024 is dismissed.

Order pronounced in open Court on 14th February, 2025

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 14/02/2025

R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

