

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 1138 to 1146/Ahd/2024

(निर्धारण वर्ष / Assessment Years : 2013-14 to 2021-22)

Prakash Misrimal Sanghvi 17, Rajmugat Soc. Naranpura Char Rasta, Naranpura, Ahmedabad 380013	बनाम/ Vs.	Deputy Commissioner of Income-Tax Central Circle-1(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEPS7266A		
(Appellant)	..	(Respondent)

&

आयकर अपील सं./I.T.A. Nos. 1148 to 1155 & 1184/Ahd/2024

(निर्धारण वर्ष / Assessment Years : 2013-14 to 2021-22)

Deputy Commissioner of Income-Tax Central Circle-1(1), Ahmedabad	बनाम/ Vs.	Prakash Misrimal Sanghvi 17, Rajmugat Soc. Naranpura Char Rasta, Naranpura, Ahmedabad 380013
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Soparkar, Sr. Advocate & Shri Parin Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri A. P. Singh, CIT-DR

Date of Hearing	21/11/2024
Date of Pronouncement	18/02/2025

ORDER

PER BENCH:

These 18 appeals are filed by the assessee & the Revenue against the combined order of the Commissioner of Income Tax

(Appeals)-11, Ahmedabad (in short 'the CIT(A)'), dated 28/03/2024 for the Assessment Years 2013-14 to 2021-22. As the issues involved in all the 18 appeals are identical, they were heard together and are being disposed off vide this common order.

Brief Facts of the case

2. Succinctly, the facts of the case are that a search action u/s 132 of the Act was carried out on 23.11.2021 in the case of "Ratnamani Group" and its key associates. The premises of Shri Prakash N. Sanghvi, the key person of Ratnamani Group was also covered during search and seizure action. In the course of search incriminating documents in the form of handwritten diaries with notings of cash transaction were found and seized from the premises of the assessee as Annexure A-1 to Annexure A-14. Further, certain loose documents and papers were also found and seized vide other Annexures. During the course of search, statement of the assessee was recorded u/s.132(4) of the Act vis-à-vis the seized diaries & documents and the assessee had admitted that these diaries were books of accounts maintained by him regarding cash transactions made by him with other persons/entities. It was also admitted that these cash transactions were not recorded in the regular books of accounts. The seized materials revealed that the assessee was engaged in the business of land trading, ancestral sarafi business and other trading activities. Based on the analysis of the seized materials/documents and the statement of the assessee recorded during search, the AO noticed that the income escaping assessment had exceeded the threshold limit of Rs.50Lakhs. The AO, therefore, issued notice u/s.148 of the Act after recording

reasons for escapement of income and required the assessee to file his return of income for A.Y. 2013-14 to 2020-21. Thereafter, the AO completed the assessment by passing order u/s.143(3) r.w.s. 147 of the Act for A.Y. 2013-14 to 2020-21 and u/s.143(3) of the Act for A.Y. 2021-22 and determined the income of the assessee by making various additions on the basis of the seized documents.

3. Aggrieved with the orders of the AO, the assessee had filed appeals before the First Appellate Authority for the A.Ys. 2013-14 to A.Y. 2021-22, which were decided by the Ld. CIT(A) vide the impugned order. The Ld. CIT(A) had allowed part relief to the assessee in all the years.

4. Aggrieved with the orders of the ld. CIT(A), both the assessee as well as the Revenue are in appeal before us.

Grounds taken in the appeal

5. Grounds of appeal in ITA No.1138/Ahd/2024 for A.Y. 2013-14 filed by the assessee are as under:

“1. The learned CIT(A) has erred in not holding that the notice issued u/s. 148 of the Act is bad in law, illegal and void-ab-initio. The learned CIT (A) has further erred in not holding that procedure as per law was not followed while issuing the notice u/s. 148 of the Act.

2. The learned CIT (A) has erred in not holding that the assessment order passed by AO u/s. 147 of the Act is bad in law, illegal and null and void.

3. The learned CIT(A) has erred in confirming the additions made by AO in the Appellant's case and rejecting the submissions that the

noting in the seized diaries do not pertain to/belong to the Appellant.

4. The learned CIT(A) has erred in not accepting the Income as per the books of accounts including Profit & Loss account prepared by the assessee on the basis of notings of the seized diary.

5. The learned CIT(A) has erred in confirming the addition of Rs.11,36,95,718/- made by AO on account of Interest on the basis of notings in the seized ledger "Shree Vyaaj Khaate / Vyaaj Khaate".

6. The learned CIT(A) has erred in confirming the addition of Rs.2,62,61,385/- by estimating profit @ 15% on Trading in Land/ Jamin Trading (out of the addition of Rs.6,12,76,566/- made by the AO) on the basis of notings in the seized ledger.

7. The learned CIT(A) has erred in confirming the addition of Rs.63,35,000/- by estimating profit @ 10% on Trading in Shares (out of the addition of Rs.1,26,70,000/- made by the AO) on the basis of notings in the seized ledger.

8. The learned CIT(A) has erred in confirming the addition of Rs.4,16,47,548/- by estimating profit @ 20% (out of the addition of Rs.20,82,37,741/- made by the AO) on the basis of notings in the seized ledger "Shree Maal Khaate".

9. The learned CIT(A) has erred in confirming the addition of Rs.76,35,340/- made by the AO u/s 69A of the Act towards peak credit in various seized ledgers under the head 'Other Trading'. The learned CIT(A) has erred in confirming the action of the AO in invoking section 115BBE in respect of the said addition.

10. The learned CIT(A) has erred in not allowing Commission Expense of Rs.1,59,76,100/- as noted in the seized ledger "Shree Commission Khaate".

11. The learned CIT(A) has erred in not allowing Other Expenses of Rs. 1,88,865.25/- as noted in the seized ledger "Shree Kharch Khaate".

12. The learned CIT(A) has erred in not allowing Bad Debts of Rs. 2,49,71,000/- written off as irrecoverable by the Appellant in the Tally Books."

13. The Appellant states that the search proceedings carried out in his case are beyond jurisdiction, illegal and void. The consequential assessment order passed is bad-in-law, illegal and void-ab-initio.

14. *The learned CIT(A) has erred in not holding that the assessment order passed by AO is in gross violation of principles of natural justice.*

15. *The Appellant craves leave to add, amend and/ or alter the ground or grounds of appeal either before or at the time of hearing of the appeal.*

Grounds of appeal in ITA Nos. 1139 to 1146/Ahd/2024 are same as in ITA No. 1138/Ahd/2024 except that an additional ground in respect of addition for negative peak balance has been taken in some of the years and also that some of these grounds are not involved in other years. The additional ground for negative peak balance will be considered in the concerned years. Further, that the quantum of amounts in respect of various additions as mentioned in Grounds 5 to Ground 12 of the appeal are varying.

6. Grounds of appeal in Revenue's appeal in ITA No.1148/Ahd/2024 for A.Y. 2013-14 are as under:

"1) *In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs. 16,39,02,055/- u/s. 28 of the Income Tax Act on account of accrued interest.*"

2). *In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs. 3,50,15,180/- out of total addition of Rs. 6,12,76,566/- on account of land trading (being 35% of total credits in land trading a/c of Rs. 17,50,75,904/-).* "

3). *In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs. 63,35,000/-, out of total addition of Rs. 1,26,70,000/- on account of share trading (being 20% of total credits Rs. 6,33,50,000/-)" of*

4). *In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition of Rs. 20,82,37,741/- to Rs. 4,16,47,548/- (@20% of total addition) u/s.28 of the Income Tax Act in respect of the ledger maal khaate/shreemaal khaate."*

5. *"The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal."*

Grounds of appeal in ITA Nos. 1149 to 1155/Ahd/2024 are same as in ITA No. 1148/Ahd/2024 except that Ground No.-3 does not appear in ITA No. 1149/Ahd/2024 and the Ground No.-1 does not appear in it ITA No. 1150/Ahd/2024. Further, that the quantum of amounts in respect of additions as mentioned in Grounds 1 to Ground 4 of the appeal vary in the different years.

7. The Grounds in Revenue's appeal in ITA No.1184/Ahd/2024 for A.Y. 2021-22 are as under:

1. *In the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating the facts that AO has not proposed any substitution of additions related to Jamin Trading A/c in remand report.*

2. *In the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in considering the submission of the assessee in respect of figures of Rs.49,90,49,59T/- as against addition of Rs.72,11,40,520/- on account of payments noted in various Jamin accounts and addition of Rs.8,11,89,833/- on account of receipts noted in various Jamin accounts and accordingly, deleted the addition of Rs.72,74,72,913/-.*

3. *In the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating the facts that diaries seized from the assessee is having entries of accrued interest, however the CIT(A) has deleted the addition of Rs.21,79,98,3T3/ - consider the same as notional interest.*

4. *In the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating the facts that assessee has not been able to establish clear and direct links between the trading accounts and the nafakhaate however the CIT(A) has restricted the addition @ 10% of total credits instead of 20% of total credits of Rs. 39,57,87,420/- made by the AO.*

5. *In the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in considering the figure of Rs. 34,62,87,454/- as total sales instead of net profit as per the assessment order and restricting the addition @ 20% of Rs.34,62,87,454/-. The CIT(A) has further erred in not considering the fact that the assessee failed to provide any supporting evidences in respect of its contention.*

6. *In the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to clarify the “entries in misc category” mentioned in assessment order and also erred in considering the” entries in misc. category” mentioned in assessment orders is as “other ledgers” mentioned in remand report and deleted the addition of Rs.196,46,51,643/.*

7. *‘The Revenue craves leave to add/ alter/ amend and or substitute any or all of the grounds of appeal.’*

8. We will take A.Y. 2013-14 as the lead year and discuss the grounds taken by the assessee as well as by the Revenue in detail in this year. The appeals pertaining to A.Y. 2013-14 are ITA No. 1138/Ahd/2024 filed by the assessee and ITA No.1148/Ahd/2024 filed by the Revenue. We have extensively heard Shri S. N. Soparkar, ld. Sr. Advocate appearing for the assessee and Shri A P Singh, the ld. CIT-DR on the various grounds taken in these appeals. We will take up the legal grounds raised by the assessee in different years first before deciding the grounds as taken on the merits of the additions.

ITA No. 1138/Ahd/2024 (A.Y. 2013-14)

Legal Grounds 1&2 – On Reopening:

9. The first two grounds taken by the assessee are in respect of reopening of the cases. Shri S. N. Soparkar, Ld. Sr. Advocate appearing for the assessee challenged the reopening of the cases on three propositions:

(i) The approval u/s.151 of the Act for **reopening of the cases for A.Y. 2013-14 to 2017-18** was incorrectly taken from Director General of Income Tax (DGIT) instead of taking it from Principal Chief Commissioner of Income Tax (PCCIT). He submitted that in the admitted factual position that there was a PCCIT posted and functional in Ahmedabad, the approval taken from DGIT was invalid and bad in law. Therefore, the consequential reopening and re-assessment orders for A.Y. 2013-14 to 2017-18 were bad in law. In this regard, he placed reliance on the following decisions:

- (i) *FIVES India Engineering & Projects (P)Ltd. v. ITO, (2024) 161 taxmann.com 79 (Madras)*
- (ii) *Ashok Kumar Makhija v. Union of India, 920240 162 taxmann.com 514 (Delhi)*
- (iii) *Twylight Infrastructure (P.) Ltd. vs. ITO,(2024) 158 taxmann.com 378 (Delhi)*
- (iv) *Cipla Pharma and Life Sciences Ltd. V. DCIT (2024) 164 taxmann.com 663 (Bombay)*
- (v) *Ravindra Reddy Katamreddy vs. DCIT,(2024) 159 taxmann.com 5 (Bombay)*
- (vi) *Gigantic Mercantile P. Ltd. vs. ACIT, (2024) 165 taxmann.com 646 (Bombay)*

(ii) The second challenge to the reopening was on the ground that the **reopening for A.Ys. 2013-14 to 2015-16 was time barred** in as much as u/s.149 of the Act, the assessment years prior to 01.04.2021 cannot be reopened, if the same couldn't have been opened under the old law. Ld. Sr. Counsel explained that under the 4th Proviso of Section 153A of the Act, the relevant assessment year (7th to 10th assessment year) cannot be assessed pursuant to search unless the income escaped assessment was represented in the form of an "asset". The Ld. Sr. Counsel

contended that in the present case, no such asset was found by the AO nor any addition was made in respect of any such asset. According to the Ld. Sr. Counsel, since the cases for A.Y. 2013-14 to 2015-16 could not have been assessed under the old provision of Section 153A of the Act, since no asset was found, the reopening made u/s.147 of the Act for these years was bad in law.

(iii) The third challenge to the reopening was on the ground that the assessment was initiated and completed by the Jurisdictional AO (JAO). The Ld. Sr. Counsel submitted that as per mandate of Section 151A of the Act, the assessment was required to be initiated and completed by the Faceless AO (FAO). However, the Ld. Sr. Counsel fairly conceded that the Jurisdictional High Court had decided this issue against the assessee and in favour of the Revenue in the case of *Talati & Talati LLP (167 taxamnn.com 371)*.

10. Per Contra, Shri A. P. Singh, Ld. CIT. DR appearing for the Revenue submitted that as per the provision of Section 151(ii) of the Act, competent authority to accord sanction for issue of notice, in the cases where more than three years had elapsed from the date of relevant assessment year, was Principal Chief Commissioner/Principal Director General or where there was no Principal Chief Commissioner /Principal Director General, then the Chief Commissioner or Director General. The Ld. CIT.DR submitted that there was no Principal Director General functional in Ahmedabad. Though, there was a PCCIT based in the city of Ahmedabad, the DGIT(Inv.), who was having jurisdiction over

the Central charges, was not under administrative or functional control of PCCIT. In this regard he placed reliance on the *Notification No. 70/2014 [F. No. 187/37/2014 (ITA-I)]/SO 2915(E) dated 13th November, 2014 issued by CBDT*, whereby the jurisdiction was assigned to the PCCIT, Ahmedabad. The Ld. CIT.DR submitted that the DGIT was under direct administrative control of Central Board of Direct Taxes (CBDT). Therefore, the approval in this case was rightly granted by the DGIT (Inv), Ahmedabad. According to the Ld. CIT.DR, the PCCIT could not have given his approval as he was not having jurisdiction over DGIT (Inv.) and the Central charge cases. The Ld. CIT.DR submitted that the jurisdiction goes to the root of the matter and the authority giving the approval must have the jurisdiction over the concerned case. In the present case, since the PCCIT did not have jurisdiction over Central charge cases of Ahmedabad, he could not have given the approval u/s.151 of the Act.

11. As regarding the second contention that for A.Ys. 2013-14 to 2015-16, no reopening could have been done under the old provision of Section 153A of the Act in the absence of any asset, the Ld. CIT-DR submitted that this issue was considered by the Ld. CIT(A) and dealt properly in his order. He, therefore, placed reliance on the order of the Ld. CIT(A) in this regard. On the third issue of proceeding initiated by the JAO and not by the FAO, the Ld. CIT.DR submitted that this issue was covered in favour of the Revenue by the decision of the Jurisdictional High Court.

Our Findings on Reopening:

12. We have carefully considered the rival submissions. The first objection of the assessee is that sanction for issue of notice u/s.148 of the Act was accorded by the DGIT(Inv.) and not by the PCCIT for the A.Ys. 2013-14 to 2017-18. The provision of Section 151 of the Act at the relevant point of time was as under:

[Sanction for issue of notice.

151. Specified authority for the purposes of section 148 and section 148A shall be,—

- (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;
- (ii) **Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.]**
[Emphasis supplied]

13. A reading of provision of section 151 shows that if more than three years had elapsed from the end of the relevant assessment year, then sanction was to be accorded by PCCIT or by PDGIT. The sanction could be accorded by CCIT or DGIT only where there was no PCCIT or PDGIT. In the present case, there was no PDGIT at Ahmedabad and, therefore, the sanction was accorded in this case by the DGIT. The contention of the assessee is that there was a PCCIT in place at Ahmedabad and, therefore, the sanction should have been accorded by the PCCIT and not by the DGIT. On the other hand, the Revenue has submitted that PCCIT had no jurisdiction over the Central charge cases and, therefore, no sanction could have been accorded by him.

14. We have given a thoughtful consideration to the rival submissions. The jurisdiction of the specified authority over the case, is *sine qua non* for according approval u/s 151 of the Act. In a case where the specified authority is CCIT and there are more than one CCIT in a particular station, then the sanction can't be given by any CCIT of that location. The sanction can be accorded only by that CCIT who is having jurisdiction over the case. The issue of jurisdiction goes to the root of the matter and it is a settled position of law that the approval can be given only by the sanctioned authority who has got the jurisdiction over the case. Merely because a PCCIT was located in Ahmedabad, he could not have given the approval for reopening of the cases, unless he was having jurisdiction over the case. Thus, the PCCIT could have accorded the sanction in this case, only if he was having jurisdiction over the DGIT or Central charge AO, who had initiated the proceedings in this case. If the PCCIT did not have the jurisdiction over the Central charge AO, he could not have given the sanction as contemplated u/s 151(ii) of the Act. We have to, therefore, examine whether the PCCIT was having jurisdiction over the Central charge cases.

15. In this case the proceeding for reopening u/s 147 of the Act was initiated by AO of Central charge. The Revenue has brought on record a copy of the *Notification No. 70/2014 [F. No. 187/37/2014 (ITA-I)]/SO 2915(E) dated 13th November, 2014 issued by CBDT*, as per which **Director General of Income-tax (Investigation), Ahmedabad was having jurisdiction over Principal Commissioner/Commissioner of Income-tax (Central), Ahmedabad.** The jurisdiction of PCCIT, Ahmedabad

was specified in the *Notification S.O. 2753(E) dated 22nd October, 2014 issued by CBDT*, as per which the jurisdiction of PCCIT, Ahmedabad was as under:

NOTIFICATION
New Delhi, the 22nd October, 2014
(Income-Tax)

S.O. 2753(E)-In exercise of the powers conferred by sub-sections (1) and (2) of Section 120 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India, Central Board of Direct Taxes number S.O.733(E), dated the 31 July, 2001, published in the Gazette of India, Extraordinary, Part II., Section 3. Sub-section (u), dated the 31 July, 2001, except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes hereby directs that the Income-tax authorities specified in column (2) of the Schedule below, having headquarters at the places specified in the corresponding entries in column (3), shall exercise the powers and perform the functions in respect of such territorial areas or of such persons or classes of persons or such incomes or classes of incomes or of such cases or classes of cases in respect of which the Income-tax Authorities specified in the corresponding entries in column (4) of the said Schedule having jurisdiction vested in them.

<i>Serial No.</i>	<i>Designation of the Income-tax Authorities</i>	<i>Headquarters</i>	<i>Jurisdiction</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1.	<i>Principal Chief Commissioner of Income-tax, Gujarat</i>	<i>Ahmedabad</i>	<i>(i) Chief Commissioner of Income-tax, Ahmedabad-1 (ii) Chief Commissioner of Income-tax, Ahmedabad-2 (iii) Chief Commissioner or Income-tax (TDS), Ahmedabad (iv) Chief Commissioner of Income-tax, Rajkot (v) Chief Commissioner of Income-tax, Surat (vi) Chief Commissioner of Income-tax, Vadodara</i>

16. It is evident from the above Notification that the PCCIT, Ahmedabad was having jurisdiction only over Chief Commissioner charges of Gujarat region. The PCCIT, Ahmedabad did not have jurisdiction over DGIT (Inv.),

Ahmedabad who was directly subordinate to CBDT vide *Notification No.68/2014 dated 13.11.2014*. Since, **the PCCIT, Ahmedabad did not have jurisdiction over the DGIT (Inv.) as well as over the Central charge cases of Ahmedabad, he could not have accorded approval u/s.151(ii) of the Act.** Further, since there was no PDGIT located in the city of Ahmedabad, the sanction was rightly accorded by the DGIT in this case, who had got the jurisdiction over the Central charge.

17. In the case of *FIVES India Engineering & Projects Private Limited (supra)*, the approval was granted by the CCIT (Chennai), whereas it should have been granted by the PCCIT, Chennai. In that case the PCCIT was having jurisdiction over the concerned CCIT and, therefore, the sanction was not accorded by the correct specified authority. On consideration of these facts, the Hon'ble Madras High Court had held that the approval granted by the CCIT was vitiated. In the case of *Ashok K. Makhija (supra)*, the approval was granted by Principal Commissioner of Income Tax, Delhi-10, who did not fall within the specified authority outlined in section 151(ii) of the Act. Similarly, in the case of *Twilight Infrastructure (P.) Ltd. (supra)*, the approval was sought from authority specified in clause (i), as against in clause (ii) of section 151 of the Act, although 3 years had elapsed from the end of the relevant assessment year. Therefore, the Hon'ble Delhi High Court had held that there was no approval of the specified authority as indicated u/s.151(ii) of the Act. In the other cases of *Cipla Pharma and Life Sciences Ltd. (supra)*, *Ravindra Reddy Katamreddy (supra)* and *Gigantic Mercantile P. Ltd. (supra)* also the sanction was accorded by the Principal Commissioner of

Income Tax, who was not the competent authority to accord sanction u/s 151(ii) of the Act. Thus, the facts of all the cases relied upon by the assessee are found to be different. Therefore, the ratio of those decisions cannot be imported to the facts of the present case.

18. In view of the above facts and considering the position of law as well as the Notifications of CBDT regarding the jurisdiction over the Central charge cases, we are of the considered opinion that **the sanction u/s 151(ii) of the Act was rightly accorded by the DGIT in these cases, who was having jurisdiction over the Central charge.** The objection taken by the assessee against the reopening on account of incorrect approval u/s 151 of the Act, is rejected.

19. The second objection of the assessee is that the **reopening for A.Ys. 2013-14 to 2015-16** was time barred for the reason that no notice for these years could have been issued under the old provisions of the Act. The provision of Section 149 of the Act, which stipulates this condition is reproduced below:

Time limit for notice.

149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

- (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- §(b) *if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—*
 - (i) *an asset;*
 - (ii) *expenditure in respect of a transaction or in relation to an event or occasion; or*

(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if ⁶[a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this subsection, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

²[*(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.*]

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.] [Emphasis supplied]

20. As per the First proviso of this Section, no notice u/s.148 of the Act shall be issued if a notice u/s.148 or u/s 153A or u/s 153C of the Act could not have been issued at that time, on

account of being beyond time limit specified u/s.153A(1)(b) or u/s.153C of the Act, as stood immediately before the commencement of the Finance Act, 2021. As a search operation was conducted in the case of the assessee, notice u/s.153A of the Act could have been issued under the old provisions of the Act. The 4th Proviso to section 153A of the Act on which reliance has been placed by the assessee, is reproduced below:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- (a) **the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;**
- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
- (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "**asset**" shall include **immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.** [Emphasis supplied]

21. This proviso stipulated that for issue of notice u/s.153A of the Act "for the relevant assessment year" (*i.e.*, 07th to 10th assessment year prior to the year of search) one of the conditions was that the AO was in possession of books of accounts or other documents or evidence which revealed that the income represented in form of asset, which had escaped assessment, amounted to Rs.50 Lakhs or more in the relevant assessment year

or in aggregate in the relevant assessment years. According to the assessee, this condition was not fulfilled and, therefore, no notice u/s.153A of the Act could have been issued for the relevant assessment years under the old provision of the Act. The Ld. Sr. Counsel has contended that no asset was found in the course of search nor any addition was made by the AO in respect of assets in the relevant assessment years. Therefore, the condition as stipulated in this proviso, was not satisfied.

22. We have carefully considered the contentions of the assessee. **The Explanation-2 to Section 153A of the Act defines “asset” for the purpose of 4th Proviso, as per which assets include immovable property being land or building or both, shares & securities, loans & advances, deposits in bank accounts.** We have to bear in mind that this is an inclusive definition and, therefore, the “asset” is not confined only to the items specified in this definition. In fact, identical definition of “asset” is appearing in Explanation-2 to Section 149 of the Act. We have to, therefore, first examine whether the condition of recording the escapement of income to the extent of Rs.50 Lakhs or more, represented in the form of asset, was satisfied in the reasons as recorded by the AO. The assessee has brought on record a copy of the reasons recorded by the AO in the paper book filed. It is found that the AO had recorded an exhaustive satisfaction regarding escapement of income. The provision of section 149(1)(b) of the Act also required satisfaction of condition of escapement of income, represented in the form of an asset, expenditure or entry in the books of accounts exceeding Rs.50 lakhs or more for the period beyond 3 years up to 10 years.

It is found from the reason that the AO had recorded the following satisfaction towards fulfillment of this condition:

Unaccounted Cash receipts:

In view of the seized material (diary A-3 to A-8) and the statement of the assessee, there are evidences of assessee's involvement in unaccounted cash payment were made and unaccounted cash receipts were received during the F.Ys. 2011-12 to 2016-17. The details of the cash receipts recorded in the diaries seized as Annexure A-3 to A-8 (F.Ys. 2011-12 to 206-17) are as under:

Sl. No.	Diary seized as	F.Y.	Amount of Cash Receipts in Rs.
1	Annexure A-3	2011-12	1,01,10,734/-
2	Annexure A-4	2012-13	1,08,39,155/-
3	Annexure A-5	2013-14	1,04,82,956/-
4	Annexure A-6	2014-15	2,30,72,985/-
5	Annexure A-7	2015-16	1,72,52,401/-
6	Annexure A-8	2016-17	2,75,73,717/-
	Total		9,93,31,948/-

From the above, it is clear that huge amount of cash is exchanged between the parties where amount, date and medium of such payments/receipts are clearly mentioned. As per section 149(1A) of Income Tax Act, Income which has escaped assessment should be more than Rs. 50,00,000/- in more than one previous years relevant to the assessment years and should be represented in the form of assets or expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of account. In the case of the assessee, as per section 149(1A) of the Act, income chargeable to tax amounting to Rs. 9,93,31,948/- represented in form of an assets is more than Rs. 50,00,000/- from F.Ys. 2011-12 to 2016-17. Even during the F.Y. 2012-13, relevant to A.Y. 2013-14 as per section 149(1A) of the Act, income chargeable to tax amounting to Rs. 1,08,39,155/- represented in form of an assets is more than Rs. 50,00,000/-.

23. It is, thus, found that the AO had recorded the satisfaction for escapement of income to the extent of Rs.50 Lakhs or more in the relevant assessment years, which was represented in the form of asset. The contention of the assessee that no asset was

found and that no addition was made in respect of asset is not found correct. As per the definition of “asset” as appearing in section 149 of the Act as well as in section 153A of the Act, the asset includes not only immovable property but also shares & securities, loans & advances, deposits in bank accounts etc. The AO had recorded specific satisfaction that the assessee had received cash payments in excess of Rs.50 lakhs in the F.Ys. 2011-12 to 2016-17. These cash receipts were recorded in the seized diaries (Annexure A-3 to A-8) and were represented in the form of loans and advances. Even if no cash was physically found, the evidence for receipt of cash was recorded in the seized diaries. In fact, the seized diaries reflected that the assessee was meticulously maintaining the records of transactions carried out by him and from the details and explanation as furnished by the assessee, it was evident that the amount escaping assessment was exceeding the threshold limit as provided u/s. 149(1)(b) of the Act. **These cash receipts were appearing in the form of loans & advances and were, therefore, included in the definition of “asset”.** Thus, the condition of income escaped assessment being in the form of “asset” was duly satisfied in the reason as recorded by the AO. We, therefore, do not find any merit in the objection of the assessee in respect of the reopening on the ground of satisfaction of “asset” in the reasons recorded. **Since the condition stipulated in 4th Proviso to section 153A of the Act was duly satisfied; the reopening done by the AO for the A.Y.2013-14 to 2015-16 was perfectly in order and was not barred by limitation.**

24. As regarding third objection that the proceeding was initiated by the JAO and not by FAO, this being a search case the jurisdiction was assigned to Central charge which was not covered under the Faceless Assessment Scheme. Therefore, the proceedings were rightly initiated by the JAO in this case. Further, as rightly held by the Ld. CIT(A), the CBDT vide Notification in F No. 370153/7/2023 – TPL dated 20/02/2023 had clarified that JAO was not bereft of jurisdiction over a particular assessee. Further, as fairly admitted by Ld. Sr. Counsel, this issue has been decided against the assessee by the Jurisdictional High Court in the case of *Talati & Talati LLP (supra)*. Therefore, the **objection of the assessee in respect of the proceeding being initiated by JAO, is rejected.**

25. In view of the above facts and discussions, **Grounds Nos.1 & 2 taken by the assessee are dismissed.**

Ground No. 3 - Ownership of seized documents:

26. In the Ground No.3, the grievance of the assessee is that the AO had erred in making addition in the hands of the assessee on the basis of seized documents by rejecting the submission of the assessee that the notings in the seized diary do not pertain to or belong to the assessee. Shri S N Soparkar, the Ld. Sr. Counsel submitted that the transactions recorded in the seized diary belonged to all the family members collectively and not to the assessee in his individual capacity. He submitted that though the diary was found at the residence of the assessee and the entries in the diaries were also in the handwriting of the assessee,

nevertheless, the transactions recorded in the diaries belonged to all the family members. To buttress this contention, the Ld. Sr. Counsel placed reliance on the following specific facts:

(i) Ledger account of the assessee was appearing in the seized diaries and the same was not in the form of a capital account.

(ii) Ledger account of all the brothers were appearing in the seized diaries and that too in the order of seniority. The ledger accounts contained details of withdrawals of all six brothers and closing balances were not carried forward from year-to-year.

(iii) Ledger account of sons, daughter-in-laws and grand children of all six brothers were appearing in the seized diaries. It was inconceivable that the assessee would keep records of money given to his own wife and grand-children and also charged interest thereon.

(iv) The ledgers titled as MNS Nafa Khaate, MNS Kharch Khaate, MNS Commission Khaate etc. were appearing, wherein MNS stood for "Mishrimal Nathmal Sanghvi", the father of all the six brothers. Therefore, these accounts represented income and expenditure pertaining to all six brothers.

(v) Ledger account of expenditure like Marraiges, Donations, Renunciation (Diksha) etc. of family members of all six brothers were appearing in the seized diaries and these ledgers were not carried forward from year-to-year.

(vi) In the statement recorded u/s.132(4) of the Act on 23.11.2022, the assessee had correctly stated (in reply to question no.6 &7) that the transactions pertained to himself, family members and group entities. His subsequent reply to Question

No.22 that the transactions pertained to him only, should be seen in light of his concern to avoid multiplicity of proceedings.

(vii) In the post search proceedings, the assessee vide letter dated 06.04.2022 had clarified that the transactions pertained to the family comprising of six brothers and their family members.

27. The Ld. Senior Counsel submitted that in the course of assessment proceeding as well, the assessee had made the submission before the AO that the activities noted in the seized diaries were carried out for and on behalf of the entire joint family. Therefore, no addition could have been made in the hands of the assessee on the basis of these documents. An affidavit was also filed by the assessee as well as by all the brothers that the entries in the seized diaries pertained to HUF, which had a separate PAN. The Ld. Sr. Counsel submitted that the Ld. CIT(A) also did not correctly appreciate the facts of the case. He contended that the addition made in the hands of the assessee on the basis of the seized document was not correct and that all the entries in the seized books should have been considered either in the hands of HUF or in the hands of six brothers in their capacity as 'AOP'.

28. Per contra, Shri A. P. Singh, Ld. CIT. DR submitted that the contention of the assessee that the entries in the seized diaries belonged to the HUF or to all the brothers jointly, was an afterthought. He has drawn our attention to the fact that no such averment was made by the assessee in the course of his statement recorded u/s.132(4) of the Act during the search. The Ld. CIT.DR submitted that neither the assessee nor any of his

brothers in their statements recorded during search had stated that any HUF business was being run by the assessee on behalf of all the family members. Neither the reference of HUF was anywhere appearing in the seized diaries. There was no separate bank account or demat account of the HUF even though shares transactions were recorded in the seized diaries. The Ld. CIT.DR further submitted that the seized diaries/documents also contained certain cheque entries, which were recorded in the books / bank account of the assessee only. Therefore, other entries in the diaries were rightly considered by the AO as belonging to the assessee. The Ld. CIT.DR submitted that the affidavit and subsequent contention of the assessee were only an after-thought, which was rightly rejected by the AO as well as by the Ld. CIT(A). He further submitted that the reason as to why the HUF had not filed any Income Tax return, even though it was having its separate PAN, was not explained by the assessee. The Ld. CIT.DR strongly supported the findings of the AO and the Ld. CIT(A) that the seized diaries/documents belonged to the assessee only.

29. We have carefully considered the rival submissions. There is no dispute to the fact that the seized diaries and documents were found from the residential premises of the assessee. Further, diaries were recorded in the own handwriting of the assessee. It will be first relevant to examine as to what was the explanation given by the assessee in respect of the seized diaries and documents in the course of statement u/s.132(4) of the Act recorded during the search. A copy of this statement has been brought on record in the paper book filed by the assessee. In

reply to Question no.6 of the statement u/s.132(4) of the Act dated 23.11.2011, the assessee has admitted that the note books seized vide Annexure A-1 to A-14 were in his own handwriting and contained records of his own, his family and his group company. It was further clarified that the cheque entries appearing in these documents were made through banking channel and were duly recorded in his books of accounts. Other than cheque entries were admitted to be cash transactions and were not recorded in the books of accounts. The assessee had reiterated in his reply that all the diaries and note books belonged to him only.

30. In reply to Question No.7, wherein he was required to explain the entry at Page No.16 of Diary A-3, the assessee had reiterated that this diary contained accounts of his own, his family and his group companies for F.Y. 2011-12. Later in the reply, the assessee had explained that the diaries & note books A-1 to A-14 contained ledger of different persons for the period from 01.04.2009 to 31.03.2021 to whom loans were given by him. He had further explained that on right side of the diary, was entered the amount of loan and calculation of interest thereon with time period. It was reiterated that diaries A-1 to A-14 contained details of transactions made by him with different persons. It was further clarified that certain ledgers/transactions were in respect of property dealings as well.

31. In reply to Question No.10, the assessee had explained that the Diary A-1 pertained to period 01.04.2009 to 31.03.2010 and that the entries made on the right-hand side of the diary belonged

to him, which was in respect of Sarafi business and that the entries on the left side were the amounts returned from respective parties. It was further clarified that the entries made in this party-wise ledgers were in codes. In response to subsequent question, the assessee had explained that diaries A-2 to A-12 pertained to the period F.Ys. 01.04.2010 to 31.03.2021. It was also explained that the diary for the current year was not complete.

32. In response to Question No.12, the assessee had stated that Diary No. A-12 contained the details of transactions made **by the assessee only** for the F.Y. 2020-21. Then in reply to Question No.14 also the assessee had stated that the diary A-14 had the details of transactions made by the assessee with different persons. In the course of search, certain loose papers were also found, which were inventorized as Annexure A-15 to A-22. In reply to Question No.15, the assessee had explained that the loose papers contained transactions with different persons which were duly entered in diary A-1 to A-12. **Though, the assessee had earlier stated that the transactions in the seized diary belonged to him, family members and group, in reply to Question No.22, the assessee had categorically stated that all the transactions recorded in those seized diaries and documents A-1 to A-22 were in his individual capacity.** The said question and the reply of the assessee is reproduced below:

The assessee had categorically stated that all the transactions appearing in the seized diary and the document A1 to A12 belonged to him and not to any of his family members or to his group entities, as stated in reply to earlier questions. It was, however, clarified that certain loose papers in seized files A-15 to A-22 belonged to others as well.

33. It is, thus, evident from the statement of the assessee recorded during the search that all the entries in the seized documents belonged to the assessee only. Though in reply to initial questions the assessee had stated that the documents belonged to him, family members and the group concerns; not even a single piece the document was identified as belonging to family members or to the group concerns. There was no whisper of any business activity being carried out by the HUF or jointly with other family members. Neither the reference of HUF or any group company was found appearing in any of the seized documents. The ledger account of his brothers and other family members doesn't prove that the seized documents belonged to them. As explained by the assessee in the course of statement, these ledger accounts were in respect of the transactions made by the assessee with all other family members. Since, the assessee was carrying on sarafi business, it was natural that transactions with others including family members would be recorded in the seized documents and, therefore, their individual ledger account had to be separately maintained in respect of funds transacted with them. Further, the assessee would be also required to calculate interest in respect of the funds of other family members. Similarly, the record of common expenses of all family members

does not transpose the ownership of seized documents. Merely because some of the ledgers were titled with prefix 'MNS', this doesn't establish that the entries in the diaries belonged to the HUF or to joint family business. Though the assessee had contended that the entries in the seized diaries belonged to himself, his family members and to the group concerns; no segregation of the entries pertaining to the three entities was done. Neither the assessee had prepared separate Tally Books in respect of transactions belonging to himself, his family members and to the group concerns. Further, the seized documents had details of share transactions but no evidence was brought on record to establish that the share transactions were made in respect of other family members or by the group concerns. No flow of funds from any other family member or from the HUF's bank account towards share transactions have been brought on record. In fact, there was no bank account or any demat account of HUF and, therefore, no trading in shares could have been done by the HUF. The entries appearing in the seized diaries had to be read in its entirety. When the cheque entries appearing in the seized diaries and documents were recorded in the books of accounts/bank of the assessee, the other entries should also have to be considered in the hands of the assessee only. Therefore, the AO had rightly rejected the subsequent plea of the assessee and other family members that the diary belonged/pertained to HUF/joint family business. The contention of the assessee that the family members were not confronted with the seized diaries had no relevance. Even if the seized diaries were not confronted with the family members, they would have been aware about the HUF business, if it was actually carried on. None of the family

members, in their statements recorded during the search, had stated that there was a common HUF/joint family business which was being looked after by the assessee. Such a plea was just an after-thought, made without any substantive evidence, and was rightly rejected by the Id. CIT(A).

34. In view of the above facts and discussions, the contention of the assessee that the notings in the seized diaries do not pertain to / belong to the assessee, is rejected. **The ground taken by the assessee regarding ownership of the seized documents is dismissed.**

Ground number 4 - Determination of profit on the basis of seized diaries

35. Sri S N Soparkar, Id. Sr. Counsel submitted that the seized diaries contained *Nafa Khaate* (profit and loss account) for all the years. Hence, the income should be determined based on such profit and loss account. According to the Id. Sr. Counsel the determination of income based on each of the ledger account which did not contain entry of profit or loss, was incorrect. In this regard he placed reliance on the following decisions:

- (i) *CIT vs Excel Industry Ltd., 38 taxman.com 100 (SC)*
- (ii) *Godhra Electricity Co. Ltd. vs CIT, 91 Taxman 351 (SC)*
- (iii) *UCO Bank vs CIT 104 Taxman 547 (SC)*
- (iv) *CIT v. Eicher Ltd., 185 Taxman 243 (Delhi)*
- (v) *Platinum Properties v. DCIT, ITA no. 2600/Mum/2012 Dated 12.09.2014, (ITAT, Mum)*
- (vi) *CIT v. Abhishek Corporation, ITR No. 15 of 2003, Gujarat HC Dated 07/11/2014*
- (vii) *Greenfield Reality P. Ltd. V. ACIT, IT(SS)A No.289-92 dated 21/02/2020, (ITAT, Ahmedabad)*

36. Per contra, the ld. CIT-DR submitted that this aspect was carefully examined by the AO and the ld. CIT(A). He further submitted that the assessee did not explain the entries appearing in the seized diaries and documents. Rather the assessee had suo-motto prepared two accounts in Tally software which were not found reliable by the AO. Therefore, the profit worked out by the assessee on the basis of Tally software account was rejected and the income was rightly assessed as per the entries appearing in the seized ledgers. The ld. CIT-DR supported the order of the AO and the ld. CIT(A) in this respect.

37. We have considered the rival submissions. The contention of the assessee is that the seized diaries contained profit and loss account for all the years and, therefore, the income should be determined based on such P&L account. This submission is not found correct on the basis of the facts as available on record. The assessee had submitted before the AO that the transactions noted in the seized diaries do not necessarily reflect the income liable to tax. It was explained that the assessee had made an attempt to decipher the nature of entries in the seized diaries. For this purpose, the assessee had copied all the transactions noted in the seized diaries and prepared books of accounts for F.Y. 2009-10 to 2020-21 in Tally Software (referred as “**Seized Diary Books**”) which was submitted before the AO. Further, based on the entries recorded in the seized diaries and also based on his memory, the assessee also prepared another set of books of accounts in the Tally Software for F.Y. 2009-10 to 2020-21 (referred as “**Tally Books**”) which also was submitted before the AO. The contention of the assessee was that the seized diaries were not in the form of systematic books of accounts neither they were prepared following any accounting principles. They were mere notings for assessee’s reference purposes. On the other hand, the **Tally Books** were prepared following matching principles. Further that the **Tally**

Books were on the basis of cash system of accounting following real income theory. The assessee had requested the AO to accept the net income for different years as per the **Tally Books**.

38. The AO had carefully examined the submissions of the assessee and given a detailed finding as to why the profit or loss as worked out by the assessee in the **Tally Books** cannot be accepted. The assessee had made major changes in the **Tally Books** such as removal of national interest entries, merging of family accounts, merging of multiple accounts of income as well as expenditures under one head, additional claim of bad debt in the **Tally Books** etc. Further, as admitted by the assessee himself the **Tally Books** were prepared not only on the basis of entries appearing in the seized diaries and documents but also taking into account certain entries based on his memory, the veracity of which could not be ascertained. Thus, the **Tally Books** were not prepared solely on the basis of entries in the seized diaries and documents and, therefore, the AO had rightly rejected the P&L account prepared as per **Tally Books**. The assessee had himself admitted that **Tally Books** results were based on best possible judgement, by taking into account the entries recorded in the seized documents and his own memory; and the correctness of such book results couldn't have been verified. When the assessee had himself submitted that the seized diaries were not in the form of systematic books of accounts neither they were maintained following any accounting principle, the correctness of the profit as per **Tally Books**, which was arrived at after omitting certain entries of seized diaries and by including extraneous entries based on memory, was doubtful and couldn't have been adopted. Under the circumstances, the AO had no option but to work out the profit on the basis of various ledgers as appearing in the seized diaries. Considering the peculiar facts of the case that the profit or loss appearing in the seized diaries were based on entries which were not systematic and not

based on any accounting principle and the profit was derived by the assessee in **Tally Books** by considering extraneous entries and also tinkering with the data as appearing in the seized diaries and documents; the reliance as placed by the assessee on the various decisions, has become otiose. Since the AO had worked out the profit on the basis of the entries in the seized ledgers, these decisions will be relevant and considered in the context of entries appearing in those ledgers, while examining the specific additions.

39. The ground taken by the assessee regarding **determination of profit on the basis of reconstructed seized document (Tally Books) is dismissed.**

Ground No. 5 - Addition on account of Interest (Shree Vyaaj Khaate)

40. In the seized diaries there were recordings of interest earned by the assessee in cash for the A.Ys. 2012-13 to 2021-22 which were appearing in 'Vyaaj Khaate/ShreeVyaaj Khaate' account, the details of which is reproduced in the assessment order. The AO had made addition of Rs.11,36,95,718/- in respect of interest received during the A.Y.2013-14 which was upheld by the Id. CIT(A). Shri S. N. Soparkar, the Id. Sr. Counsel submitted that the income in respect of interest (*Shree Vyaaj Khaate*) was incorporated in the profit & loss account prepared by the assessee. His only contention was that the expenditure claimed against the same should be allowed as deduction.

41. Per contra, Sri A P Singh, the Id. CIT-DR submitted that the AO had made addition of only net interest as appearing in the

seized diary and, therefore, there was no question of allowing deduction for any other expenditure.

42. We have considered the rival submissions. The AO has reproduced the ledger account of interest received by the assessee in the assessment order. It is found therefrom that there were credit as well as debit entries in the interest ledger account. The total credit appearing in the interest ledger was Rs.11,86,21,397/- whereas the debit entries were to the extent of Rs.49,25,679/-. After setting off the debit entries with the credit entries, the AO had made addition for net interest of Rs.11,36,95,718/- only. It is thus found that the expenditure incurred by the assessee for earning of the interest income, as recorded in the ledger account, was already allowed set off by the AO. Under the circumstances, we do not find any merit in the ground as taken by the assessee. No evidence has been not brought on record to substantiate that the assessee had incurred any other expenditure for earning of the interest income as recorded in the seized diaries. Therefore, we do not find any mistake in the order of the AO and **the ground as taken by the assessee is dismissed.**

Ground No. 6 - Addition on account of Land Trading

43. In the seized diaries one 'Jamin Trading' account was appearing which has been reproduced in the assessment order. It is found there from that the details of various land transactions were noted therein along with opening balance, transactions made during the year and the closing balance of the various land dealings. It was explained that the assessee was an arm chair

property dealer and was a passive investor in the land dealings. It was contended by the assessee that the profit arising from Jamin trading account was duly considered in the 'Shree Nafa Khate' ledger in the seized diary. The AO had rejected this contention of the assessee for the reason that no direct link between the trading account and the ledger was established. The AO had proceeded to estimate the income from Jamin trading @ 35% of the credit transactions made during the year. Accordingly, the AO had applied 35% rate on total credits of Rs.17,50,75,904/- received during the year and estimated the income from Jamin trading at Rs.6,12,76,566/- and accordingly made the addition. In appeal the Id. CIT(A) had reduced the profit from Jamin trading to 15% of the credits received during the year.

44. The assessee as well as the Revenue (*vide Ground No.-2*) both are in appeal on this issue. Shri S. N. Soparkar, the Id. Sr. Counsel submitted that the addition sustained @ 15% by the Id. CIT(A) was high and needs to be suitably reduced for the following reasons:

- (i) Since this is a trading activity the profit cannot be as high as 15%.
- (ii) Reliance was placed upon section 44AD of the Act which provides a presumptive taxation @ 8% in the case of real estate activity.
- (iii) There was no corresponding asset found during the search as compared to the huge additions made by the AO.

In view of above facts, the Id. Sr. Counsel requested that the estimation of percentage of profit in respect of land trading

should be suitably reduced, for which reliance was also placed on various decisions placed in the paper book.

45. Per contra the Id. CIT-DR submitted that the assessee was not required to incur regular expenses in the nature of registration charges, stamp duty, property and other taxes etc. in respect of the land transactions undertaken by him. Considering these factors, the AO had rightly estimated the income from land dealing @ 35%. The Id. CIT-DR submitted that the reduction of estimation of profit to 15% by the Id. CITA was not correct considering the facts of the case. He, therefore, requested that the addition as made by the AO should be restored.

46. We have considered the rival submissions. We find that this issue requires correct appreciation of facts of the case rather than considering various judicial decisions as relied upon by the assessee. The assessee was a passive investor in the land dealings. As noted by the Id. CIT(A) the assessee did not devote sufficient time for land dealings as he was busy in handling large business group, he had made partial investment whereas the co-venturer did all the work and the assessee had no overheads. Considering these factors, the AO was justified in rejecting the assessee's request to apply presumptive rate of tax of 8% as stipulated in section 44AD of the Act. At the same time the AO had not given any basis for estimating the income from land trading at exorbitantly high rate of 35%. In the absence of any basis for estimating the income from land dealings at high rate of 35%, the addition as made by the AO couldn't have been sustained. The Id. CIT(A) had considered the average profit in

the land dealings made by the assessee which was 13.14% and, therefore, he had sustained the addition in respect of land dealing @ 15% of the total credits received during the year.

47. The grievance of the assessee is that profit @ 15% as sustained by the Id. CIT(A) was still high and it should be reduced to 8% as stipulated u/s 44AD of the Act. The assessee was only a passive investor in land dealings and was not incurring any overhead expenditure. Further as the assessee was engaged in sarafi business, obviously he would deploy funds in land dealings with an intention to earn better return than the interest earned in sarafi business. The profit earned in land dealings depends substantially on the period of holding. Longer the period of holding better the earning. The Id. CIT(A) had inquired about this aspect but the period of holding of the land transactions was not made available by the assessee. Considering this aspect, the Id. CIT(A) had rejected the application of presumptive rate of 8% u/s 44AD as contended by the assessee. Since the average profit rate in the land dealings as per the seized documents was 13.14%, the presumptive rate of 8% could not have been applied in this case. **The assessee himself had worked out the average percentage of profit at 13.14% on the basis of the Jamin trading ledgers in the seized diaries**, in the rejoinder to the remand report of the AO. At the same time, the Id. CIT(A) also has not given any reason for estimating the profit @ 15% when the average profit rate as per seized document was 13.14% only. All the factors of passive investment, no overhead expense etc. were already taken into account in the average profit rate as reflected in the seized document. Therefore, it will be reasonable

to estimate the profit of Jamin/land trading account by applying the average profit rate of 13.14%. Accordingly, **the AO is directed to work out the profit from Jamin/land trading by applying the average profit rate of 13.14% on the total credits received during the year.**

48. Accordingly, the ground taken by the Revenue in this respect is dismissed whereas the ground of the assessee is partly allowed.

Ground No. 7 - Addition on account of Share Trading

49. In the seized diaries, the AO found recording in respect of trading in certain shares. The contention of the assessee was that income from all trading activities was already recorded in his *nafakhaate* account, which was rejected by the AO. The total credits in respect of share trading for the year under consideration was Rs.6,33,50,000/- and the AO estimated the income from share trading by applying profit rate of 20%. Accordingly, an addition of Rs.1,26,70,000/- was made on account of profit from share trading. The Ld. CIT(A) had reduced the addition by applying profit rate of 10% on the total credits received during the year.

50. Both the assessee and the Revenue (*vide Ground No.-3*) are in appeal on this issue. Shri S. N. Soparkar, Ld. Sr. Counsel submitted that the trading activity in the shares was carried out in quick succession and the holding period was not very long. He submitted that there cannot be such a high profit when the trading

was so frequent and there could be losses as well. Therefore, he requested that the addition sustained at 10% by the Ld. CIT(A) needs to be suitably reduced.

51. Per contra, Shri A. P. Singh, Ld. CIT.DR submitted that the addition sustained by the Ld. CIT(A) @10% was not correct as the assessee was unable to establish clear and direct link between the trading account and the *nafakhaate* account. He supported the addition @ 20% as made by the AO.

52. We have considered the rival submissions. The contention of the assessee that the profit from share trading was taken to *nafakhaate* account was rightly rejected by the Revenue for the reason that the assessee was maintaining the diaries on single entry system and no direct nexus of the profit from share trading to the *nafakhaate* account was established. The other contention of the assessee is that considering the volatile nature of share market and that no evidence for delivery of share was found and further that the shares were traded in very short span of time, earning profit @10%, as sustained by the Ld. CIT(A), was not feasible. At the outset, the AO had not given any basis for estimating the profits from share trading @ 20%. Therefore, the addition as made by the AO could not have been sustained. The Ld. CIT(A) has restricted the addition by applying profit rate of 10% on the share trading. It is true that no evidence for delivery of shares was found in the course of search. It is also found from the share trading accounts as reproduced in the assessment order that the total debit during the year was Rs.6,65,56,082/- as against total credit of Rs.6,33,50,000/- during the year. Thus,

the submissions of the assessee that the frequency of the transactions was high is found to be apparently correct. Considering the totality of facts of the case, we deem it appropriate to restrict the addition in respect of profit from share trading by applying presumptive rate of 8% as specified u/s.44AB of the Act. The said section also provides that the income can be computed @ 6% where the amount of total turnover or gross receipt was received by account payee cheque or bank draft or by use of electronic mode. Since, the assessee had not fulfilled this condition, the profit rate @ 6% cannot be applied in this case. Accordingly, **the AO is directed to re-compute the income from share trading by applying net profit rate of 8% on the total credits of share trading during the year.**

53. Accordingly, the ground taken by the Revenue is dismissed, whereas, the ground of assessee is partly allowed.

Ground No.8 – Addition on account of Maal Khaate

54. This ground pertains to addition of Rs.20,82,37,741/- made by the AO on account of income from “*Shri Maalkhaate account*”. In the seized diaries, the assessee had maintained a ledger of “*Maalkhaate/Shri Maalkhaate*” which according to the AO, reflected net profit received from a trading activity. In the course of assessment, no explanation was given by the assessee about the nature of trading activity as recorded in this ledger. In the absence of any details about the nature of the entries, the AO held that the entries appearing in *Maalkhaate* account were the net profit of the trading account transactions. Accordingly, the

total credit of Rs.20,82,37,741/- as appearing in this ledger account was treated as income of the assessee.

55. In first appeal, the Ld. CIT(A) had held that the *Maalkhaate* ledger also had debit entries and, therefore, he reduced the addition to 20% of the total credits.

56. The assessee as well as the Revenue (*vide Ground No.-4*), both are aggrieved with the decision of the Ld. CIT(A). Shri S. N. Soparkar, Ld. Sr. Counsel submitted that the Ld. CIT(A) had rightly held that entries in "*Maalkhaate*" ledger did not represent the net profit of the transaction. However, the Ld. CIT(A) was not correct in estimating the net profit @ 20% looking at the quick and huge turnover as appearing in this ledger account. The Ld. Sr. Counsel submitted that net profit of 20% in any kind of trading activity was unthinkable and that no corresponding assets were found as compared to the huge additions made by the AO. He, therefore, requested that estimation of profit in respect of the *Maalkhaate* ledger account may kindly be suitably reduced.

57. Per contra, Shri A. P. Singh, Ld. CIT.DR submitted that the Ld. CIT(A) was not correct in holding that the entries in *Maalkhaate* ledger account did not represent the net profit of the transactions. He, therefore, requested to sustain the addition as made by the AO.

58. We have considered rival submissions. The finding of the AO that the *Maalkhaate* ledger account represented net profit of the trading transactions is patently incorrect and unsustainable.

A copy of the ledger account has been reproduced in the assessment order. It is found therefrom that there were credit as well as the debit entries in the ledger account. When both the credit and debit entries are appearing in the ledger account, it cannot be held that all credit entries represented net profit of transactions. The Ld. CIT(A) had rightly held that the said ledger represented only sales entries. Further, he correctly concluded that there would not have been any debit entries in the *Maalkhaate* ledger, had the credit entries represented only profit element. The finding as given by the Ld. CIT(A) in respect of nature of entries in the *Maalkhaate* ledger account is found to be correct and, therefore, the contention of the Revenue in this regard is rejected.

59. As regarding estimation of income in respect of entries appearing in *Maalkhaate* ledger account, the Ld. CIT(A) had restricted the addition @ 20% of total credits as appearing in this ledger. However, the Ld. CIT(A) has not given any basis for estimating the profit @ 20%. Even if the assessee had not explained the nature of trading activities or the transactions as appearing in this ledger account, the net profit @ 20% in any kind of trading activity is too high to be accepted. The provision of Section 44AD of the Act gives a guideline for computing profit and gain of business on presumptive basis. As per that section profit rate of 8% is required to be applied on the total turnover or gross receipts. However, the said section is applicable only in respect of turnover or gross receipt of Rs.1 Crore earlier, which was increased to Rs.2 Crores w.e.f. 01.04.2017. The turnover of the assessee in all the years was much higher than the limit as

specified in the Act for application of presumptive rate. Further, the assessee has also not explained the nature of actual trading activities carried on by it. Considering the much higher turnover of the assessee and the nominal debit entries appearing in this ledger account, it will be reasonable to estimate the income of the assessee @ 10% of the total credits in the *Maalkhaate* ledger as appearing in the seized diaries. Accordingly, **the AO is directed to re-compute the income from trading activities as recorded in *Maalkhaate* ledger by applying net profit rate of 10%.**

60. The ground taken by the assessee is partly allowed, whereas, the ground of the Revenue is dismissed.

Ground No.9 – Addition on account of peak credit

61. This ground pertains to addition of Rs.76,35,340/- u/s.69A r.w.s. 115BBE of the Act towards peak credit in various ledgers in the seized diaries under one trading. The AO found that apart from the ledger in respect of land trading, sarafi business, share trading, *Maalkhaate* which have been discussed earlier, there were certain other ledgers in the seized diary. The assessee had claimed that the other ledgers were also concerned with his trading activities and that the income derived from these activities were included in the *Nafakhaate* account. However, since the assessee was unable to establish any nexus or link of the other ledgers with the *Nafakhaate* account, this contention of the assessee was rejected. The assessee, in the alternate, had submitted that the combined peak credit of all other ledger

accounts should be considered for making the additions. The AO, however, did not accept this submission of the assessee as well. Rather the AO considered the peak balance of each ledger to arrive at the assessee's net unexplained credits and granted benefit of intra account peak in unexplained ledgers. Accordingly, addition of Rs.76,35,340/- was made in respect of total of peak amount as appearing in the other ledger accounts. The addition as made by the AO was confirmed by the Ld. CIT(A).

62. Shri S. N. Soparkar, Ld. Sr. Counsel submitted that the AO and the Ld. CIT(A) were not justified in working out the peak credit in respect of all residual ledger accounts individually instead of finding out the peak credit after merging all such ledger accounts. According to the Ld. Sr. Counsel, debit in any of the ledger account should be set off against credit in any other ledger account. The Ld. Sr. Counsel further submitted that after finding out the combined peak, the set-off of the income finally determined till the preceding year should be given. In other words, the assessee sought benefit of telescoping of income already taxed in earlier years against the peak credit in any year. The Ld. Counsel submitted that the Ld. CIT(A) had rejected the ground for allowing the benefit of telescoping without assigning any reason.

63. Per contra, Shri A. P. Singh, the Ld. CIT.DR supported the orders of the AO and the Ld. CIT(A) in respect of this addition.

64. We have carefully considered the rival submissions. The first contention of the assessee is that the income from trading activity as recorded in the remaining ledger accounts were carried to *Nafakhaate* account. This contention was rightly rejected by the AO as no such nexus was established between the trading accounts and *Nafakhaate* account. As regards, working out the peak credit in respect of all residual ledger accounts, the contention of the assessee is that the peak credit should be worked out after merging all such ledger accounts and that the peak should not be determined for individual ledger accounts, as done by the AO. This contention of the assessee would have been acceptable had the assessee identified the parties to whom the individual ledger accounts belonged and also explained the nature of transactions carried out with each individual party. In the absence of any such explanation, the request of the assessee to work out the peak by merging the entries of all residual ledger accounts could not have been accepted. The nature of entries in the different ledger accounts might be divergent and working out the peak by merging all the accounts might result in gross distortion of profit. The apprehension of the AO that since the nature of each individual ledger account was not established, the peak worked out by merging the ledger accounts would result in nominal income due to rotation of funds, was quite genuine and not unfounded. In the absence of any explanation about the nature of transactions carried out in the residual ledger accounts, the AO had rightly worked out the peak for individual ledger accounts separately. Accordingly, **the addition of peak amount of Rs.76,35,340/- as worked out by the AO in the A.Y. 2012-13 is upheld.**

65. The second grievance of the assessee in this regard is that the Revenue did not allow set off of the income finally determined till the preceding year with the peak as determined in the individual years. This aspect was not at all considered by the AO and the Ld. CIT(A) too had rejected the request of the assessee without any sound reason. By working out the peak, the Revenue was estimating the unexplained investment in the particular business as recorded in individual residual ledgers. Thus, the addition in respect of peak was mainly in respect of unexplained investment. The request of the assessee is that the benefit of telescoping of income already taxed in the earlier year should be allowed towards unexplained investment as worked out on the basis of peak value. This request of the assessee is found to be reasonable. Since, the income taxed till the preceding year was available with the AO, the set off for the same has to be allowed with the peak amount for the subsequent year. Accordingly, **the Revenue is directed to allow the benefit of telescoping of income already taxed in the earlier year(s) with the peak addition of the subsequent year(s).** As is natural, no benefit of telescoping can be allowed in the first year *i.e.* in A.Y. 2012-13 but has to be considered in the subsequent years. Accordingly, the ground taken by the assessee for allowing benefit of telescoping of income already taxed in the earlier year with the peak addition of the following year(s) is allowed.

66. In the result, **the ground of the assessee is partly allowed.**

Ground Nos. 10 & 11 – Disallowance of Commission & Other Expenses

67. Ground No.10 pertains to not allowing commission expense of Rs. 1,59,76,100/- and Ground No.11 pertains to not allowing other expense of Rs.1,88,865.25, as noted in the seized ledgers *Shree Commission Khaate* and *Shree Kharch Khaate*, respectively. The assessee had taken a ground before the Ld. CIT(A) that the AO while passing the assessment order did not grant deduction for commission and other expenses as recorded in *Shree Commission Khaate* and *Shree Kharch Khaate*, which was appearing in the seized diaries. The ground taken by the assessee was rejected by the Ld. CIT(A).

68. Shri S. N. Soparkar, Ld. Sr. Counsel submitted that the expenses recorded in the seized diaries cannot be disbelieved and that the seized material had to be read and believed in entirety. According to the Ld. Sr. Counsel, if the income can be taxed on the basis of noting in the seized diaries and without any further evidence, there was no reason as to why the same treatment should not be given in respect of expenditure.

69. Per contra, the Ld. CIT.DR submitted that the assessee could have been allowed deduction for commission and expenditures appearing in the seized diary only if the entire transaction as recorded in seized diaries was taxed on gross basis. He submitted that since the receipts appearing in the seized diary were taxed on presumptive basis by applying different profit rates, there was no question of allowing deduction of expenses recorded in the seized diaries.

70. We have considered the rival submissions. The fact that the commission expense and other expenses were found recorded in the seized diaries is not under dispute. We do agree with the submission of Ld. Sr. Counsel that if the income can be taxed based on the noting in the seized diaries, the same treatment has to be given to the expenditures as noted in the seized diaries. However, as rightly pointed out by the Ld. CIT.DR, the entries in the seized diaries were not taxed on gross basis and in view of this fact, the deduction for expense as noted in the seized diary couldn't have been allowed. In respect of receipts as appearing in the ledgers land trading account, share trading account, Maal Khaate account etc., only net profit rate has been applied to work out the income and the entire receipts as appearing in the seized diaries were not brought to tax. When the income is estimated by applying net profit rate, all the expenses are deemed to have been allowed and this principle is categorically enunciated in Section 44AD of the Act. Even in the case of other ledger accounts, the gross receipt has not been considered as income but only peak of the transactions have been worked out to estimate the profit and unexplained investment in the business. Considering these facts, the assessee could not have been allowed the deduction for expenses of commission and other expenses as appearing in the seized diary, as the income was not worked out on gross basis considering all the entries as appearing in the seized diary.

71. The **ground taken by the assessee is, therefore, dismissed.**

Ground No.12- Bad debts

72. The assessee had claimed deduction for bad debt of Rs.2,49,71,000/- written off as irrecoverable by the assessee in the **Tally Books**, which was not allowed by the AO. The Ld. CIT(A) too did not agree with the claim of deduction made by the assessee in respect of bad debts. The Ld. Sr. Counsel submitted that the claim of bad debts was in respect of Sarafi business and there was no requirement of debt having been considered as income in the earlier years. Further, the assessee had written off the debt in the **Tally Book** produced before the AO in the course of assessment proceedings. He, therefore, requested that the claim for deduction in respect of bad debt may kindly be allowed. Per contra, the ld. CIT-DR supported the order of the lower authorities.

73. We have carefully considered the rival submissions. In the seized diaries, there was no reference of any bad debts. Further, no amount was found written off as irrecoverable bad debt in the seized diaries. The assessee had contended that on the basis of the entries in the seized diaries, he had identified the entries which had become bad and such entries were written off as irrecoverable in the **Tally Books** prepared on the basis of seized diaries and presented before the AO in the course of assessment proceedings. Thus, the fact remains that no bad debts were written off in the seized diaries. It was only in the **Tally Books** prepared subsequently by the assessee that the bad debts were written off and the claim for deduction was accordingly made by the assessee. As already discussed earlier, the **Tally Books** were

prepared not only on the basis of entries appearing in the seized diary and documents but also on the basis of certain entries as per the memory of the assessee. Further, all the entries appearing in the seized diaries were also not considered in the **Tally Books** but certain entries were omitted. In view of these facts, it has been held earlier that the AO had rightly rejected the accounts prepared as per **Tally Books**. Accordingly, when the account prepared as per **Tally Books** was not found reliable and was rejected, the claim for bad debt as made in the **Tally Books** cannot be considered for deduction.

74. The assessee is eligible for deduction of bad debt u/s 36(1)(vii) of the Act, which is reproduced below:

36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in [section 28](#)—

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is **written off as irrecoverable in the accounts of the assessee for the previous year:** (Emphasis supplied)

As per this section, the basic condition to be fulfilled for deduction of bad debt is that the bad debt should be written off as irrevocable in the accounts of the assessee for the previous year. The previous year involved in this case was Financial Year 2012-13 (for A.Y.2013-14). In the seized diary pertaining to F.Y. 2012-13, no bad debt was written off as irrevocable. The assessee had carried forward the balances of all debts in the seized diaries from year to year. It was only in the **Tally Books** prepared after the search that the assessee had written off the bad debt as irrevocable. The **Tally Books** were prepared by the assessee after the search in the F.Y. 2022-23. Thus, the assessee had actually written off the

bad debts as irrevocable in the accounts in the F.Y. 2022-23. When the decision to write off the debts as irrevocable was taken in the F.Y. 2022-23 while preparing the **Tally Books**, the bad debts could not have been written off as irrevocable in the accounts of the earlier years. **In essence, the assessee had written of the bad debts as irrevocable in the previous year 2022-23 and, therefore, he was eligible for deduction of bad debts in the subsequent assessment year. The deduction for the same could not have been allowed in the earlier years.**

75. The other condition to be fulfilled for deduction of bad debt is enshrined in section 36(2) of the Act which reads as under:

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply—

- (i) **no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee; (Emphasis supplied)**

As per this section the bad debt being claimed as deduction has to be taken into account in computing the income of the assessee of the previous year in which the bad debt is written off or of an earlier previous year. The contention of the assessee is that this provision was not applicable in his case, as he was carrying on business of money-lending and the entire bad debt as written off pertained to money-lending business only. We have to, therefore, examine as to whether the entire claim for bad debt was only in respect of money lending amount.

76. The contention of the assessee is that many debts remained to be recovered for a prolonged period and they represented bad debts. However, the balances of such debts were carried forward to the subsequent years in the seized diaries. When the assessee himself had carried forward the balances in the seized diary, it is evident that these debts were not acknowledged as bad debt in the accounts of the assessee. Further, not only the balances were carried forward but the assessee had also worked out the notional interest in respect of such debts. Thus, part of the bad debts was also in respect of such notional interest. **Since the notional interest was not offered to tax by the assessee, he couldn't have claimed deduction for bad debt in this respect.** The Ld. CIT(A) had rightly upheld that twin condition of writing off the bad debts as irrecoverable in the seized diaries as well as offering such debts as income in the earlier years was not satisfied and, therefore, the deduction was not admissible. Though, the assessee has contended that the bad debt pertained to sarafi business and there was no requirement for such debts to be considered as income in the earlier years, no evidence was brought on record that all the bad debts pertained to sarafi business only. The assessee was carrying on multiple activities and, therefore, it cannot be presumed that all the bad debts pertained only to sarafi business. Thus, it can't be held that the entire claim of bad debt was in respect of money-lending business only. Be that as it may, the fact remains that no bad debt was found written off in the seized diaries. Therefore, the claim for deduction of bad debt was rightly disallowed by the AO in the current year. We do not find anything wrong with the decision of Ld. CIT(A) on this issue and, therefore, his order on this issue is upheld.

77. The ground taken by the assessee is dismissed.

Other grounds

78. The grounds taken by the assessee regarding illegality of search operation and violation of principle of natural justice were not pressed by the Ld. Sr. Counsel in the course of hearing. Therefore, these grounds are dismissed.

79. In the result, appeal of the assessee in ITA No. 1138/Ahd/2024 is partly allowed.

ITA No. 1148/Ahd/2024 (A.Y. 2013-14)

Ground No. 1 – Notional Interest

80. The first ground taken by the Revenue is against deletion of addition of Rs.16,39,02,055/- on account of accrued interest. In the seized diaries, the assessee had recorded entries for accrued interest in respect of sarafi as well as trading accounts. The AO had considered the net accrued interest of Rs.16,39,02,055/- as income of the assessee following the mercantile system of accounting and accordingly made the addition. In the first appeal, the Ld. CIT(A) had deleted the addition by holding that the entries for accrued interest were only notional entries and that no income had accrued to the assessee. Aggrieved with the order of the Ld. CIT(A) on this issue, the Revenue is in appeal before us.

81. Shri A. P Singh, the Ld. CIT.DR submitted that when the entries for accrued interest were duly recorded in the seized diaries, the AO had rightly made the addition. He, therefore, strongly supported the order of the AO.

82. Per contra, Shri S. N. Soparkar, Ld. Sr. Counsel submitted that the seized diaries were neither in the form of systematic books of accounts nor were they prepared following any accounting principle but they were mere notings for the assessee's reference purposes and all the transactions noted in the seized diary didn't necessarily reflect the income liable to tax. The Ld. Sr. Counsel explained that the assessee had merely noted the interest in respect of funds received from family members and also to work out the return on the investment made in the land trading and other business. He submitted that the accrued interest as noted in the seized diaries were never received and the balances were carried forward from year to year. The Ld. Sr. Counsel supported the order of the Ld. CIT(A) and submitted that he had correctly appreciated the nature of notional interest recorded in the seized diaries and deleted the addition. He further submitted that the tax cannot be levied on hypothetical income. According to the Ld. Sr. Counsel the actual interest receipts were already taxed following the cash system of accounting, which was not disputed by the assessee. Therefore, no addition could have been made in respect of notional interest following mercantile system of accounting. He stressed that no addition could have made on account of interest following the cash system of accounting as well as the mercantile system of accounting.

83. We have carefully considered the rival submissions. It is found from the assessment order that the AO had not given any reason for making the addition for accrued interest, which were only notional in nature. In the course of statement recorded during search, the assessee had explained that other than cheque entries which were recorded in the books of accounts, the cash transactions appearing in the seized diaries were not accounted for. Following the cash system of accounting, the AO had already made addition for the interest received during the year as noted in the seized diaries. When the addition for interest received were already made following the cash system accounting, the AO had not explained as to why addition was made also for accrued/notional interest. Indisputably, the addition on the basis of cash system as well as on the basis of mercantile system, will result in double taxation. It is found that the Ld. CIT(A) has correctly appreciated the facts of the case and given relief to the assessee in this respect. The finding recorded by the Ld. CIT(A) is found to be as under:

“10.5 I have carefully considered the submissions made by the appellant and the assessment order passed by the AO. The appellant has made entries related to interest across all types of account which can be broadly categorized as under.

- a. Interest provided in accounts that represent transactions related to land.*
- b. Interest provided in accounts that represent transactions related to family members.*
- C. Interest provided in accounts that represent transactions related to parties wherein there is no debit/credit transaction is reflected over long period except the interest entry passed by the Appellant.*

10.6 So far as entries of interest passed by the appellant in category a) above is concerned, I find there is merit in contentions raised by the Appellant. After the land is purchased, no one provides/pays interest thereon. It is the assumption of the Assessing Officer that such interest provided on land was pursuant to terms of agreement or that transaction related to trading of land. AO has not referred to any such agreements found or seized during the search proceedings. Further, after the purchase of land, there is no evidence which would show that the seller of the land had any outstanding balance pending on which any interest was paid/payable by the seller to the appellant. A perusal of the seized ledgers, reproduced by the appellant in his submission (supra) of Hasmukhbhai Gadhecha Ambapur Land account and P. K. Surendra Jamin account basically represent the cost of land plus interest provided. In such Jamin / land accounts there is no third party payer who is paying interest or who would pay any interest at a future date and thus, the entry for accrual of interest remains notional only and not real. Further, after having acquired land, it is unheard of if one provides any interest thereon. Therefore, the contention of the appellant has force that the interest has been provided to ascertain whether on sale of such land in the future, the profit equivalent to interest is earned or not. Thus, such interest entry does not reflect the real interest earned. The Assessing Officer has adopted 35% profit on all the credits in such Jamin accounts in the assessment order. Now it is interesting that while doing so, the Assessing Officer has also applied the 35% profit rate on such interest entry also. The Assessing Officer has not even excluded such interest credits while estimating profit from Jamin trading thus resulting into double additions. Therefore, in respect of the interest charged on such land transaction accounts, the entry passed is notional and such notional income cannot be considered as 'income' under the Act.

10.7 So far as entries of interest passed by the appellant in category (b) above is concerned, it is the case of the appellant that he maintained the diary for members of his family and carried on ancestral sarafi business. In order to face the contingency of future dispute, the Appellant made entries of interest on notional basis with aim that the share due to each member of the family could be easily ascertained taking into account the inflation that will cover the cost of holding over the period. In the facts and circumstances of the case, that the explanation offered by the Appellant that the interest provided in the seized diaries was notional appears to correct. Taking into account overall practice followed for many years, it appears that the Appellant has tendency to provide for cost of inflation in respect of amounts payable to the family members over a period of time so that each member can get his due unpaid share with adequate compensation. The members who withdraw the amounts will have lesser amount due to them whereas the members who do not withdraw any amount would be duly rewarded with

compensatory interest for not flushing out the funds from the family. Obviously, those who withdraw funds will receive lesser interest and if they overdraw, they would be charged interest for overdrawing the amount. This appears to be rational consistent approach adopted by the Appellant and it is apparent from the notings made in seized diaries. The Assessing Officer has not doubted the credit / debit balances of members of the Appellant's family appearing in the seized diaries. The Assessing Officer has in the cases of various family members accepted the fact that such interest has not been paid by the appellant nor received by such family members and the same reflects like journal entries. In the assessment order for A. Y. 2013-14 in the case of appellant's son Jigar P. Sanghvi (the appeal for which pending and being disposed off separately), the Assessing Officer has stated as follows:

"3.1.2 The assessee has submitted that the ledger is a notional ledger where accounts were maintained by Sh. Prakash M. Sanghvi. The assessee has also drawn attention towards the submission made by Sh. Prakash M. Sanghvi, during the course of his on-going assessment proceedings. It is to be noted that Sh. Prakash M. Sanghvi has stated that these are notional interest entries. However, the contention has not been accepted by this office. There is no basis to treat these entries as notional. On perusal of the ledger, it can be clearly seen that it has opening / closing balance and it computes the interest at the end of the year which is aggregated to the closing balance carried forward to the next year as opening balance. Even if the assessee contends that no cash transaction has taken place, it is still undisputed that the interest reflects a journal entry as per accrual method of accounting and the same constitutes income in the hands of the assessee."

10.8 In can be seen from the above that the AO has accepted the fact that interest in the account of family members is accrued from year to year and not paid. The AO has not referred to any seized documents evidencing that such interest was actually paid to the family members by the appellant. Therefore, notional interest charged to the members of the family cannot be considered as income of the Appellant.

10.9 So far as entries of interest passed by the appellant in category c) above is concerned, the AO has stated that as per the mercantile system of accounting, the interest is considered as income of the assessee from his sarafi business. The AO has not referred to any seized documents evidencing the fact that any party has actually paid any interest to the Appellant as per the interest reflected in the seized material. The appellant has consistently stated that the appellant has followed cash system of accounting. Under law, the appellant has a choice to adopt mercantile system of

accounting or cash system of accounting. The AO cannot impose mercantile system of accounting.”

84. In the seized diaries, notional interest entries were passed on the debit side as well as on credit side in the ledger accounts without there being a corresponding entry in the interest account. Further, the actual interest received was separately credited in the seized diaries under the head “Shree Vyaj Khate”. Thus, there was duplication of interest in the seized diaries. The notional interest recorded in the seized diaries pertained to transactions related to land trading, related to family members and also to other parties. The Id. CIT(A) has analyzed the nature of the notional interest in respect of these three categories in detail and given a categorical finding as to why the notional interest as recorded in the seized diaries cannot be subjected to tax. The Revenue has been unable to controvert the findings as recorded by the Id. CIT(A).

85. So far as the accrued interest pertaining to land transactions is concerned, it had not been made out by the Revenue as to who had paid or from whom the interest was payable. As rightly observed by Id. CIT(A) no third party’s name was appearing in the documents who will pay interest to the assessee, after investments in the land as made by the assessee. The land accounts were mere investments and did not represent advances given, on which interest could be earned. The Id. CIT(A) had rightly held that there cannot be any question of payment of interest after acquisition / investment in the land. As explained by the assessee the notional entries in land account were made to ascertain whether profit, equivalent to or higher or lower as

compared to interest, was earned on sale of the land. In other words, the notional interest entry was made to calculate the opportunity cost of investment in land. Further, the AO had adopted 35% profit on credits appearing in land trading account, including the entries for notional interest. At the same time, separate addition for notional interest pertaining to Jamin account was also made, which had resulted into double taxation. This fact was not controverted by the Revenue. Since, the interest in the Jamin account were notional entries and already considered in the addition in respect of land trading account, no separate addition in that respect could have been made. The findings given by Id. CIT(A) in this respect is, therefore, upheld.

86. The notional interest entries in respect of family members were explained by the assessee to avoid any disputes between the family members in future and also to ascertain the cost of holding their funds over the period, taking into account the inflation factor. The notional interest recorded in the diaries was not paid but were only carried forward from year-to-year. Same is the position in respect of other accrued interest in non-moving accounts. As explained, notional entries were passed in almost all accounts irrespective of whether any amount was received from such party or not. In fact national interest entries were found appearing even in accounts where there was no recovery of principle and the balance was being carried forward from year to year. The contention of the assessee was that where no principle was recovered from parties over a long period of time, the entry for notional interest cannot be held as accrued and considered as 'real income'. When the AO had already made addition for the

actual interest received following the cash system of accounting, no addition could have been made in respect of notional entries on the basis of mercantile system of accounting. We, therefore, do not find any reason to interfere with the findings and the decision of the Id. CIT(A) on this issue.

87. It was held by the Hon'ble Supreme Court in the case of *CIT vs. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC)*, that income tax cannot be levied on hypothetical income. To reproduce from the said order:

"Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a 'hypothetical income', which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

In the present case also, there was neither accrual nor receipt of interest income even though an entry to the effect of notional interest was made in the seized diaries. Under the circumstances, the income cannot be said to have resulted in this case. And if income doesn't result at all, there cannot be a tax; even though in book-keeping, an entry is made about a hypothetical income, which doesn't materialize.

88. The Hon'ble Supreme Court has held in the case of *Excel Industries Ltd. (supra)* that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that, for the purposes of taxability,

the income is not hypothetical and it has really accrued to the assessee. The Hon'ble Supreme Court in that case, had laid down the following three tests to determine whether the income had actually accrued or not:

- i. Whether the income accrued to the assessee is real or hypothetical,*
- ii. Whether there is a corresponding liability of the other party to pass on the benefit/pay the amount to the assessee, and*
- iii. The probability or improbability of realization of the benefit by the assessee considered from a realistic and practical point of view.*

When we apply the above three yardsticks, we find that no real income had accrued to the assessee. In the present case, there was no corresponding liability of the other parties to pay the notional interest as recorded in the seized diaries. The entries for notional interest were carried forward from year-to-year and there was no real accrual. The probability of realization of the notional interest income was totally uncertain. What has really accrued to the assessee has to be found out from the point of view of 'real income' taking the probability or improbability of realization in a realistic manner and dovetailing of these factors together. It was held by Hon'ble Supreme Court in the case of *UCO Bank v. CIT (104 taxman 547) (SC)* that transferring the doubtful debt to an interest suspension account and not treating it as profit until actually received, was in accordance with accounting practice. The interest pertaining to doubtful loans was not considered as real income in the year in which it accrued, but only when it was realized. From the facts as discussed by the Id. CIT(A) in detail in his order, we don't find any real income accruing to the assessee. Further, when the interest actually realized by the assessee was already taxed following the cash system of accounting, no addition could have been made in

respect of notional interest on accrual basis. We, therefore, do not find anything wrong with the findings and the decision of the Ld. CIT(A) on this issue. **The deletion of addition made by the AO in respect accrued interest is, therefore, upheld. The ground taken by the Revenue is dismissed.**

Other Grounds:

89. The other three grounds taken by the Revenue in this appeal have already been adjudicated while deciding the assessee's appeal for this year in ITA No.1138/Ahd/2024, and dismissed.

90. In the result, the Revenue's appeal in ITA No.1148/Ahd/2024 for A.Y. 2013-14 is dismissed.

ITA No. 1139/Ahd/2024 to ITA No.1146/Ahd/2024 (A.Ys. 2014-15 to 2021-22)

91. Grounds of appeal taken by the assessee in ITA Nos. 1139 to 1146/Ahd/2024 are same as in ITA No. 1138/Ahd/2024, **except that an additional ground in respect of addition for negative peak balance has been taken in the A.Ys. 2014-15, 2016-17, 2017-18 & 2018-19** and also that some of the grounds are not involved in these years. Since the facts and the common grounds taken in ITA Nos. 1139 to 1146/Ahd/2024 are identical; the finding and the decision of ITA No.1138/Ahd/2024 on merits, is applicable *mutatis mutandis* to the appeals pertaining to A.Ys. 2014-15 to 2021-22.

Additional Ground – Negative Peak in Cash Book

92. We will now adjudicate the additional ground take by the assessee in the A.Y. 2014-15 for negative peak balance which is as under:

9. The learned CIT(A) has erred in confirming the addition of Rs.3,06,61,912/- made by the AO u/s 69A of the Act on account of negative peak credit in the Cash Book prepared by the AO on the basis of the seized ledgers. The learned CIT(A) has erred in confirming the action of the AO in invoking s. 115BBE in respect of the said addition.

93. On the basis of cash entries found in the seized diaries, a separate cash book was prepared. The assessee was required to explain as to why the entries in the cash book should not be treated as unexplained transaction. The assessee had explained that only negative peak of the cash book should be added and had further requested for allowing benefit of telescoping of the addition made in the earlier years. The AO had considered the entries for the A.Y. 2012-13 to A.Y. 2021-22, on the basis of which negative peak cash balance was found in A.Ys. 2014-15, 2016-17, 2017-18 & 2018-19. Accordingly, the AO had made addition of negative peak balance of Rs.3,06,61,912/- in the A.Y.2014-15, which was upheld by the Ld. CIT(A).

94. Shri S. N. Soparkar, Ld. Sr. Counsel submitted that while working out the negative peak of cash balance, the AO had taken the opening cash balance as on 01.04.2011 as NIL, although the seized diaries were found from 01.04.2009 onwards. According to the Ld. Sr. Counsel, the AO should have accepted the opening cash balance which was worked out by the assessee after considering all the transactions from 01.04.2009 to 31.03.2011.

He further submitted that the Ld. CIT(A) had erred in observing that the transactions pertaining to assessment years prior to A.Y. 2012-13 cannot be taken into account, as those years couldn't be reopened by the department. On the contrary, the Ld. CIT.DR supported the orders of the AO and Ld. CIT(A).

95. We have considered the rival submissions. There is no dispute to the principle of addition in respect of negative cash balance. The objection of the assessee is confined only to the quantification of the negative peak balance. The AO had worked out the negative peak balance by taking into account the entries from A.Y. 2012-13 to A.Y. 2021-22 only. Thus, the opening cash balance as on 01.04.2011 was taken as Nil by the AO. When the seized diaries pertaining to the earlier years were also found during search, the action of the AO to take the cash balance as on 01.04.2011 as Nil cannot be held as correct. The seized diaries have to be considered in their entirety and the cash balance as per the seized diaries for the earlier years has also to be taken into account to correctly work out the quantum of negative peak balance for different years. The Ld. CIT(A) has given a finding that since the assessment proceedings for earlier years were barred by limitation and income for those years cannot be brought to tax, even though the diary for those years were seized; the entries for the earlier years cannot be taken into account to work out the negative peak balance. This finding of the Ld. CIT(A) is not found to be based on sound and correct legal and accounting principle. The income of the assessee for the years prior to A.Y. 2013-14 could not have been taxed due to legislative intent to tax the income of not more than ten years. Merely because the

proceedings for the earlier year had become barred by limitation, this doesn't negate the entries of the seized diaries for the earlier years. When the diaries for the earlier years were seized, the cash balance available for the prior period had to be taken into account to correctly work out the negative peak balance. By not doing so, the Revenue has not correctly assessed the income for the subsequent years in respect of negative peak balance. Therefore, **the Revenue is directed to consider the opening cash balance as on 01.04.2011 as per the seized diaries for the earlier years and, thereafter, re-compute the negative peak balance for the subsequent years. For this purpose, the matter is set aside to the Jurisdictional AO who should allow an opportunity of being heard to the assessee and should confront the assessee with the revised working of the negative cash balance.** The addition in this respect should be made in the years in which negative cash balance is found as per the revised working. Accordingly, the ground taken by the assessee is allowed for statistical purposes and the assessments for the A.Ys. 2014-15, 2016-17, 2017-18 & 2018-19 are set aside to re-examine this issue. The Revenue will be free to make addition in this respect in the other years as well if negative cash balance is found in those years.

96. Accordingly, **the appeals of the assessee in ITA No. 1139/Ahd/2024 to ITA No.1146/Ahd/2024 (A.Ys. 2014-15 to 2021-22) are partly allowed.**

ITA No. 1149/Ahd/2024 to ITA No.1155/Ahd/2024 (A.Ys. 2014-15 to 2020-21)

97. The Grounds of appeal taken by the Revenue in ITA Nos. 1149 to 1155/Ahd/2024 are same as in ITA No. 1148/Ahd/2024. Therefore, the

finding and the decision of ITA No.1148/Ahd/2024 on merits, is applicable *mutatis mutandis* to the appeals in ITA Nos. 1149 to 1155/Ahd/2024 pertaining to A.Ys. 2014-15 to 2020-21. In the result, the **Revenue's appeal in ITA No.1149 to 1155/Ahd/2024 are all dismissed.**

ITA No. 1184/Ahd/2024 (A.Y. 2021-22)

98. The grounds taken by the Revenue in this appeal, in essence, are identical to the grounds of earlier years except the Ground Nos.1, 2 & 6. The assessment for A.Y. 2021-22 was completed by the AO u/s.143(3) of the Act on 31.12.2022, which was much before the completion of the assessment for other years u/s.147/143(3) of the Act on 02.06.2023. The AO had completed the assessment for the A.Y. 2021-22 in an ex-parte manner without having any input about the nature of seized diaries from the assessee. The accounts prepared by the assessee in the form of **Seized Diary Books** and **Tally Books** were not available with the AO while completing this assessment. The assessee had submitted a copy of **Seized Diary Books** and **Tally Books** before the Ld. CIT(A) in the course of appeal proceeding, who had called for a remand report from the AO. The matter was decided by the Ld. CIT(A) after considering the remand report of the AO as well as the rejoinder of the assessee on the remand report.

99. The first two grounds taken by the Revenue in this appeal pertain to addition of Rs.72,11,40,520/- on account of payments noted in various Jamin account and addition of Rs.8,11,89,833/- on account of receipts noted in the Jamin accounts. The AO noticed that various accounts in the seized diary of the assessee

reflected investment in land and other properties, ledgers for which were appearing as 'Jamin acc', 'flat acc', 'jamin khata', 'land account' etc. The total investment in the properties made by the assessee was tabulated in Table-1A & Table-1B in the assessment order which was to the extent of Rs.8,11,89,833/- and Rs.72,11,40,520/- respectively. The AO had made the addition in respect of the total investments as appearing in respect of these assets. Before the Ld. CIT(A), the assessee had submitted the accounts prepared in the form of **Seized Diary Books** and **Tally Books** and considering the additional evidences filed by the assessee, the Ld. CIT(A) had called for a remand report from the AO. In the remand report dated 21.02.2024 sent by the AO, it was admitted that in all the years other than A.Y. 2021-22, additions were made on the basis of the details provided by the assessee and explained in the **Seized Diary Books** and **Tally Books**. The AO had stated that the addition in the A.Y. 2021-22 can also be made on the same basis, as made in the other years. The Ld. CIT(A) has given a finding that the AO had adopted a different approach in A.Y. 2021-22 for making the additions, than the additions made for all other assessment years from A.Ys. 2013-14 to 2020-21. Further that, in the remand report the AO had admitted that the additions in the year under consideration (*i.e.*, A.Y. 2021-22) should also be made on the basis of assessments made in the other years. Accordingly, the Ld. CIT(A) had substituted the additions for the current year with the additions as proposed by the AO in the remand report.

100. In the A.Y. 2021-22, the AO had made addition of Rs.72,11,40,520/- on account of payments noted in various Jamin

accounts u/s.69 of the Act. Further, the AO had also made addition of Rs.8,11,89,833/- on account of receipts noted in the Jamin accounts u/s.69A of the Act. In the other years from A.Ys. 2013-14 to 2020-21, however, the AO had made the addition in respect of credits in the Jamin trading account by applying profit rate of 35%, which was reduced to 15% by the Ld. CIT(A). Accordingly, the Ld. CIT(A) had directed that in the A.Y. 2021-22 as well, profit rate of 15% should be applied on the credits of Rs.49,90,49,597/- under Jamin trading account for this year, to work out the income from these transactions. The Revenue is in appeal against this direction of Ld. CIT(A).

101. Shri A. P. Singh, Ld. CIT.DR submitted that the AO had made addition in respect of unaccounted investments in the properties, which was substituted by the Ld. CIT(A) with the profit earned by the assessee in the land trading account. According to the Ld. CIT.DR, the nature of transactions on which the addition was made by the AO was totally different. Further that the AO had not proposed any substitution of addition related to Jamin trading account in the remand report. According to Ld. CIT-DR, the addition for investment in the property stands deleted by the order of Ld. CIT(A) due to its substitution with profit in land trading account, which was not correct. He, therefore, requested that the addition as made by the AO, be restored.

102. Per contra, Shri S. N. Soparkar, Ld. Sr. Counsel submitted that the AO had made the addition without considering the real nature of the transactions. He explained that the addition for the

total investments could not have been made in this year, as the investments did not pertain solely to the current year. Ld. Sr. Counsel explained that the real nature of transactions recorded in the seized diary was land trading as held by the Revenue itself in the earlier years. He submitted that in the remand report, the AO had inadvertently overlooked the addition made in the earlier years in respect of trading in land/Jamin trading and the assessee, in the rejoinder to the remand report, had pointed out this omission to the Ld. CIT(A). Accordingly, the Ld. CIT(A) had confirmed the addition to the extent of 15% of the credits of Rs.49,90,49,597/- in the land trading account, while deleting the additions as made by the AO; which also was contested by the assessee.

103. We have carefully considered the rival submissions. The AO had made addition of Rs.72,11,40,520/- on account of unexplained investments in the property. This addition is based on the presumption that the entire investment was made in the current year itself, which is not found correct. In the assessment order, the AO had given one example of investment in *Hitachi 252 land* wherein the total investment was Rs.25,70,000/-. From the ledger copy of this account reproduced in the assessment order, it is found that the opening balance of this account was Rs.19,60,407/-. It is thus evident that the major investment in this property was already made in the earlier years and, therefore, the AO was not correct in making addition for the entire investment in this property in the current year. Therefore, the total addition of Rs.72,11,40,500/- and Rs.8,11,89,833/- as made by the AO could not have been sustained as the entire amount of

investment didn't pertain to the current year. Further, the portion of investment pertaining to the current year could also have been explained by the additions made by the AO on account of profit in land trading account as well as other additions in the earlier years. Therefore, the entire addition as made by the AO in respect of investment in properties was based on wrong footings.

104. In the remand report, the copy of which is reproduced in the order of the Ld. CIT(A), no comment was made by the AO in respect of this addition. The AO had reported various additions made in the earlier years and on that basis had worked out the proposed addition for A.Y. 2021-22 in the remand report. The recommendation of the AO in the remand report is reproduced below:

“7. Accordingly the figures related to Assessment Year 2021-22 based on the stand taken in assessee's own case for AY 2012-13 to 2020-21 in respect of seized diary transactions and tally books are summarized here under:

<i>Sr.</i>	<i>Particulars/head under which addition was made/proposed in all A.Ys. which is related to AY 2021-22</i>	<i>Gross Amount related to AY 2021- 22</i>	<i>Figures related to AY 2021-22 on which addition was made/proposed.</i>
<i>1</i>	<i>Interest received</i>	<i>12,36,99,898</i>	<i>12,36,99,898</i>
<i>2</i>	<i>Interest accrued</i>	<i>21,79,98,373</i>	<i>21,79,98,373</i>
<i>3</i>	<i>Trading in shares</i>	<i>39,57,87,420</i>	<i>7,91,57,484 (being 20%)</i>
<i>4</i>	<i>Maal Khaate/Shree Maal Khaate</i>	<i>34,62,87,454</i>	<i>34,62,87,454</i>
<i>5</i>	<i>Other ledgers</i>	<i>33,83,370</i>	<i>33,83,370</i>
<i>6</i>	<i>Negative peak in cash book</i>	<i>-</i>	<i>-</i>
<i>7</i>	<i>Received from family members</i>	<i>13,14,035</i>	<i>13,14,035</i>

7. In view of the above mentioned facts and circumstances and stand taken by the AO in assessee's own case for all A.Ys. other than AY 2021-22 in which figures related to A.Y. 2021-22 was also mentioned, it is proposed that figures mentioned in para-6 & 7 above in respect of A.Y. 2021-22 may be treated as authentic as the same has been verified from seized diary and tally books.”

105. It is noted from the above recommendation of the AO in the remand report that no addition was proposed in respect of profit from trading in land/Jamin trading, as made in the earlier years. The contention of the Revenue is that the AO did not propose for substitution of addition related to investment in properties in the remand report. In fact, the AO had neither recommended for any addition in respect of investment in properties nor in respect of profit in land trading account in the remand report. Even if the AO did not propose for substitution of addition related to Jamin trading account in the remand report, the addition for total investment in the properties as made by the AO could not have been sustained as the investments were not made in the current year. Further, the addition for both payments and receipts as appearing in the Jamin account also could not be held as correct.

106. The total credit pertaining to the current year in the Jamin account was to the extent of **Rs.49,90,49,597/-** only, which has not been disputed by the Revenue. In the earlier years, the AO had made the addition by adopting profit rate of 35% on the credits in the Jamin trading account, which was reduced to 15% by the Ld. CIT(A). Adopting the same principle, the Ld. CIT(A) had restricted the addition to the extent of 15% of credits of Rs.49,90,49,597/- in the current year. The addition as confirmed by the Ld. CIT(A) was consistent with the stand taken by the Revenue on this issue in the earlier years. We do not find anything wrong with the addition as sustained by the Ld. CIT(A) following the basis as adopted by the Revenue itself in the earlier years and there is no merit in the grounds as taken by the Revenue. **Following the decision taken by us in the earlier**

years, the Revenue is directed to work out the profit in the land trading account by applying the average rate of 13.14% only on the credits in the land trading account. The grounds taken by the Revenue are devoid of merit and are dismissed.

107. Ground Nos. 3, 4 & 5 taken by the Revenue in this year are identical to the grounds taken by the Revenue in ITA No.1148/Ahd/2024 for A.Y. 2013-14 and the decision taken on these issues in that appeal will apply mutatis mutandis in this year as well.

108. Ground No.6 pertains to addition of Rs.196,46,51,643/- in respect of entries in “miscellaneous category”. The AO found that a large number of entries to the tune of Rs. 196,80,35,013/- couldn't be placed under any of the identified categories and no clarification was given by the assessee in this regard. Therefore, the AO placed those entries under the head ‘miscellaneous transactions’, the details of which is given in Table-5 in the assessment order. The AO had treated the entire credit of Rs.196,80,35,013/- as unexplained and unaccounted money u/s.69A of the Act and accordingly made the addition.

109. The Ld. CIT.DR submitted that the Ld. CIT(A) had failed to understand the correct nature of the entries in miscellaneous categories as mentioned in the assessment order and that he had deleted the addition without giving any categorical finding. He further submitted that the Ld. CIT(A) had erred in considering the entries in miscellaneous categories as ‘other ledgers’ mentioned in the remand report.

110. Per contra, the Ld. Sr. Counsel supported the order of the Ld. CIT(A). He submitted that the nature of miscellaneous categories transactions was duly examined by the ld. CIT(A) and thereafter he had not deleted the entire addition but had confirmed the part of the addition.

111. We have considered the rival submissions. The Ld. CIT(A) has given the following finding in this regard:

“165.1 In ground no. 8, the appellant has challenged the addition made u/s.69A towards entries in the miscellaneous category. The addition on account of miscellaneous transactions is dealt with by the AO in para 6.7 of the assessment order. The AO has stated that a large number of entries could not be placed under any category without further clarification from the assessee. The AO has tabulated such transactions and made addition in respect of the same. The details tabulated by the AO in Table 5 on page nos. 43 to 45 of the assessment order contains transactions under various ledgers like Bhagidari accounts, Shares accounts, Sarafi accounts. In the remand report, the Assessing Officer has examined the nature of all the accounts in the seized diaries and segregated them as per the nature of such accounts. The AO has thus proposed additions under different heads in the remand report. Bhagidari accounts have been treated as Jamin trading accounts and addition based on estimated profit @35% in respect of credits in such accounts has been proposed in the remand report. Similarly, Shares accounts have been treated as Share trading accounts and addition based on estimated profit @20% in respect of credits in such accounts has been proposed. Addition in respect of Interest received and Interest accrued in Sarafi accounts have also been proposed in the remand report. The additions on account of Interest on sarafi loans, Jamin Trading, Trading in shares & Maal Khaate/ Shree Maal Khate have already been dealt in separate grounds of appeal in the preceding paras. Therefore, after considering, it is observed that the proposed addition of Rs.33,83,370/- on account of other ledgers and Rs. 13,14,035/- on account of received from family members remained to be adjudicated. Therefore, the same are adjudicated in the following paras.

165.2 The issue of other ledgers/peak credit in other ledger amounting to Rs.33,83,370/- is similar to the ground no. 10 for A.Y.2013-14 and as per the detailed discussion in para 14 of this order, after considering the submission filed by the appellant, the undersigned has confirmed the addition made by the AO. In view of the above detailed discussion made in para 14 of this order, the

addition made by the AO for the year under consideration i.e. A.Y.2021-22 is also confirmed.

165.3 Further, the issue of amount of Rs.13,14,035/- received from family members/ protective addition towards cash credit in the ledger account of family member is similar to the ground no. 11 for A.Y.2013-14 and as per the detailed discussion in para 15 of this order, after considering the submission filed by the appellant, the undersigned has deleted the addition made by the AO. In view of the above detailed discussion made in para 15 of this order, the addition made by the AO for the year under consideration i.e. A Y 2021-22 is also deleted.

165.4 In view of the above, the ground of appeal no. 8 is partly allowed.”

112. It is found that the AO had made addition of Rs.196,80,35,013/- being credit entries in the diaries, which were not explained and were treated as miscellaneous transaction. All the credit entries in the nature of miscellaneous transactions couldn't have been considered as income without taking into account the debit entries of miscellaneous nature as well. The AO had not mentioned about the debit entries of miscellaneous transactions in the assessment order. In the remand report also, the AO did not propose any addition for miscellaneous credits of Rs.196.80 Crores. Rather the AO had segregated the entries of miscellaneous category into the identifiable heads of land trading account, share trading account, interest received and interest accrued account, maal-khate account etc. in respect of which additions were made in the earlier years. The Ld. CIT(A) had considered the transactions of miscellaneous nature and found that many of them were already taken into account in Bhagidari (land trading account), share account, sarafi account etc., the profit of which, was already estimated separately. After excluding such entries, for which the profit was separately added, the balance amount in respect of other ledgers was considered as

unexplained and peak credit of such entries was Rs.33,80,370/-. Further the receipt from family members was to the extent of Rs.13,14,035/-. The Ld. CIT(A) had confirmed the addition of Rs.33,83,370/- on account of peak credit in the other ledger and had deleted the addition of Rs.13,14,035/- in respect of receipt from family members as the same was protective in nature.

113. We do not find anything wrong with the approach of the Ld. CIT(A). The entire credit in the miscellaneous transactions could not have been considered as income of the assessee and the addition of gross credit of Rs.196.80 crores was not justified. It is a settled position of law that what can be taxed is the undisclosed income and not the entire undisclosed receipts. Therefore, the addition in respect of total undisclosed receipt of Rs.196.80 crores, as made by the AO, could not have been sustained. The ld. CIT(A) had rightly confirmed the addition to the extent of undisclosed income emanating out of the undisclosed receipts. In fact, the AO himself, in the remand report, had proposed addition of Rs.33,83,370/- only in respect of "Other ledgers". The Ld. CIT(A) had rightly considered the peak credit in respect of the transactions of miscellaneous category (other than the entries taken to identified respective heads) and accordingly confirmed the addition to that extent. Accordingly, addition of Rs.33,83,370/- as proposed by the AO in the remand report was confirmed by the ld. CIT(A). The proposed addition of Rs. 13,14,035/- in respect of the receipt from family members was not upheld by the ld. CIT(A) for the reason that the same was found to be protective in nature. The Revenue has been unable to controvert the findings as given by

the ld. CIT(A). The approach of the ld. CIT(A) was logical and rationale and was in consonance with the stand of the Department in the earlier years. Therefore, **the ground taken by the Revenue is dismissed.**

114. In the result, the appeal of the Revenue in ITA No. 1184/Ahd/2024 (A.Y. 2021-22) is dismissed.

115. The final outcome of these appeals is summarized in the table below:

Sl. No.	ITA No.	A.Y.	Appeal filed by	Outcome
1-9	ITA Nos. 1138 /Ahd/2024 to 1146/Ahd/2024	2013-14 to 2021-22	Assessee	Partly allowed
10-17	ITA Nos. 1148/Ahd/2024 to 1155/Ahd/2024	2013-14 to 2020-21	Revenue	Dismissed
18	ITA No. 1184/Ahd/2024	2021-22	Revenue	Dismissed

This Order is pronounced in open Court on 18/02/2025

Sd/-

(T.R. SENTHIL KUMAR)

JUDICIAL MEMBER

Ahmedabad; Dated 18/02/2025

S. K. SINHA

True Copy

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(NARENDRA PRASAD SINHA)

ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad