

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH : BY VIRTUAL HEARING**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

<b>SN</b>	<b>Assessee</b>	<b>Revenue</b>	<b>ITA No.</b>	<b>Asst. Year</b>
1	ABC Sales Corporation (Payyannur)	ITO, Circle-1, Kannur	404/COCH/2024	2017-18
2	ABC Sales Corporation (Taliparamba)	ACIT, Central Circle, Kozhikode	440/COCH/2024	2017-18
3	ABC Sales Corporation (Payyannur)	-do-	441/COCH/2024	2017-18
4	ABC Sales Corporation (Payyannur)	-do-	449/COCH/2024	2018-19
5	ABC Sales Corporation (Kanhangad)	-do-	439/COCH/2024	2017-18
6	ABC Sales Corporation (Taliparamba)	-do-	450/COCH/2024	2018-19
7	ABC Sales Corporation (Kanhangad)	-do-	451/COCH/2024	2018-19
8	ABC Sales Corporation (Payyannur)	-do-	457/COCH/2024	2019-20
9	ABC Sales Corporation (Taliparamba)	-do-	458/COCH/2024	2019-20
10	ABC Sales Corporation (Kanhangad)	-do-	459/COCH/2024	2019-20
11	ABC Sales Corporation (Payyannur)	-do-	534/COCH/2024	2020-21
12	ABC Sales Corporation (Taliparamba)	-do-	535/COCH/2024	2020-21
13	ABC Sales Corporation (Kanhangad)	-do-	536/COCH/2024	2020-21
14	ABC Sales Corporation (Kanhangad)	-do-	578/COCH/2024	2017-18
15	ABC Buildwares India (P) Ltd	-do-	531/COCH/2024	2015-16
16	ABC Buildwares India (P) Ltd	-do-	532/COCH/2024	2016-17
17	ABC Buildwares India (P) Ltd	-do-	533/COCH/2024	2020-21
18	ABC Buildwares India (P) Ltd	-do-	454/COCH/2024	2017-18
19	ABC Buildwares India (P) Ltd	ITO, Circle-1, Kannur	389/COCH/2024	2017-18

20	ABC Buildwares India (P) Ltd	<b>ACIT, Central Circle, Kozhikode</b>	455/COCH/2024	2018-19
21	ABC Buildwares India (P) Ltd	-do-	456/COCH/2024	2019-20
22	Junaid KN	-do-	497/COCH/2024	2017-18
23	Junaid KN	-do-	498/COCH/2024	2018-19
24	Junaid KN	-do-	499/COCH/2024	2019-20
25	Junaid KN	-do-	500/COCH/2024	2020-21
26	Abdul Vaheed	-do-	501/COCH/2024	2017-18
27	Abdul Vaheed	-do-	502/COCH/2024	2018-19
28	Abdul Vaheed	-do-	503/COCH/2024	2019-20
29	Abdul Vaheed	-do-	504/COCH/2024	2020-21
30	Ruchit	<b>ACIT, Central Circle -1, Calicut</b>	505/COCH/2024	2018-19
31	Ruchit	<b>ACIT, Central Circle, Kozhikode</b>	506/COCH/2024	2019-20
32	Ruchit	-do-	507/COCH/2024	2020-21
33	Keeran Muhammed Basheer	-do-	508/COCH/2024	2017-18
34	Keeran Muhammed Basheer	<b>ACIT, Central Circle -1, Calicut</b>	509/COCH/2024	2018-19
35	Keeran Muhammed Basheer	-do-	510/COCH/2024	2019-20
36	Keeran Muhammed Basheer	-do-	511/COCH/2024	2020-21
37	Abdul Gafoor	<b>ACIT, Central Circle, Kozhikode</b>	512/COCH/2024	2013-14
38	Abdul Gafoor	-do-	513/COCH/2024	2015-16
39	Abdul Gafoor	-do-	514/COCH/2024	2016-17
40	Abdul Gafoor	-do-	515/COCH/2024	2017-18
41	Abdul Gafoor	-do-	516/COCH/2024	2018-19
42	Abdul Gafoor	-do-		2019-20

			517/COCH/2024	
43	Abdul Gafoor	-do-	518/COCH/2024	2020-21
44	Muhammed Jabir	-do-	519/COCH/2024	2017-18
45	Muhammed Jabir	-do-	520/COCH/2024	2018-19
46	Muhammed Jabir	-do-	521/COCH/2024	2019-20
47	Muhammed Jabir	-do-	522/COCH/2024	2020-21
48	Muhammed Madani	-do-	523/COCH/2024	2013-14
49	Muhammed Madani	ACIT, Central Circle, Calicut	524/COCH/2024	2017-18
50	Muhammed Madani	-do-	528/COCH/2024	2018-19
51	Muhammed Madani	-do-	529/COCH/2024	2019-20
52	Muhammed Madani	-do-	530/COCH/2024	2020-21
53	Bathx Bathware India (P) Ltd.,	-do-	436/COCH/2024	2014-15
54	Bathx Bathware India (P) Ltd.	-do-	437/COCH/2024	2015-16
55	Bathx Bathware India (P) Ltd.	-do-	438/COCH/2024	2016-17
56	ABC Imports & Exports India Pvt. Ltd.	-do-	743/COCH/2024	2019-20
57	Muhammad Madani	-do-	835/Coch/2004	2018-19
58	Muhammad Madani	-do-	836/Coch/2004	2019-20
59	Muhammad Madani	-do-	837/Coch/2004	2020-21

Assessee by	:	U Mohanan, C.A
Revenue by	:	Shri S.K Das, CIT (DR)

Date of hearing	:	09.12.2024
Date of Pronouncement	:	20.12.2024

**ORDER****PER BENCH:**

These bunch of appeals are filed by the assessee against the order passed by the commissioner of Income Tax (Appeal) for the assessment years captioned above.

2. First, we take up ITA No. 441/Coch/2024 relevant to AY 2017-18 in the case of the assessee namely M/s ABC Sales Corporation, Payyannur as lead case. The assessee has raised the following grounds of appeal:

*"1. The order under section 250 passed by the Commissioner of Income tax (A)Kochi-3 is against the facts and circumstances of the appellant's case and hence opposed to the provisions of the Income tax Act.*

*2. The learned Commissioner of Income tax (Appeals) has dismissed the appeal by drawing conclusion that the inferences and findings of the learned assessing*

*authority are acceptable without independently applying his mind, which is against the provisions of section 250 of the Act. The learned Commissioner of Income tax (Appeals) has made conclusions in the nature of Ipse Dixit that too without the support of discernible reasons and hence the appellate order stands to be set aside. This view is supported by the decision contained in Sohan Raj Khanted Guvanthraj Vs. CIT & Ors (2024) 337 CTR (Mad) 978 .*

*3. The appellant most humbly submit that no incriminating material have been seized or impounded from the appellant during the year and hence no proceedings under section 153A should have been initiated and completed for the year under reference. The appellant's submission that the corrections in the sales bills during the year, alleged by the department to be editing for suppression, are only genuine transactions carried out during the year, which is also evident from the sufficiency of gross profit returned, correctness of stock, cash and other figures in statements of accounts. There was no seizure during proceedings under section 132 , no difference in stock or cash or any accounts were also traced out. The statement given by the staff and other persons explaining the detailed procedure for effecting the genuine corrections carried out, are misinterpreted as suppression, relying the so called timing etc., of correction done. The learned Commissioner of Income tax (appeals) failed to consider the statement, details and arguments filed in this regard during the appeal proceedings. The genuine corrections effected in the sale bills carried out even after office hours, do not make the correction*

*suppression etc., as presumed by assessing authority and upheld by the Commission of Income tax (Appeals) without making independent appreciation of facts and record.*

#### 4. APPROVAL

*Without prejudice to the above, the appellant submit that no proper 'approval' as provided under section 153 D of the Act is accorded in the case under reference. The learned CIT (A) failed to look into this aspect, inspite of specifically submission made by the appellant during personal hearing to call for the records and verify the same.*

*The appellant plead that the assessment order having been passed without 'proper approval' is against the provisions of the Act and hence stand to be quashed.*

*5. No satisfaction note having been issued and served on the appellant as specified under the Act, before the issue of notice under section 153C or notice u/s. 142 (1) for the relevant year or even during the assessment proceedings or even after the completion of the same, the whole proceedings initiated and completed under section 153C stand vitiated and hence assessment framed in the hands of the appellant is not valid. Reliance is placed on the decision : CIT Vs. Calcutta Knitweaves (2014) 267 CTR (SC) 105 and Circular No: 24/2015, dt.31/12/2015 of CBDT (2016) 129 DTR (St) 77.*

#### 6 Time bar under Section 153(1)(a)

*It is a settled law that the time limit applicable to assessments under section 153A/153C is that specified under Section 153B(i)(a) and not the time limit specified in section 132(9A) read with Section 132(8) and (9). In this view of the matter all the assessments completed in the instant case under section 153C is barred by limitation specified under Section 153B(i)(a) of the Income Tax Act. The authorization under section 132 or for requisition under section 132A was executed on 27/02/2020 in the relevant cases. Reference to FT & TR, if any, having not been made known to the appellant and not establishes, the extended period do not seem search to be applicable in the case for the year under reference the appellant therefore submits that the assessment under section 153A/153C for the year are barred limitation and hence the order is void ab initio*

*7. The learned Commissioner of Income tax (Appeals) grossly erred in holding that the so called excel sheet, snap shots from mobile phone relating to certain foreign income stated to be seized from other premises, are connected to the appellant, as the same is said to belong to the same 'group'. There is nothing called "group" for the purpose of section 132(4) and that the appellant is an independent entity which has no connection with the so called search premises. There is nothing on record to connect the said evidence to the appellant, other than mentioning the name in certain places, which has no acceptance of the appellant*

*8. The summary of the so called 'editing' given during the appeal hearing in writing by way of a register, together with the details and confirmation from the parties cited by the assessing authorities, are seen ignored by the CIT (A) by a simple statement that it is not 'authenticated'. The s~e have been signed in all pages, filed together with detailed argument note, needs no separate authentication for acceptance and also that the absence of separate authentication if any, do not make the register documents and confirmation filed invalid and not suitable for consideration during appeal proceeding.*

*Without prejudice to the above the appellant submit that even if there is any sales suppression, what is taxable is only the net profit, if any, earned thereon and not the complete sale value, as alleged by assessing authority and upheld and CIT (A).*

**9 FOREIGN INCOME:**

*1. No material whatsoever relating to the so called income earned from outside India, termed as 'global income' and upheld to be liable for tax by Commissioner of Income tax (A), were seized or impounded from the appellant's premises during the proceedings under section 132 of the Act. The so called data stated to be extracted from the computer/mobile phone seized from other premises, wherein also there is no acknowledgement or acceptance of any data by the appellant, by no stretch of imagination be considered as "incriminating material" for the purpose of assessment in the appellant's case. The appellant reiterates that there is no evidence, primary or secondary, to connect the appellant with the so called computer printout/mobile snap shot, either by way of any fund transfer, receipt of money in any form as dividend, share, zakath etc., during the relevant year. Excel sheet seized from other premises, stated to be some projection made by them to suit their convenience, do not tantamount to 'incriminating materials' as stated under the act and hence should not have been relied for the purpose of assessment. The Commissioner of Income tax (A) failed to appreciate the case and record properly before upholding the contentions of the assessing officer and rejecting the submission of the appellant and sustaining the addition made. Incriminating material as such, are to be proved by test of corroborative evidences and not by assumptions and presumptions as done in the instant case. The appellant submit that there was no seizure or impounding of any kind relating to the so called foreign income from the appellant during the proceedings under section 132 of the Act.*

*2. The appellant affirms that the investment made by Shri P.A. Ibrahim, in another company, which is not related or connected to the appellant, and its extension by A.O. by making unheard presumptions, were all stated in the assessment order for the first time. No enquiry about its true nature, whatsoever were conducted from Shri P.A. Ibrahim, who is an assessee before the Central Circle itself. The assessing officer have relied on the so called projections stated to be extracted from the computer/mobile phone etc., from other premises, without conducting any enquiry from any connected persons, including Shri. P.A. Ibrahim and P. Abdul Gafoor, which is seen upheld by the Commissioner of Income tax (A), which are against the settled provisions of the law. The enquiry stated to be conducted in foreign countries are confirmed to have resulted with no details relating to investments and the so called receipt of dividend etc, by appellant in any year in any foreign companies, as stated in the order. In spite of the said information on record, the officer has made following additions to the total income of the appellant for different years.*

*(a). Investment not proved to have been made in different years. Even investments upto 31/03/2017 is recorded as investment during the year ended 31/03/2017.*

*(b). Premium on shares, which are not proved as existing during the year (c). Share of profit, dividend, zakath etc., stated to be earned during the year. All these additions are foisted on the strength of a computer extract, relating to*

*investment etc., which has been proved by evidence from foreign tax department, to have been not existing, based on the enquiry conducted outside India by the assessing officer. The CIT (A) without appreciating the correct facts and legal position, have upheld the additions relying upon the unjustified and uncollaborated versions of the officer, which are totally against the provision of the Act.*

*10. The appellant reiterates that it has no connection with the unverified and uncollaborated data relating to foreign investment etc., stated to be seized from other premises being computer extract/snap shots of mobile phone. The officer failed to discharge the onus cast on him before extending the data in the said "seized material" to the appellant. The appellant have categorically proved with document and evidences, being copy of the audited financial statements of all the foreign companies for all the years under reference, that it has no connection with the said foreign entities and that it has not made any investments by way of share etc., and have not received any income by way of dividend, share, zakath etc., in any years under reference and hence have discharged the onus cast on it. This being the facts on record, the version of the CIT (A) otherwise by simplying relying on the assessment order, is illegal and incorrect.*

*11. Income of a foreign entity, registered and operated outside India, is treated as liable to tax in India in some proportions, in the hands of the appellant, under the guise of 'global income' even without considering the relevant provisions of the Income tax Act,, DTAA'S and Treaties with the Sovereign Governments. These entities, as per the revenue also, have no activity in India and have no P.E. or other establishment as well in India. Ignoring all the provisions of the law, treaties, DTAA'S the CIT (A) have held that the so called investment including premium on shares, alleged profit, dividend, zakath etc., stated to be received from the said company during the year, is liable to tax in India in the hands of the appellant, under the so called 'global income' theory. The CIT (A) grossly ignored the provisions of the law, when upholding the findings of the assessing officer in this regard. Moreover, investments of any amount, having been proved to be made by the appellant, the same should not have been subjected to tax in the appellants hands, that too by applying section 115 BBE of the Act. It is on record that no evidence of any investment or return have been obtained from outside India, after detailed enquiry for more than one year. .*

*12. CITATIONS:*

*All the citations relied by the appellant are seen interpreted by CIT (A) by considering part of findings in the same found suitable to him, ignoring the principles at large laid out in the order. The Commissioner of Income tax (A) seems to have not applied his mind properly to the principles laid out and upheld in the decisions cited by the appellant.*

*13. For the above and for other reasons to be adduced at the time of hearing, it is prayed that justice be done to the appellant by setting aside the order appealed against."*

3. The assessee vide letter dated 24<sup>th</sup> September 2024 has also raised additional ground of appeal which reads as under:

*On the facts and in the circumstances of the case and in law, the Learned Assessing Officer ("Learned AO") has erred in relying on alleged incriminating material being excel sheet found from the computers or mobile phones and then relying on such digital material or documents as evidence for making addition without following the procedure prescribed under section 65B of the Indian Evidence Act, 1872 and therefore, such evidences cannot be relied upon for the purpose of making the addition.*

4. The assessee, in the application for admission of additional grounds, argued that the issues raised were legal in nature and fundamental to the resolution of the case. Consequently, the assessee's learned Authorized Representative (AR) requested that these additional grounds be admitted for adjudication.

4.1 On the other hand, the learned (DR) opposed the admission of the additional grounds of appeal, arguing that these grounds had not been raised before the lower authorities.

5. We have heard the rival submissions of both the parties and perused the materials available on record. The Hon'ble Supreme Court in the case of National Thermal Power Co. Limited vs. CIT reported in 229 ITR 383 has held as under:

*" Under section 254 of the Income-tax Act, 1961, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier.*

5.1 From the above, it is evident that the view limiting the Tribunal's jurisdiction to issues arising solely from the appeal before the Commissioner (Appeals) is too restrictive to define the Tribunal's powers. The Tribunal undoubtedly has the discretion to permit or decline the raising of a new ground. Since the issue raised in the additional ground of appeal is purely legal in nature, and in light of the judgment cited above, we admit the additional ground raised by the assessee.

**6. The issues** raised by the assessee in ground 1, 2, 3, 12 & 13 are general in nature and do not require any separate adjudication. Accordingly, the same are hereby dismissed as infructuous.

**7. The next issue** raised by the assessee vide ground No. 8 of its appeal is that the learned CIT(A) erred in confirming the addition of Rs. 10,20,829/- on account of suppressed sales.

8. The necessary facts are that during the search proceedings, certain loose sheets were discovered indicating that sales bills had been modified. This finding was corroborated by data retrieved from the accounting software, *Go-Frugal*, where it was observed that cash sales bills were altered. Specifically, after sales entries were made in the software, the quantities were modified by logging into the system, resulting in reduced sales figures. The excess stock generated due to these modifications was subsequently reported as wastage. A report of the original sale values of the modified invoices was generated from the "Audit Change Sales Summary" menu of the said accounting software. Statements were recorded of various individuals in connection with these

findings. Shri Vaisakh V.V., the manager of ABC Sales Corporation, Kannur, confirmed the modification of sales bills in the software. Additionally, Shri Mahesh, an employee at the head office of ABC Sales Corporation, Taliparamba, provided a detailed explanation of the process by which sales bills were modified and stock was adjusted as wastage in the *Go-Frugal* software. These statements were further corroborated by the managing partner of the assessee firm, Shri Abdul Vaheed, and subsequently confirmed by the chairman of the ABC Group, Shri Muhammad Madni.

8.1 Based on the statements recorded, the loose sheets discovered, and the reports retrieved from the *Go-Frugal* software indicating the modification of sales, the Assessing Officer (AO) determined the suppressed sales of the assessee for the assessment years (A.Y.) 2017-18 to 2020-21. For the year under consideration, i.e., A.Y. 2017-18, the suppressed sales were calculated at ₹10,20,829/- only, and this amount was added to the total income of the assessee.

9. The aggrieved assessee filed an appeal before the learned CIT(A), arguing that the modifications made to sales bills in the accounting software were genuine corrections carried out in the ordinary course of business. The assessee contended that the number of modified sales bills and their corresponding value were insignificant when compared to the total number of bills and the overall turnover. This, the assessee argued, inherently indicated that the modifications were genuine corrections. Additionally, the assessee claimed that the statements recorded during the search were dictated by the search team and did not accurately reflect the facts. The assessee asserted that there were no actual modifications to the sales bills or subsequent write-offs of

stock as damage. It was further emphasized that no evidence of discrepancies in stock, debtors, or creditors was found during the search proceedings to corroborate the claims of suppression of sales.

9.1 However, the learned CIT(A) after considering the facts in totality confirmed the addition made by the AO by observing as under:

*"14. The above grounds/contentions raised by the appellant in the appeal are discussed and decided as under:*

*(i)(a) In the ground raised by the appellant, as mentioned in para 13(i) above, it has been contested that sales deletion highlighted by the AO was only genuine corrections in the books of accounts done in the ordinary course of business to set right the business returns/losses on account of various reasons. This contention was made before the AO during the assessment proceedings and the AO has logically rebutted the same. As rightly stated by the AO, if a customer returns the goods after purchase, it is known as sales return and has to be accounted under that head. However, in the accounting software maintained by the appellant, the purported sales returns are reflected as pending and is appearing in the "audit change sales summary", which are stated to be subsequently accounted as wastage by the Accountant after normal working hours. Further, it is also surprising to note that that only cash sales have been selectively modified and subsequently accounted as wastage. Without prejudice to the above, all the key persons of managerial level and employees of the appellant have unanimously admitted in their sworn statement that cash sales have been selectively deleted and shows as wastage, with the help of the accounting software, so as to reduce the tax liability. The Managing Partner and the Chairman, at the time of search have admitted the above modus operandi and have also agreed to offer the undisclosed income so generated, for taxation. Considering the above facts, it becomes clear that the argument of the appellant is an afterthought, which is devoid of truth. Therefore, the contention of the appellant is held to be not sustainable and hence rejected.*

*(i)(b) The appellant has also raised a ground contesting the action of the AO in not making independent enquiry and ignoring the replies filed by it during the course of assessment proceedings. With regard to the above, it needs to be stated that the assessment proceedings were conducted as per the procedure established by law and after giving adequate opportunities to the appellant to furnish its explanation. The explanation given by the appellant is also seen to be discussed in the assessment order. Without prejudice to the above, the appellant also had enough opportunity to substantiate its claims during the course of the appellate proceedings. However, it is found that the appellant could not counter the evidences seized during the course of search with credible explanation/proof. Considering the facts, the contention of the appellant is not sustainable and hence rejected.*

*(ii) The contentions raised by the appellant in para.13(ii) are in substance, a mere reproduction of those at para.13(i), which has been discussed and decided in the foregoing paragraph of this order. Hence, this ground is not adjudicated again.*

*(iii) The appellant, as mentioned in para.13(iii) above, has raised a ground that sales figures were not edited, as alleged by the AO, since no difference in stock/cash has been found during the course of search. As regards the argument raised by the appellant, it needs to be stated that in the assessment order itself, the methodology adopted by the appellant to correct/reconcile the stock has been discussed. The same has also been admitted by the employees of the appellant. One the stock is accounted as wastage, then there is no possibility of having a corresponding difference in stock. As regards the argument raised by the appellant in respect of cash difference, the other issues relating to the investments of the persons/entities of ABC Group, sourced out of unaccounted cash available with it, discussed earlier in this order also needs to be appreciated. It would be logical to assume that the unaccounted cash generated from suppressed sales also formed the source for the unaccounted investments of the persons/entities of ABC Group. Considering the above, the arguments of the appellant are not sustainable and hence the ground raised is rejected.*

*15. During the course of appellate proceedings, the appellant has raised further contentions/arguments, especially vide online communication dated 08/03/2024. The contentions/arguments have been examined and considered. It is observed that most of the contentions/arguments now raised by the appellant are reiterations of the earlier contentions/grounds, which have already been discussed and decided in the foregoing paragraphs. However, it is seen that the appellant has produced a copy of Chart and a letter purported to be dated 21/09/2022 along with extracts of certain unverified hand written register. It is observed that the extracts of the hand written register is not authenticated and does not convey any legible meaning in connection with the additions made in the assessment order. Considering the above, the contentions of the appellant are not sustainable and hence rejected.*

*16. To conclude, it needs to be stated that the search on the premises of the appellant has brought to light the evidences regarding sales suppression by the appellant and other discrepancies in the audited financials. It also leads to the inescapable conclusion that the taxable profit disclosed by the appellant in the audited financials have been suppressed with the help of the accounting software. The detailed discussions and conclusions made in the foregoing paragraphs substantiates the above mentioned facts. The AO, during the course of the assessment proceedings has been able to establish the legitimacy of the seized materials based on which the assessment has been framed. On the other hand, the appellant, neither during the course of the assessment proceedings nor during the appellate stage, could come up with any evidence to disprove the reliability or authenticity of the seized materials/evidences, based on which the assessment has been completed. The appellant has failed to substantiate its arguments against the findings of the AO in the assessment order. Considering the above and also in view of the*

*discussions made in the preceding paragraphs, the addition made by the AO on account of sales suppression stands confirmed.*

10. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

11. The learned AR before us filed paper book "factual paper book to the sales deletion" running from pages 1 to 99, written submission dated 30-09-2024 along with supporting annexure running from pages 1 to 69 and written submission dated 06-11-2024 along with sample copy of B2B credit sales invoice which were modified. The learned AR accordingly submitted that it is very common in the business carried on by the assessee that the customers return the purchased goods on account of various reasons such as change in colour, size or design or damaged goods. For all the sales returns, the assessee was maintaining physical registers which is available on page numbers 4 to 23 of the paper book. However, the employee of the assessee instead of showing the sales returns has modified the original sales invoices but the same is matching with the physical register maintained by the assessee. Such sales return/editing of sales bills were relating to cash and credit invoices issued by the assessee and therefore the allegation of the revenue that only the cash sales were modified is not correct. The learned AR in support of its contention vide letter dated 6 November 2024 has filed sample invoices of the credit sales which were modified.

11.1 According to the learned AR, all the sales/invoices as recorded in the books of accounts were duly matching with the VAT/GST returns which were filed after editing the sales invoice, but the same are accepted by the respective VAT/ GST authorities.

11.2 The learned AR also submitted that there is no discrepancy in the quantity of the inventory and there was no evidence found by the search team suggesting any unaccounted sales.

11.3 As per the learned AR considering the quantum of the sale, the modified invoices were negligible and therefore no adverse inference can be drawn against the assessee for suppression of sales. As such the invoices modified are within the range of the industry practice/parameters.

11.4 The revenue did not believe the contention of the assessee that the assessee instead of showing the sales returns separately have adjusted the invoices of sales which is against the principles of accounting. According to the Ld. AR merely the assessee has presented the accounts in a different manner, that cannot be used against the assessee.

11.5 Likewise, the revenue has not rejected the books of accounts under the provisions of section 145 of the Act despite having pointed out the defects in the quantum of sales. Accordingly, in the absence of the rejection of the books of accounts, the sales made by the assessee cannot be doubted.

11.6 All the sales return along with the wastage were duly recorded and accounted in the books of accounts in order to match the inventory. All the details of the wastage were duly furnished to the AO which was also accepted by him without pointing out any factual error.

11.7 The learned AR further argued that the statements recorded during the search proceedings cannot be relied upon to draw any adverse inference against the assessee unless corroborated by concrete supporting evidence. It was emphasized that none of the assessee's employees, including the General Manager, admitted in their statements under Section 132(4) of the Income Tax Act that sales had been suppressed in the audited financial statements. Based on this, the learned AR contended that no addition to the assessee's income is warranted under the given facts and circumstances.

12. On the other hand, the learned DR before us filed written submission by reiterating the findings contained in the order of authorities below and vehemently supported the order of the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. During the search proceedings, a bunch of loose sheets was found at the showroom of the assessee's sister concern, ABC Sales Corporation in Kannur, indicating that original sales bills had been altered. This modification was further substantiated by the data from the accounting software "GoFrugal," which showed that the quantities on original sales bills were reduced. The surplus inventory resulting from these changes was then recorded as wastage. This practice was identified not only in the assessee's firm (ABC Sales Corporation, Payyanur) but also in two other sister concerns, ABC Sales Corporation in Taliparamba and Kanhangad, during the assessment years 2017-18 to 2020-21.

13.1 Based on this evidence, as well as employee statements and data retrieved from the billing software, the revenue authorities concluded that these bill modifications were made to suppress sales figures, leading to additions to the total income of the assessee and its sister concerns for the relevant assessment years. The mere presence of an Excel sheet or statements recorded during a search cannot automatically be the sole basis for additions or disallowances under tax law unless supported by corroborative material. Tax assessments and additions typically require a holistic approach, considering all available evidence and adherence to procedural requirements. Prima Facie Evidence: Documents, such as Excel sheets, may act as prima facie evidence of transactions or financial dealings. In simple words, the documents like Excel sheets, loose papers, or other digital evidence found during a search may not be treated as conclusive evidence unless corroborated by other material. As such, without corroborative materials (e.g., bank statements, invoices, contracts), these documents might not be treated as conclusive evidence. Similarly, the statements recorded during a search must be corroborated with evidence such as cash, jewelry, or investments unearthed during the search. Likewise, the statements recorded under Section 132(4) of the Act can be used as evidence. However, they must be voluntary and not obtained under duress. As such, the statements alone cannot justify additions unless they are supported by corroborative evidence. As such, the statements made during a search under Section 132(4) of the Income Tax Act, 1961, can be treated as evidence, but courts have ruled that such statements must be corroborated with material evidence. In the case of *Shri Kailashben Manharlal Chokshi v. CIT* [2008] 174 Taxman 466 (Guj HC), the Gujarat High Court held that

statements recorded during a search are not sacrosanct. If a statement is retracted, it must be corroborated by tangible evidence to have evidentiary value. Similarly, the Hon'ble HIGH COURT OF KARNATAKA in the case of Deputy Commissioner of Income-tax v. Sunil Kumar Sharma reported in 159 taxmann.com 179 has observed as under:

*50. In the instant case, the first issue raised by the Revenue is as regards the addition of income made by the Assessing Officer based on loose sheets found in the house of a third party. However, we find that the Revenue has not established the said loose sheets to be considered as evidence in law by producing corroborative evidence supported by judgments and findings. Further, since the statement made by Shri K. Rajendran under section 132 of the IT Act is later retracted by him by filing an affidavit, the statement given by him does not hold any evidentiary value.*

*51. The notice issued under section 153C of the IT Act in respect of the Assessment year 2018-19 is not applicable, which is also supported by various judgments of the High Court. Further, the notice as regards the Assessment years 2015-16, 2016-17 and 2017-18 are also not applicable, as the total addition of income were made on the basis of loose sheets. Further, the panchanama or mahazar of all the loose sheets said to have been seized from the house of Shri Rajendran, are now unavailable and the learned counsel for the Revenue has no answer for the same. On these premise, the assessment order made for the Assessment years 2015-16, 2016-17, 2017-18 and 2018-19 requires to be quashed.*

13.2 The above finding of the Hon'ble High Court was affirmed by the Hon'ble Supreme Court reported in 165 taxmann.com 846 by observing as under:

*2. Heard the learned Senior Counsel appearing for the appellants.*

*3. We are not inclined to interfere with the impugned judgment and order passed by the High Court of Karnataka at Bengaluru in Writ Appeal No. 831/2022 (T-IT) dated 22-01-2024/ Deputy Commissioner of Income-tax v. Sunil Kumar Sharma [2024] 159 taxmann.com 179 (Karnataka) .*

*4. The Special Leave Petition is dismissed.*

13.3 In conclusion, it can be said that while Excel sheets and statements during a search can serve as starting points for investigation, but they cannot form the sole basis for additions or disallowances without corroborative material. Revenue authorities must substantiate

their findings with additional evidence to make their case legally sustainable.

13.4 Moving further, we note that the presence of undisclosed income or assets such as unaccounted investments, cash in hand, or jewelry discovered during a search is critical to substantiate any additions or disallowances. In tax proceedings, unearthed tangible or corroborative material evidence is crucial to justify the additions to an assessee's income. During a search, the tax authorities are expected to find and seize tangible evidence of undisclosed income or assets, such as:

- Undisclosed cash or bank accounts
- Unexplained investments
- Unaccounted-for jewelry or bullion
- Property or shares not disclosed in tax returns
- Digital evidence substantiating unaccounted income

13.5 If such evidence is missing, the foundation for additions or disallowances becomes weak, as courts have consistently ruled that mere suspicion or unsubstantiated documents/statements cannot justify additions.

13.6 The assessee contended before the lower authorities, and before us, that the modifications to sales bills were legitimate adjustments made in the ordinary course of business. Given the nature of the goods traded—such as tiles, sanitary wares, and bathroom fittings, damages during transportation or handling are common. Consequently, when

customers returned damaged goods, the original sales bills were modified, and the returned items were recorded as damaged stock.

13.7 In support of this argument, the assessee highlighted that, out of 32,988 sales bills issued during the year under review, only 49 bills (0.15%) were modified. Similarly, in subsequent years, only 0.75%, 0.19%, and 0.43% of bills were modified in the case of the assessee whereas, modifications in the case of sister concerns were ranging from 0.36% to 3% during A.Ys. 2017-18 to 2020-21. Thus, both the frequency and value of modified bills were negligible in comparison to the total turnover, except for ABC Sales Corporation in Taliparamba, where modifications accounted for 14% of the turnover in A.Y. 2018-19.

13.8 Considering the nature of goods, the small proportion of modified bills relatively to the total volume of bills and turnover, and in the absence of corroborative evidence suggesting that the assessee made unaccounted sales, purchases, or variation in stock, we find merit in the assessee's argument. Although a more proper accounting approach might have been adopted to record sales returns rather than modifying original bills, but this presentation difference does not impact the outcome.

13.9 The assessee's position also finds support from the judgment of Hon'ble Supreme court in case of *CIT v. Calcutta Discount Co. Ltd.* reported in 91 ITR 8, where the Hon'ble Supreme Court held that routine business practices, if bona fide and in the ordinary course, should not automatically be interpreted as tax evasion. Additionally, in *CIT v. A. Raman & Co.* (67 ITR 11) (SC), the Supreme Court emphasized that the

mere reorganization of a business transaction in a lawful manner cannot be grounds for presuming concealment of income. These precedents underscore that genuine business adjustments, such as those made for damaged goods, should not be deemed suppressive actions unless clear evidence of intent to evade tax is shown.

13.10 Likewise, the Hon'ble Bombay High Court in case of *Tata Chemicals Ltd. v. CIT* (256 ITR 395), held that modifications in business records, if necessary for accurate accounting, do not automatically imply fraudulent intent, especially in cases where damaged stock or returned goods are common. The negligible proportion of modified bills compared to the overall turnover in the assessee's case supports the argument that these modifications were reasonable and within normal business practices.

13.11 Furthermore, the revenue authorities alleged sales suppression primarily on modified bills and admissions from employees, with an emphasis on bills issued to customers not requiring tax credits were modified. However, no corroborative evidence was presented demonstrating that the modified bills represented concealed sales. No discrepancies in stock were found, and the assessee group continued to declare a substantial gross profit, even after these modifications. Additionally, no comparative data was provided to show that the gross profit ratio declared by the assessee was not at par with similar businesses. Regarding the modification of the sales bills to the tune of 14% for the AY discussed above, we find that there was higher gross profit ratio declared by the assessee in comparison to the earlier assessment year. As such the assessee in the earlier assessment year

2017-18 has declared GP at the rate of 14.57% which was increased to 17.39% in the year under consideration. Nevertheless, if we go by the version of the revenue the gross profit rate of the assessee will jump to 28.08% which is just double of the gross profit of the immediately preceding assessment year. As such, we are of the conscious view that such a jump in the gross profit ratio is not possible until and unless some alarming facts supported by the corroborative materials brought on record by the revenue. Thus, we disagree with the order of the authorities below.

13.12 Regarding the findings of the authorities below that the bills against the cash sales were only modified, we note that the Ld. A.R. vide letter dated 6-11-2024 and 30-9-2024 has submitted that the details of the sales made against the payment received through a banking channel which were modified. As such, we note that the modifications of the bills raised by the assessee was not limited to the extent of cash sales but also the sales through banking channel were also modified. Thus, to this extent the finding of the authorities below is incorrect.

13.13 From the details filed by the Ld. A.R. of the assessee at the time of hearing, it is also seen that the assessee was maintaining proper records of the sales bills which were modified with reasons in a systematic manner. Thus, it cannot be said that such modifications were carried out by the assessee without maintaining the supporting records and with the fraudulent objects.

13.14 Given the overall facts, the nature of the goods, the low proportion of modifications relating to the total turnover, and the lack of

supporting evidence from the revenue authorities to show suppression of sales, and higher gross profit, we accept the assessee's arguments. Accordingly, we overturn the findings of the CIT(A) and direct the Assessing Officer to delete the additions made by him. Therefore, the assessee's ground of appeal is allowed.

**14. The interconnected** issue raised by the assessee vide Ground Nos. 9 to 11 of its appeal is that the learned CIT(A) erred in confirming the addition of Rs. 1,63,36,238/- on account of unexplained foreign investment.

15. The necessary facts are that the assessee group comprises several companies, partnership firms, individuals, and foreign enterprises. Foreign enterprises include following entities:

- (i) M/s ABC Project W.L.L- Doha Qatar,
- (ii) M/s ABC Impex Africa Ltd- Kampala Uganda
- (iii) M/s ABC Mercantile FZC- Jebel Ali Free Zone- Dubai-UAE

15.1 During the search proceedings conducted on 27<sup>th</sup> February 2020, under section 132 of the Act, various types of documents were found and seized from the mobile/laptop/computer hard disk of key person of the group namely Shri Mumhammad Madni as well as from business premises of the ABC group. These documents include the following:

- i. Investors agreement undated and unsigned for the incorporation of a new company namely M/s ABC Mercantile FZC- Jebel Ali Free Zone- Dubai-UAE,
- ii. Excel sheet of share valuation as on date 31-12-2016 of three companies namely M/s ABC Project W.L.L- Doha Qatar, M/s

ABC Impex Africa Ltd- Kampala Uganda and M/s Bathx bathware India Pvt. Ltd.

- iii. Individual share holding pattern in the companies stated above after revaluation for-Profit sharing purpose in so called new company namely M/s ABC Mercantile FZC- Jebel Ali Free Zone- Dubai-UAE
- iv. Excel sheet regarding Zakath/dividend distribution etc. by foreign entities.
- v. Other miscellaneous documents- board meetings, internal communications etc.

15.2 As per the investor's agreement, discovered during the search, the assessee group intended to establish a new entity namely M/s ABC Mercantile FZC in Dubai Free Zone. This company would operate as a free zone entity, allowing it to benefit from favourable tax regulations and ease of business operations within the UAE. To accomplish this, the group planned to consolidate the accounts of its already operational companies, effectively merging financial records and resources. The existing entities whose accounts and resources were intended to be consolidated are detailed as under:

- (i) M/s ABC Project W.L.L- Doha Qatar,
- (ii) M/s ABC Impex Africa Ltd- Kampala Uganda
- (iii) M/s Bathx Bathware India Pvt Ltd -Cochin India

15.3 According to the investor's agreement discovered during the search, the assessee group intended to establish M/s ABC Mercantile FZC in the Dubai Free Zone with a total share capital of USD 20 million, divided into 10,000 shares at USD 2,000 each. The agreement outlined

the company's intended business activities, identified the promoters, detailed management and board appointment procedures, and explained the profit distribution structure.

15.4 The Assessing Officer (AO) inferred from this document that the initial capital contributors in M/s ABC Mercantile FZC were the following existing companies within the assessee group:

1. M/s ABC Project W.L.L, Doha, Qatar.
2. M/s ABC Impex Africa Ltd, Kampala, Uganda.
3. M/s Bathx Bathware India Pvt Ltd, Cochin, India.

15.5 Additionally, an Excel sheet, reportedly prepared by the accountant of M/s ABC Mercantile FZC, Shri Jabir P.K., was seized during the search. This document contained the valuation of the share capital of the three companies as of December 31, 2016, estimated at USD 12 million. Other Excel sheets listed individual shareholders' stakes in the consolidated entities based on revalued share amounts, which were intended to determine the shareholding and profit-sharing ratios in M/s ABC Mercantile FZC.

15.6 The AO, analyzing these Excel sheets, investor agreements, board meeting documents, and email correspondence, concluded that the shareholders of the three companies made undisclosed investments in M/s ABC Mercantile FZC over the assessment years 2017-18 to 2020-21. These investments were allegedly made through the existing companies but were not disclosed in the individual shareholders' books of accounts or in their personal income tax returns.

15.7 In response to the findings of the Assessing Officer (AO), the assessee group contended that the investor agreement discovered during the search was merely a proposal and had not materialized. The group argued that the Excel sheets in question, which contained projected or estimated valuations, were far from actual transactions and should not be regarded as evidence of real investments. The figures in these sheets were not corroborated by any other reliable evidence or documentation, and the internal correspondence, including the board meeting documents, was deemed by the group to be purely internal managerial communication unrelated to any actual investment in M/s ABC Mercantile FZC.

15.8 Further, the group emphasized that M/s Bathx Bathware India Pvt Ltd was not involved in the incorporation of M/s ABC Mercantile FZC. The group clarified that M/s Bathx Bathware India Pvt Ltd had neither contributed capital nor held shares in the Dubai Free Zone entity.

15.9 However, the AO rejected these arguments, contending that the investors agreement, the share valuation Excel sheets, and other related documents collectively indicated that M/s Bathx Bathware India Pvt Ltd, along with the other two companies, M/s ABC Project W.L.L. (Doha, Qatar) and M/s ABC Impex Africa Ltd. (Kampala, Uganda), were indeed participants in the formation of M/s ABC Mercantile FZC. According to the AO, the Excel sheets, especially the one labeled "Investment Only Latest," contained detailed month-by-month records of capital investments, share profit distributions, and new investments, which the AO argued reflected actual transactions rather than mere projections.

15.10 Additionally, the AO noted that the operations of these companies, which merged into M/s ABC Mercantile FZC, were consistent with substantial investments, as evidenced by the expansion of the assessee's business to international markets. This expansion, in the AO's view, was not feasible without significant capital investment.

15.11 The AO further observed contradictions in the group's statements. For instance, Shri Muhammad Madani, while initially acknowledging the investment in the foreign company, later retracted and claimed that the investment was made by his brother, Shri Shameem, and Shri Muhammad Abdul Gafoor. This was further corroborated by Shri Jabir, the accountant who prepared the Excel sheets, in his sworn statement.

15.12 Based on these findings, the AO concluded that the Excel sheets contained actual transaction data and not mere projections. As a result, the AO made additions under Section 69 of the Income Tax Act for unaccounted investments in the hands of ABC Sales Payyannur and others for the assessment years 2017-18 to 2020-21. For the year under consideration, the AO made an addition of ₹1,63,36,238 to the assessee's income under Section 69 of the Act, treating the unreported investment as undisclosed income.

16. On appeal, the learned Commissioner of Income Tax (Appeals) [CIT(A)] upheld the addition made by the Assessing Officer (AO). The Id. CIT(A) found that the investor agreement, Excel sheets, and other documents provided a sufficient basis for the AO's conclusions regarding the undisclosed investments made by the shareholders in M/s ABC Mercantile FZC. Despite the assessee's arguments that the documents were merely proposals or estimates, the CIT(A) agreed with the AO that

the documents pointed to actual, unreported transactions. Consequently, the addition of ₹1,63,36,238 made in the assessment year 2017-18 was confirmed by the CIT(A), reinforcing the AO's findings based on the documents discovered during the search.

17. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

18. The learned Authorized Representative (AR) before us has submitted a comprehensive set of documents, including a paper book running from pages 1 to 233, with written submissions spanning 15 pages. The AR contended that there was no actual investment made by the shareholders of the entities, namely M/s Bathx Bathware India Pvt Ltd, M/s ABC Project W.L.L.- Doha Qatar, and M/s ABC Impex Africa Ltd-Kampala Uganda, in M/s ABC Mercantile FZC. This assertion was supported by the list of shareholders placed on page 150 of the factual paper book. It was clarified that although the name of Shri Muhammed Madni appeared as a shareholder, the actual investment was made on behalf of Shri Muhammed Abdul Gafoor and Shri Shameem, who are non-resident individuals and the brother and associate of Shri Muhammed Madni, respectively. The AR further emphasized that the actual ownership of shares in M/s ABC Mercantile FZC vests with Shri Muhammed Abdul Gafoor and Shri Shameem, with Shri Muhammed Madni being a registered shareholder on their behalf. This was substantiated by the confirmations from Shri Muhammed Abdul Gafoor and Shri Shameem, placed on pages 227 and 231 of the factual paper book.

18.1 The AR also submitted that there was no record of any investment made by M/s Bathx Bathware India Pvt Ltd. in M/s ABC Mercantile FZC and that the investor agreement found during the search had not materialized into actual transactions. The Excel sheets and board resolutions discovered during the search were projections for the potential growth of the overseas business, particularly through the merger of the operations of several companies. These projections, according to the AR, lacked any corroborating evidence to confirm their realization, and therefore, no adverse inferences should be drawn based solely on these documents.

18.2 Additionally, the AR submitted that Shri PA Ibrahim, a non-resident, had legally made investments in M/s Bathx Bathware India Pvt Ltd through banking channels in compliance with the Foreign Exchange Management Act (FEMA), and this was duly disclosed in the company's books of accounts.

18.3 The AR further argued that Shri Muhammed Madni had received dividends from ABC Project WLL, Qatar, and the same were duly offered to tax in his income tax return for the year of receipt. The AR stressed that none of the other alleged shareholders had received any dividend or zakath, as alleged by the revenue, thereby rendering the claim of undisclosed profits in the hands of these shareholders baseless.

18.4 In conclusion, the AR submitted that the Excel sheets, investor agreements, and other documents found during the search were merely "dumb documents," and since there was no corroborative evidence to support their contents, no adverse inference should be drawn against the assessee based on these documents. The AR also contended that

the statements recorded under Section 132(4) of the Income Tax Act, without any incriminating material, cannot serve as a valid basis for making additions in the hands of the assessee.

19. On the other hand, the learned DR before us contended that the search operation conducted uncovered significant unexplained investments and undisclosed foreign assets held by the ABC Group. It was revealed that the group's flagship companies in Uganda, Qatar, and India were consolidated under a single entity, ABC Mercantile FZCO, Dubai, which currently manages operations in GCC and East Africa. Despite generating income and sharing profits through these businesses, the group failed to disclose these investments and foreign assets in their income tax returns filed in India. This omission highlights a deliberate attempt to evade taxation and conceal foreign wealth.

19.1 The material found further revealed undisclosed capital investments made by resident individuals and companies associated with the ABC Group during FY 2016-17 to FY 2019-20. These capital inflows into ABC Mercantile FZCO were never reported, violating provisions of the Act. Such non-disclosure is a clear indication of the group's intent to hide foreign investments from regulatory authorities. Additionally, the search uncovered substantial foreign income received by key individuals, of the group. This income includes dividend payouts, zakat payments, salaries, and capital gains, all of which were undisclosed in their Indian tax filings.

19.2 The search material identified that dividend payments were distributed across multiple financial years, as evidenced by the seized excel file "Dividend 2018.xlsx" from the corporate office of ABC

Mercantile Group. Verified bank receipts confirm that dividend amounts were transferred to the Indian accounts of stakeholders, yet these were not reported to taxation authorities. Similarly, the Zakat payments from ABZ Mercantile FZCO for the year 2018, documented in PDFs found during the search indicate further non-disclosure. The extracted evidence also revealed significant salary payments and capital gains received by the chairman and other individuals, reinforcing the findings of deliberate tax evasion.

19.3 The learned DR contended the department's case is backed by strong corroborative evidence, including extracted mobile phone data, hard disk files, bank statements, and PDF documents. These pieces of evidence confirm the transfer of undisclosed foreign income into Indian bank accounts while matching the values declared in seized financial documents. For instance, detailed reconciliation of dividend data, such as payments made in Qatari Riyals and their conversion to USD, demonstrates the accuracy of the department's findings.

19.4 In conclusion, the ABC Group and its key stakeholders engaged in intentional non-disclosure of significant investments and incomes generated from foreign entities. By failing to report such transactions, they violated Indian tax laws under provisions requiring the disclosure of global income for residents. The department, therefore, has sufficient grounds to levy taxes.

20. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the AO, based on various documents seized during the search operation, found that there was a merger of the

operations of three companies by incorporating M/s ABC Mercantile FZC in Dubai, UAE. Consequently, the shareholders of these three companies allegedly made undisclosed investments in the shares of these companies in order to acquire rights to the profits of the foreign entity, M/s ABC Mercantile FZC. The AO's conclusion was primarily based on the so-called investor's agreement and various Excel sheets related to share valuations, shareholder allocations, dividend distributions, and zakath distributions, all of which were discovered during the search.

20.1 On the other hand, the assessee and the assessee group repeatedly denied any actual investment in the foreign entity, either directly or through associate companies such as M/s Bathx Bathware India Pvt Ltd. They submitted that the investor agreement and Excel sheets were merely projections that never materialized.

20.2 To evaluate the validity of the AO's findings, we must analyze the materials such as the investor agreement and the Excel sheets that were relied upon by the AO and the learned CIT(A) in making the additions. The first allegation by the revenue is that the operations of M/s ABC Project WLL-Qatar, M/s ABC Impex Africa Ltd-Uganda, and M/s Bathx Bathware India Pvt Ltd had been merged with M/s ABC Mercantile FZC. A review of the financial statement of M/s ABC Mercantile FZC reveals that the company has made purchases and sales with related parties. This can be verified from the financial statement of M/s ABC Mercantile FZC, available at pages 78 to 101 of the factual paper book.

20.3 It is important to note that M/s ABC Mercantile FZC was formed on 27-11-2016, and its financial statements were prepared for the first time as of 31-12-2017, covering a period of thirteen months. The

financial statements, found in the paper book, suggest that the company made significant transactions with related parties, which could indicate that some of the business of the existing entities was routed through M/s ABC Mercantile FZC. In this regard, the allegation of the revenue that the operations/accounts of the existing companies were merged into M/s ABC Mercantile FZC appears to have some basis.

20.4 However, it is equally important to recognize that all three companies—M/s ABC Project WLL-Qatar, M/s ABC Impex Africa Ltd-Uganda, and M/s Bathx Bathware India Pvt Ltd—continued to carry out their business operations independently. M/s ABC Mercantile FZC was primarily formed to obtain a business license to operate in the Dubai Free Zone, but the actual operations of the businesses continued through the existing companies. This fact was also acknowledged by the learned CIT(A) in his order which is extracted as under:

*"The formation of the FZCO is only for getting a licence for doing the business from the Free Zone. The actual business will be done by the above three participating companies of ABC Group, i.e, (1) M/s Bathx Bathware India Private Limited."*

20.5 In the light of this, it is clear that while there was some interrelationship in the operations of the companies, the revenue's assumption that the operations of the three existing companies were fully merged with M/s ABC Mercantile FZC may not be entirely accurate, given that these companies continued their operations independently. The investor agreement and related documents must, therefore, be closely scrutinized, as the projections contained within them did not

materialize into actual transactions, according to the assessee's submission.

20.6 Nevertheless, the key issue that arises is whether any investment was actually made in the foreign or Indian company, based on the investor agreements and Excel sheets recovered during the search proceedings. Upon examining the investor agreement and the audited financial statement of ABC Mercantile FZC for the period ending 31st December 2017 (available on pages 78 to 101 of the factual paper book), we made several observations that shed light on the situation:

1. **Share Capital Discrepancy:** According to the impugned investor agreement, the share capital was proposed to be USD 20 million. However, the audited financial statement of ABC Mercantile FZC shows the actual share capital at AED 500,000 (which is far less than the projected share capital in the agreement). Furthermore, this capital is held equally by two individuals: Shri Abdul Gafoor Muhammad and Shri Muhammad Madni.
2. **Board of Directors and Shareholding:** The investor agreement stipulated that to be part of the Board of Directors of ABC Mercantile FZC, an individual would need to invest in 500 shares of USD 2,000 each. However, according to the audited financial statement, PA Ibrahim, one of the directors, does not hold any shares in ABC Mercantile FZC. This discrepancy suggests that the agreement's provisions regarding shareholding and board participation were not fully implemented.
3. **Alleged Investments through M/s Bathx Bathware India Pvt Ltd:** The revenue, based on the Excel sheets, alleged that M/s Bathx

Bathware India Pvt Ltd was a participating investor, and that the assessee group, along with other individuals/entities, made investments in ABC Mercantile FZC through this Indian entity. However, the audited financial statement of ABC Mercantile FZC shows only two shareholders, holding 50% of the shares each. This contradicts the revenue's claim based on the Excel sheets and shareholder agreements.

20.7 From these observations, we find merit in the assessee's contention that the investor agreement and the Excel sheet, which purportedly detailed the valuation of shares in the three existing companies, were projections and never materialized. The revenue has not provided any additional evidence beyond the Excel sheets to prove that any foreign remittances were made by the assessee group. Additionally, the audited books of ABC Mercantile FZC confirm that only two shareholders exist, which directly contradicts the revenue's allegations based on the investor agreements and Excel sheets. Thus, the evidence put forward by the revenue, primarily in the form of the investor agreement and Excel sheets, does not provide sufficient support for the allegations of undisclosed investments.

20.8 Furthermore, we note that, the AO's argument centers around the allegation that the ABC group made indirect investments in M/s ABC Mercantile FZC by routing investments through three existing companies: M/s ABC Project WLL-Qatar, M/s ABC Impex Africa Ltd-Uganda, and M/s Bathx Bathware India Pvt Ltd. According to the AO, the business operations of these companies were merged into M/s ABC Mercantile FZC. Based on this theory, the AO made additions to the

income of various assessees from the ABC group for the alleged indirect investments made through these companies.

20.9 The parties challenging the AO's assessment, who are currently involved in the appeals, are as follows:

1. ABC Sales Corporation Payyannur (taken by us lead case)
2. ABC Sales Corporation Taliparamba
3. ABC Sales Corporation Kanhangad
4. ABC Buildware India Pvt Ltd
5. Junaid KN
6. Abdul Vaheed
7. Ruchit Ashar
8. Keeran Muhammed Basheer
9. Muhammed Jabir
10. Muhammed Madni

20.10 As noted in the case, the audited financial statement of M/s ABC Mercantile FZC (UAE) indicates that Shri Muhammed Madni is the only shareholder among the 10 parties mentioned in the appeals. This is significant because it establishes that, contrary to the AO's allegations, only one of the assessees, Shri Muhammed Madni, is an actual shareholder in M/s ABC Mercantile FZC, and therefore, the issue of the addition regarding his income is dealt with separately.

20.11 In contrast, the AO's argument suggests that the 10 parties, including those listed in the appeals, had indirectly invested in M/s ABC Mercantile FZC by first making investments in the three companies—M/s ABC Project WLL-Qatar, M/s ABC Impex Africa Ltd-Uganda, and M/s

Bathx Bathware India Pvt Ltd— the operations of which, according to the AO, were merged into ABC Mercantile FZC.

20.12 Therefore, considering the contradictory stand of the revenue and the assessee, we proceeded to analyze the materials. Upon analyzing the seized materials relied upon by the AO, several inconsistencies have been identified as under:

1. Investment in M/s Bathx Bathware India Pvt Ltd: The revenue authorities allege that three assessee firms (ABC Payyanur, Taliparamba, and Kanhangad) made an investment in M/s Bathx Bathware India Pvt Ltd, each holding 5% shares. However, the shareholder list from the factual paper book shows that these firms do not hold any shares in the company. The Revenue contends that these firms may hold shares in the names of their respective partners, but this is not substantiated by the records or evidence provided.
  
2. Investment by Shri Abdul Vaheed, Shri Muhammed Jabir, and Shri Junaid KN: The AO claims that these individuals made undisclosed investments in the three companies/entities and computed their respective undisclosed investments based on shareholding valuations. However, upon review, it is found that these individuals were holding shares in Bathware India Pvt Ltd. only and no share was held by them in other entities as alleged. Likewise, their investments in BathxBathware were made in earlier years, which had been disclosed in the company's books, rather than the year under consideration.

3. Shri Abdul Gafoor's Investment: The excel sheet according to the AO suggest that Shri Abdul Gafoor invested in M/s Bathx Bathware India Pvt Ltd and ABC Project WLL Qatar in 2017. However, the actual shareholding of Shri Abdul Gafoor in Bathx Bathware is only 9.27% and he is not the major shareholder as alleged by the Revenue. Additionally, there is no evidence showing that he held any shares in ABC Project WLL Qatar at the beginning of 2017.

4. Discrepancy in Shareholder Lists: The AO relied on an excel sheet which indicated 10 individuals invested in ABC Project WLL Qatar, but the actual shareholder list shows only 3 shareholders in the entity. Similarly, the excel sheet lists 10 individuals holding shares in ABC Impex Africa-Uganda, while the actual list shows only 4 shareholders, with the major 94% shareholding being held by M/s ABC Mercantile FZC.

20.13 From the detailed observations, it becomes evident that the materials relied upon by the revenue for making the additions in the hands of the assessee group, specifically on the grounds of undisclosed investments, is not credible. The arguments put forth by the learned AR of the assessee are further strengthened by the inconsistencies and contradictions in the Excel sheets and shareholder agreements, which appear to be mere projections that never materialized. Likewise, the FT & TR Division of the Central Board of Direct Taxes (CBDT) in India is a specialized division responsible for handling matters related to Foreign Taxation (FT) and Tax Research (TR). It plays a critical role in addressing international tax issues, managing treaties, and conducting research to shape India's tax policies and global tax compliance.

However, the Revenue in the present case has made reference to the FT & TR but nothing adverse has been brought on record against the assessee even after the lapse of so many years.

20.14 Furthermore, regarding the revenue's claim that the operations of the three entities (M/s ABC Project WLL-Qatar, M/s ABC Impex Africa Ltd-Uganda, and M/s Bathx Bathware India Pvt Ltd) were merged to form M/s ABC Mercantile FZC, and that these companies were the initial capital contributors, there is a key observation: M/s ABC Mercantile FZC holds a 94% stake in ABC Impex Africa Ltd-Uganda. This fact, verified from the shareholder list, directly contradicts the notion that ABC Impex Africa Ltd-Uganda was an initial contributor to the capital of ABC Mercantile FZC. This further undermines the revenue's argument that the three existing companies were capital contributors to the foreign entity. Thus, the theory proposed by the revenue is conclusively disproven, as the actual investment flows and shareholding patterns do not align with the allegations made.

20.15 Regarding the issue of the alleged distribution of dividends and Zakath (a form of charitable giving in Islam), the learned DR (Departmental Representative) argued that certain Excel sheets showed distribution of Zakath and dividends to resident Indians. The DR contended that such dividend payments were possible only if investments had been made by the concerned parties, with banking records supporting these transactions. According to the DR, the investments were allegedly made in the foreign entity ABC Mercantile FZC through the shareholders of other companies (M/s ABC Project WLL-Qatar, M/s ABC Impex Africa Ltd-Uganda, and M/s Bathx Bathware India

Pvt Ltd) whose operations were supposedly merged to form ABC Mercantile FZC. However, this claim rested on the assumption that such investments were not recorded in the books of accounts.

20.16 Upon reviewing the materials presented, the Excel sheets in question primarily pertain to ABC Project WLL Qatar, detailing dividend distributions to certain parties (as seen in pages 17 to 20 of the DR's submission). Crucially, there is no material or evidence suggesting that these dividends were linked to investments in ABC Mercantile FZC Dubai. The distribution appears to be related to the operations of ABC Project WLL-Qatar, not directly tied to ABC Mercantile FZC. Therefore, the conclusion is that the alleged dividend payments do not substantiate the revenue's claim that they stem from investments in the foreign entity namely ABC Mercantile FZC. This further weakens the case of unaccounted foreign investments. In this regard the relevant submission of the learned DR reads as under:

*"i. Dividend Payout :The evidences regarding the dividend distribution of the Investors of the company ABC Project WLL, Qatar for the cater year 2017 have been found in the Dividend 2018.xlsx from F8-Audrt desktop seized from corporate office of ABC Mercantile Group, Kannur. It was seen that the dividend for a year is distributed over multiple financial years. The total amount of dividend of ABC Mercantile FZCO, Dubai was distributed to all the investors from its subsidiary company ABC Project WLL Qatar during FY 2017-18 and FY 2018-19."*

20.17 However, upon reviewing the shareholding pattern provided by the assessee, it is clear that M/s ABC Project WLL Qatar is not the holding company of M/s ABC Mercantile FZC Dubai, contrary to the allegations made by the learned DR. This assertion is further supported by the Assessment Officer's (AO) findings in relation to Shri Mehmood Madani's capital gain calculation. The AO recorded that Shri Khalifa Alhabshi K S Al-Rahibi, Muhammed Madani, and Shri Zayed Mahamood

were the shareholders of ABC Project WLL Qatar, a fact that can be verified from the assessment order of 2020-21. Therefore, the claim made by the DR regarding the holding structure between these entities is inconsistent with the verified records.

20.18 Regarding the issue of zakath, the alleged excel sheets detailing its distribution concern M/s ABC Project WLL Qatar and do not provide evidence of unaccounted investments in ABC Mercantile FZC Dubai. As per Islamic practice, zakath is a religious obligation where a certain percentage of income is given to the needy. The fact that funds from ABC Project WLL Qatar were credited to the accounts of individuals in India could indicate that these individuals were acting as intermediaries, distributing zakath on behalf of the entity, rather than making any personal investments in ABC Mercantile FZC.

20.19 Without evidence suggesting that the credited zakath funds were used for personal gain, and with no indication that these credits were related to investments in the foreign entity, the argument stands that these transactions were purely for charitable purposes. The lack of material evidence to suggest otherwise leads to the conclusion that these payments do not support the revenue's claim of unaccounted investment.

20.20 Without prejudice to the above finding, the merger of operations alleged by the Revenue is clarified through an example. In this scenario, three companies with similar business objectives but different financial turnovers may merge their operations without necessarily merging their individual entities. Instead, these companies could set up a new entity to

route their combined business operations in the target market. The income generated by this new entity would then be shared proportionally among the original companies, based on their contribution to the business volume.

20.21 In such a case, the shareholders of the existing companies should receive their rightful share of profits from the new entity, but it is not necessary for these shareholders to invest directly in the new entity (like ABC Mercantile FZC). The key here is that the merger was related to business operations rather than capital investment. The allocation of profit to the shareholders of the original companies can be done through valuation and proper agreements, without requiring them to purchase shares in the new entity.

20.22 Given the detailed review, the **CIT(A)'s findings** that the assessee had made unaccounted investments through the existing companies are unsupported. Therefore, it is concluded that the assessee did not make any unaccounted investment in the foreign entity (ABC Mercantile FZC). As a result, the addition made by the AO is incorrect, and the CIT(A)'s decision is set aside, with the direction to delete the addition. Consequently, the ground of appeal is allowed in favor of the assessee.

21. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153C of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153C of the Act on account of proper satisfaction note not recorded/ provided in accordance with the provision of section 153C of the Act, and
- iii. Challenging the validity of the assessment under section 153C of the Act on account of the limitation of time under section 153B of the Act.

22. At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

23. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

24. At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's

ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

25. In the result, the appeal of the assessee is hereby partly allowed.

**Coming to ITA Nos. 449, 457 & 534/Coch/2024 relevant to AYs. 2018-19 to 2020-21 in the case of assessee i.e. ABC Sales Corporation (Payyannur)**

26. The issue raised by the assessee in all three captioned appeals for the A.Ys. 2018-19 to 2020-21 are identical, therefore, for the sake of brevity and convenience, we are inclined to club all of them for the purpose of adjudication of all these 3 appeals.

27. The assessee vide letter dated 24 September 2024 filed additional ground in the captioned appeals which is identical to additional ground of appeal filed by the assessee in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground of appeal raised by the assessee for A.Y. 2017-18 has been admitted by us vide Paragraph No. 5 of this order. Following the same, the additional ground raised by the assessee in the captioned appeals for A.Ys. 2018-19 to 2020-2021 are hereby admitted.

**28. The first issue** raised by the assessee in its appeal is that the learned CIT(A) erred in confirming the addition made on account of suppressed sales.

29. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AYs 2018-19 to 2020-21 are identical to the

issue raised by the assessee in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessment years 2018-19 to 2020-21. The ground of appeal of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph No. 13 of this order wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2017-18 shall also be applied for the assessment years 2018-19, 2019-20 and 2020-21. Hence, the grounds of appeal filed by the assessee in all three appeals are hereby allowed.

**30. The next** issue raised by the assessee in the captioned appeals is that the learned CIT(A) erred in confirming the addition made on account of foreign investment.

31. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2018-19 to 2020-21 are identical to the issue raised by the assessee in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessment years 2018-19 to 2020-21. The ground of appeal of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2017-18 shall also be applied for the assessment years 2018-19, 2019-20 and 2020-21. Hence, the grounds of appeal filed by the assessee in all three appeals are hereby allowed.

32. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153C of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153C of the Act on account of proper satisfaction note not recorded/ provided in accordance with the provision of section 153C of the Act, and
- iii. Challenging the validity of the assessment under section 153C of the Act on account of the limitation of time under section 153B of the Act.

32.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

33. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

33.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

34. In the result, the appeals of the assessee for A.Ys. 2018-19 to 2020-21 are hereby partly allowed.

**Coming to ITA No. 404/Coch/2024 for A.Y. 2017-18 in the case of assessee namely ABC Sales Corporation (Payyannur)**

35. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition by the amount added to closing stock on account of its valuation inclusive of tax and duties.

36. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2017-18 is identical to the issue raised by the sister concern of the assessee namely ABC Sales Corporation (Kanhangad) in ITA No. 578/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 578/Coch/2024 shall also be applicable for the issue raised by the assessee in captioned appeal for AY 2017-18. The ground of appeal raised by the sister concern of the assessee i.e. ABC Sales Corporation (Kanhangad) for the A.Y. 2017-18 has been decided by us vide in the succeeding paragraph No. 73 of this order, wherein the issue has been decided in favour of the assessee. The

learned AR and the DR also agreed that whatever will be the findings for the appeal of ABC Sales Corporation (Kanhangad) for assessment year 2017-18 shall also be applied for the ground of appeal raised by the assessee. Hence, the ground of appeal filed by the assessee is hereby allowed.

37. In the result, the appeal of the assessee is hereby allowed.

**Coming to ITA Nos. 440, 450 & 535/Coch/2024 for A.Ys. 2017-18, 2018-19 & 2020-21 in the case of ABC Sales Corporation (Taliparamba)**

38. The issue raised by the assessee in all the three captioned appeals for the respective A.Ys. are identical, therefore, for the sake of brevity and convenience, we are inclined to club all of them for the purpose of adjudication of all these 3 appeals.

39. The assessee, through a letter dated 24 September 2024, filed an additional ground of appeal in the captioned appeals for A.Ys. 2017-18, 2018-19, and 2020-21. This ground is identical to the additional ground of appeal raised by the sister concern of the assessee, namely ABC Sales Corporation (Payyannur), in ITA Number 441/Coch/2024 for the A.Y. 2017-18. The additional ground raised in the case of ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 was admitted by us, as recorded in Paragraph No. 5 of this order. Following the same reasoning, the additional grounds raised by the assessee for A.Ys. 2017-18, 2018-19, and 2020-21 in the present appeals are hereby admitted.

**40. The next issue** raised by the assessee in its appeal is that the learned CIT(A) erred in confirming the addition made on account of suppressed sales.

40.1 At the outset, we note that the issues raised by the assessee in the captioned grounds of appeal for A.Ys. 2017-18, 2018-19 & 2020-21 are identical to the issue raised by the sister concern of the assessee namely ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeals for A.Ys. 2017-18, 2018-19 & 2020-21. The ground of appeal of the ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 13 of this order wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of ABC Sales Corporation (Payyannur) shall also be applied for the appeals of the present assessee for A.Ys. 2017-18, 2018-19 & 2020-21. Hence, the grounds of appeal raised by the assessee in the said A.Ys. are hereby allowed.

**41. The next issue** raised by the assessee in its appeal is that the learned CIT(A) erred in confirming the addition made on account of foreign investment.

41.1 At the outset, we note that the issue raised by the assessee in the captioned ground of appeal for A.Ys. 2017-18, 2018-19 & 2020-21 is identical to the issue raised by the sister concern of the assessee namely

ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeals for A.Ys. 2017-18, 2018-19 & 2020-21. The ground of appeal of the ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order, wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied in the case of present assessee for A.Ys. 2017-18, 2018-19 & 2020-21. Hence, the ground of appeal raised by the assessee in the said A.Ys. is hereby allowed.

42. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.

42.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

43. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

43.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

44. In the result, the appeals of the assessee for A.Ys. 2017-18, 2018-19 & 2020-21 are hereby partly allowed.

**Coming to ITA No. 458/Coch/2024 for A.Y. 2019-20 in the case of ABC Sales Corporation (Taliparamba)**

45. The assessee, through a letter dated 24 September 2024, has filed an additional ground of appeal that is identical to the one raised by the assessee's sister concern, namely ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground of appeal in the case of ABC Sales Corporation (Payyannur) was admitted by us, as recorded in Paragraph No. 5 of this order. Following

the same reasoning, the additional ground raised by the assessee in the present appeal is hereby admitted.

**46. The issue** raised by the assessee in ground Nos. 1, 2, 3, 12 & 14 of its appeal are general in nature and do not require any separate adjudication. Accordingly, the same are hereby dismissed as infructuous.

**47. The issue** raised by the assessee vide ground No. 8 of its appeal is that the learned CIT(A) erred in confirming the addition of Rs. 3,25,84,113/- on account of suppressed sales.

47.1 At the outset, we note that the issues raised by the assessee in the captioned grounds of appeal for A.Y. 2019-20 is identical to the issue raised by the sister concern of the assessee namely ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeal for A.Y. 2019-20. The ground of appeal of the ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 13 of this order wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied to the present assessee. Hence, the ground of appeal raised by the assessee is hereby allowed.

**48. The interconnect issue** raised by the assessee, through ground Nos. 9 to 12 of its appeal, pertains to the learned CIT(A)'s confirmation of an addition of Rs. 15,73,600/- on account of foreign investment.

48.1 At the outset, we note that the issues raised by the assessee in the captioned grounds of appeal for A.Y. 2019-20 are identical to the issue raised by the sister concern of the assessee namely ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground appeal for A.Y. 2019-20. The ground of appeal of the ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order, wherein the issue has been decided in the favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied to the present assessee. Hence, the ground of appeal raised by the assessee is hereby allowed.

**49. The last** issue raised by the assessee vide ground No. 13 of its appeal is that the learned CIT(A) erred in confirming the addition of Rs. 9,22,75,684/- on account of excess stock.

50. During the search proceedings conducted on 27-02-2020 at the showroom of the assessee, namely ABC Emporio in Kannur and ABC Sales Corporation in Taliparamba, a discrepancy in stock was found. The difference was observed between the stock recorded in the accounting software and the actual physical stock. The details of the stock difference are as follows:

Showroom	Actual as per Excel Sheet	As per Tally	Difference
ABC Emporio	Rs. 11,71,06,613/-	Rs. 4,19,71,530/-	Rs. 7,51,35,110/-
ABC Sales Taliparamba	Rs. 6,34,89,041/-	Rs. 4,63,48,467/-	Rs. 1,71,40,574/-
<b>Total Difference</b>			<b>Rs. 9,22,75,684/-</b>

50.1 In view of the above differences between the actual stock and the stock recorded in the books of account, the Assessing Officer (AO) concluded that the assessee had generated undisclosed income. Consequently, the AO made a separate addition of Rs. 9,22,75,684/- to the total income of the assessee.

51. The aggrieved assessee filed an appeal before the learned CIT(A), contending that the difference in stock, which the AO used to make the addition, was based on the excel sheets bearing Nos. A-14 and A-1. The assessee argued that the AO did not seek any explanation regarding these excel sheets. The assessee further clarified that the stock as per the books was Rs. 11,92,11,567/- and not Rs. 8,83,19,970/- as observed by the AO, leading to an addition of Rs. 3,08,91,597/- in the assessment. Additionally, the stocks recorded in the tally/books were exclusive of GST, whereas the stock considered by the AO, as per the excel sheets, was inclusive of GST. This discrepancy resulted in the impugned difference in stock. The assessee further asserted that there was no actual difference in stock found during the physical verification and, therefore, requested for the deletion of the impugned addition.

51.1 However, the learned CIT(A) disagreed with the assessee's submission and confirmed the addition. The Id. CIT(A) observed that while the assessee had provided an explanation regarding the difference in stock, this explanation was not supported by any concrete material/evidence.

52. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

53. The learned AR before us contended that there was no difference in the quantity of stock, and the discrepancy noted was only in the value of the stock. This fact, according to the learned AR, could be verified from the submissions made before the learned CIT(A). The learned AR further argued that the difference in the value of stock should not result in an addition to the income, as it is "tax neutral."

53.1 Without prejudice to the above, the learned AR further submitted that if any addition is to be made, it should be done under the provisions of section 69A of the Income Tax Act. However, the AO has not invoked section 69A for making the addition, which raises a concern. The learned AR pointed out that the AO did not refer to any specific provision of the Act under which the addition of Rs. 9,22,75,684/- was made, thus arguing that, in the absence of any such invocation, the addition is not warranted. In the absence of a clear reference to a relevant provision further strengthens the assessee's position that the addition should not be sustained.

54. On the other hand, the learned DR before us reiterating the findings contained in the assessment order and vehemently supported the order of the authorities below.

55. We have carefully considered the rival contentions and examined the materials on record. It is an undisputed fact that the addition of Rs. 9,22,75,684/- was made by the AO based solely on a comparison between the stock recorded in the tally and the figures in certain excel sheets, without conducting a physical verification of the stock. The entire basis for the variance in stock was derived from these excel sheets, which were not subject to any scrutiny or explanation from the assessee

prior to the addition being made. The AO failed to seek any clarification or explanation from the assessee regarding these excel sheets before proceeding with the addition. The assessee contended that the difference was due to the valuation method, specifically the inclusion or exclusion of GST, but this explanation was not considered or further examined by the AO. Furthermore, despite the assessee providing detailed submissions, the learned CIT(A) upheld the AO's decision without conducting any further investigation into the matter or verifying the explanation provided by the assessee. The learned CIT(A) rejected the assessee's explanation on the grounds that it was not supported by corroborative evidence. However, it is important to note that the AO did not provide an adequate opportunity for the assessee to address these issues. In the absence of any physical verification, coupled with the fact that the difference was primarily based on valuation methods rather than actual discrepancies in stock, makes the addition apparently unjustified. In light of these facts, it appears that the addition of Rs. 9,22,75,684/- was made arbitrarily without due inquiry and consideration of the explanation provided by the assessee. Therefore, we are inclined to allow the appeal of the assessee on this ground and direct the deletion of the addition.

55.1 Therefore, considering the fact that the addition on account of the variance in stock was made solely based on an excel sheet, which was not corroborated by any other material, and without conducting a physical verification of the stock, the addition appears to be unjustified. Moreover, the assessee was not given an opportunity to explain the contents of the excel sheets or the alleged variance before the addition was made. In the absence of any corroborative evidence, and without giving the assessee a fair chance to address the discrepancy, no addition

is warranted. Consequently, the addition of Rs. 9,22,75,684/- on account of stock variance is hereby deleted.

55.2 At this juncture, it is also equally important to see whether there was any variation in the quantity between the closing stock in the manner discussed above. In this regard, we find that no such difference in terms of quantity has been pointed out by the authorities below. The Hon'ble Gujarat High Court in case of PCIT vs. APCO Motor (India) Pvt Ltd reported in 65 taxmann.com 12 has denied upholding the addition on account of difference in the value of the closing stock without having any difference in the quantity of the stock. The relevant extract of the order is reproduced as under:

*6. The Tribunal in the impugned order has concurred with the findings recorded by the Commissioner (Appeals) and has observed that the revenue has not disputed the fact that there is no discrepancy with regard to quantitative details of the stock items and that the only difference is with regard to adopting the value of closing stock. The Tribunal placed reliance upon the decision of the jurisdictional High Court in the case of CIT v. Veerdip Rollers (P.) Ltd. [2010] 323 ITR 341 (Guj.), and noted that in the facts of the present case also the revenue had not reported that there was any difference in the quantity of stock; and the Assessing Officer had not made any inquiry in respect of the explanation of the assessee that the stock belonging to another entity was included in the stock statement submitted by the banker, and accordingly, found that there was no reason to interfere with the order passed by the Commissioner (Appeals).*

*7. Thus, the Tribunal has recorded concurrent findings of fact to the effect that the revenue had failed to establish that there was in fact any difference in the quantity of stock and has thereafter merely applied the decision of the jurisdictional High Court, wherein in a similar set of facts it had been held that there was no justification for making any addition on the allegation of inflated stock shown to the bank, to the facts of the present case. Under the circumstances, the conclusion of the Tribunal being based upon concurrent findings of fact recorded by it after appreciation of the evidence on record, in the absence of any perversity being pointed out in the findings of fact recorded by it, it cannot be said that the impugned order gives rise to any question of law, much less, a substantial question of law, so as to warrant interference. The appeal, therefore, fails and is, accordingly, dismissed.*

55.3 The value of stock is determined by the net effect of purchases and corresponding sales. Any remaining stock after sales reflects the unsold portion of the purchases made. A discrepancy in stock typically arises only when there are unaccounted purchases or sales. However, in this case, the authorities below did not identify any specific issues related to the purchases or sales that could explain the alleged variation in stock. Furthermore, the books of accounts maintained by the assessee were accepted as accurate. While the difference in stock value raised suspicion, the provisions of Section 145(3) of the Income Tax Act, which apply in cases of discrepancies in the books of accounts, were not invoked in this case. Therefore, we set aside the findings of the learned CIT(A) and direct the Assessing Officer to delete the addition made by him. Consequently, the assessee's ground of appeal is hereby allowed.

56. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.
- iii. Challenging the validity of the assessment under section 153A of the Act on account of fact that the material found from third party.

56.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

57. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

57.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

58. In the result, the appeal of the assessee for A.Y. 2019-20 is hereby partly allowed.

**Coming to ITA Nos. 439, 451, 459 & 536/Coch/2024 for A.Ys. 2017-18 to 2020-21 in the case of ABC Sales Corporation (Kanhagad)**

59. The issues raised in the four appeals mentioned above are identical. In the interest of brevity and convenience, we have decided to consolidate these appeals for adjudication. The findings outlined below will apply to all four appeals.

60. The assessee, through a letter dated 24th September 2024, has filed an additional ground of appeal in the present appeals for the assessment years 2017-18 to 2020-21. This additional ground is identical to the one filed by the assessee's sister concern, ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for the assessment year 2017-18. The additional ground in the case of ABC Sales Corporation (Payyannur) was admitted by us in paragraph 5 of this order. In light of this, the additional grounds raised by the assessee for the assessment years 2017-18 to 2020-21 in the present appeals are also hereby admitted.

**61. The first issue** raised by the assessee in its appeal is that the learned CIT(A) erred in confirming the addition made on account of suppressed sales.

61.1 At the outset, we note that the issue raised by the assessee in the captioned grounds of appeal for A.Ys. 2017-18 to 2020-21 is identical to the issue raised by the sister concern of the assessee namely ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeal for A.Ys. 2017-18 to 2020-21. The ground of appeal of M/s ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 13 of this order, wherein the issue has been decided in

favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied for the appeal of the present assessee for A.Y. 2017-18 to 2020-21 as well. Hence, the ground of appeal raised by the assessee in the said A.Ys. is hereby allowed.

**62. The next issue** raised by the assessee in its appeal is that the learned CIT(A) erred in confirming the addition made on account of foreign investment.

62.1 At the outset, we note that the issues raised by the assessee in the captioned grounds of appeal for A.Ys. 2017-18 to 2020-21 is identical to the issue raised by the sister concern of the assessee namely ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeal for A.Ys. 2017-18 to 2020-21. The grounds of appeal of M/s ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order, wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied for the appeal of the present assessee for A.Y. 2017-18 to 2020-21 as well. Hence, the ground of appeal raised by the assessee in the said A.Ys. is hereby allowed.

63. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153C of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153C of the Act on account of proper satisfaction note not recorded/ provided in accordance with the provision of section 153C of the Act, and
- iii. Challenging the validity of the assessment under section 153C of the Act on account of the limitation of time under section 153B of the Act.

63.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

64. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

64.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

65. In the result, all the appeals of the assessee for A.Ys. 2017-18 to 2020-21 are hereby partly allowed.

**Coming to ITA No. 578/Coch/2024 for A.Ys. 2017-18 in the case of ABC Sales Corporation (Kanhgad)**

67. The sole issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 75,53,975/- by including taxes and duties in the closing stock under Section 145A of the Act.

68. The facts, in brief, are that the assessee, a partnership firm, is engaged in the retail and wholesale trading of sanitary wares, wall and floor tiles, water tanks, and related products. The assessee's return for the relevant assessment year was selected for scrutiny under Section 143(2)/(3) of the Act. During the assessment, the AO observed that the tax auditor, in Annexure D to Form 3CD, had revalued the closing stock by including VAT and other taxes, which resulted in an increase in the gross profit. However, this increase in gross profit was neutralized through journal entries. The AO further noted that under Section 145A of the Act and the ICDS notified by the Board from 1st April 2016, the cost of stock must include the value of taxes and cess. Consequently,

the AO added Rs. 75,53,975/- to the total income of the assessee due to the revaluation of the closing stock, reflecting the inclusion of VAT and other taxes.

69. The aggrieved assessee preferred an appeal before the learned CIT(A).

69.1 Before the learned CIT(A), the assessee contended that VAT or any other taxes or cess should be included in the value of the closing stock only if such taxes or cess form part of the purchase cost or the expenses incurred to bring the goods to their current location. Therefore, the assessee argued that the AO's interpretation, requiring the mandatory inclusion of taxes in the closing stock under Section 145A read with the ICDS provisions, was incorrect. The VAT paid by the assessee did not constitute part of the purchase cost; instead, it was treated as a current asset to be offset against the VAT liability arising from sales. Additionally, the assessee pointed out that any addition to the closing stock in the current year would correspondingly reduce profits in the following year, rendering the adjustment unnecessary. Accordingly, the assessee requested the deletion of the addition made by the AO.

69.2 The learned CIT(A) disagreed with the assessee's contention and upheld the addition made by the AO. The CIT(A) held that the cost of stock must include taxes or cess actually paid to bring the goods to their location and that the stock should be valued at cost or market value, whichever is lower. The assessee failed to provide evidence demonstrating that the VAT paid was not incurred to bring the goods to their location. Additionally, the assessee did not substantiate that the

market value of the stock was lower than its cost, inclusive of VAT. The CIT(A) further emphasized that income under the Act is to be computed accurately for each specific year, and the argument that an addition in one year would reduce profits in subsequent years was deemed irrelevant. Accordingly, the learned CIT(A) confirmed the addition made by the AO.

70. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

71. The learned AR argued that the assessee follows the exclusive method of accounting, whereas the inclusive method requires the inclusion of taxes in purchases, sales, opening stock, and closing stock. The AR emphasized that irrespective of the accounting method adopted, there would be no impact on the assessee's profitability. It was further contended that if taxes are included in the closing stock, similar adjustments must be made to the opening stock and purchases, which would neutralize the effect on profitability as alleged by the revenue. Therefore, the learned AR submitted that no addition to the income is warranted.

72. On the other hand, the learned DR before us reiterating the findings contained in the assessment order and vehemently supported the order of the authorities below.

73. We have considered the arguments presented by both parties and reviewed the materials on record. The issue before us is whether the closing stock should be valued inclusive or exclusive of taxes and cess. In our considered view, the inclusion or exclusion of taxes or cess in the valuation of opening and closing stock depends on the accounting

method consistently followed by the assessee. If the assessee employs the exclusive method of accounting—where taxes paid on purchases and taxes collected on sales are recorded separately, and payments to the government are shown in a separate account—then the valuation of stock should exclude such taxes or cess. In reaching this conclusion, we rely on the guidance provided by the Hon'ble Supreme Court in the case of *CIT vs. Indo Nippon Chemicals Co. Ltd.* (261 ITR 275), wherein it was held as follows:

*5. Mr. P.J. Pardiwala, learned counsel for the respondent in C.A. No. 2161 of 2002 and 2164-2165 of 2002, points out that the assessees have all uniformly adopted the "net method", namely, valuing the raw materials at the purchase price minus Modvat credit. This method was also adopted by them while valuing the unconsumed raw materials and the work-in-progress at the end of the year. We, therefore, do not think that their method of valuation was wrong. The Assessing Officer adopted the "gross method" at the time of purchase, and the "net method" of valuation at the time of valuation of the stock on hand. By this method, which is wholly erroneous in our view, he assumed that the income, to the extent of the Modvat credit on the unconsumed raw material, was generated, which was not reflected in the accounts and attempted to bring it to charge under the Act.*

73.1 In the present case, the assessee follows the exclusive (or net) method of accounting, where VAT payments and collections are recorded in separate accounts, and purchases are accounted for net of VAT. Under these circumstances, the VAT amount cannot be included in the valuation of the closing stock. Furthermore, it is crucial to note that any addition to the closing stock value due to VAT or other taxes is a tax-neutral exercise, as the closing stock for the current year becomes the opening stock for the subsequent year. Accordingly, we set aside the findings of the learned CIT(A) and direct the AO to delete the addition made. Consequently, the assessee's ground of appeal is allowed.

74. In the result, appeal of the assessee is hereby allowed.

**Coming to ITA No. 454/Coch/2024 for A.Ys. 2017-18 in the case of ABC Buildware India (P) Ltd**

75. The assessee, through a letter dated 24<sup>TH</sup> September 2024, filed an additional ground of appeal identical to that raised by its sister concern, M/s ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for the assessment year 2017-18. The additional ground of appeal in the case of ABC Sales Corporation (Payyannur) was admitted by us in paragraph 5 of this order. Accordingly, following the same principle, the additional ground raised by the assessee in the present appeal is also admitted.

**76. The first issue** raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 2,82,18,789/- on account of unaccounted sales.

77. The facts of the case reveal that the assessee, a private limited company engaged in the trading of tiles, sanitary wares, bathroom fittings, and related products, was subjected to a search operation. During the search, an Excel sheet titled "Performance Report," covering the assessment years 2015-16 to 2019-20, was found on the laptop of the General Manager, Shri Saifuddeen. A discrepancy was noted between the sales figures recorded in the performance report and those disclosed in the regular books of account. In his statement recorded under Section 132(4) of the Act, Shri Saifuddeen admitted that certain transactions were not recorded in the regular books of account. These unrecorded transactions were maintained by him in Tally software under the account name "Saifu Account." He further explained that the performance report was a consolidated account prepared by combining

entries from the regular books and the "Saifu Account." The report was used to determine the actual profit for religious purposes, such as calculating "Zakkath" as per Muslim religious law, and to ascertain the dividend payable to directors. Regarding the closing stock in the performance report, Shri Saifuddeen stated that it was based on a physical stock verification conducted annually on 31st March. Similarly, he explained that the "Sales w/o" account in the report represented cash sales conducted without issuing bills. The director of the assessee company, Shri Muhammad Bashir, corroborated Shri Saifuddeen's statement during his own statement recorded on the same day.

77.1 However, in the return filed in response to the notice under Section 153A of the Act, the assessee did not declare the income allegedly representing unaccounted sales. During the assessment proceedings, Shri Saifuddeen retracted his earlier statement, claiming that it was made under undue pressure during a late-night recording. He clarified that "sales w/o" referred to sales written off, not sales without bills, as previously presumed. The assessee argued that no corroborating evidence was found to substantiate the claim of unaccounted sales. It was contended that the performance report prepared by Shri Saifuddeen was unrelated to the company's actual books of account, as none of the figures in the report matched the audited accounts. This discrepancy suggested that the report was created for other purposes. The assessee also pointed out that if the figures in the performance report were considered, taking the closing stock for A.Y. 2013-14 as a base, the gross profit would amount to 60%, which is unrealistic. Additionally, the stock valuation in the performance report for *Zakkath* purposes was done at the selling price without accounting for damages or other

reductions which further justifies the claim that the report was not connected to the actual financial records of the assessee.

77.2 However, the AO observed that the assessee's retraction from the Shri Saifuddeen's statement occurred after a significant delay of 18 months, near the conclusion of the assessment proceedings. The retraction was made without providing any evidence to substantiate the claim that the statement recorded during the search was made under undue pressure or coercion. Furthermore, no material evidence was furnished to prove that the assertions made in the original statement were incorrect. Consequently, the AO concluded that the retraction was an afterthought. In reaching this conclusion, the AO relied on the judgment of the Hon'ble Kerala High Court in *CIT vs. O. Abdul Razzak* (20 taxmann.com 48).

77.3 The AO further held that the "sale w/o" account did not represent sales written off, as claimed by the assessee. If it had been intended for sales written off, the amount should have been deducted from the gross sales. However, in the performance report, this amount was added to sales. Similarly, the term "discount allowed w/o" appeared in the performance report, which was added to the total discount allowed. This, according to the AO, demonstrated that "sale w/o" referred to sales made without bills, and "discount allowed w/o" represented discounts on those sales.

77.4 The performance reports were prepared consistently over the years as separate accounts, which itself serves as concrete evidence of sales made without bills. Therefore, the contention that no corroborative evidence was found is without merit. Additionally, the amounts recorded

in the performance report for advance tax paid, interest on income tax, service tax payments, VAT, and courier charges were identical to the amounts recorded in the audited books. This establishes a clear connection between the performance report and the assessee's actual books of accounts. Aside from discrepancies in sales, sales without bills, stock, and purchases, the differences in other entries between the performance report and the audited books were minimal. These small differences likely arise due to the fact that the performance report was based on raw data, while the audited books were finalized after various adjustments, classifications, and groupings. The AO also noted that the performance report, prepared for the purpose of calculating Zakkath under Muslim religious beliefs, was assumed to be accurate, as it reflected religious motivations, which were presumed to be truthful and correct.

77.5 Based on the above findings, the AO calculated the difference between the performance report and the audited books to be Rs. 2,82,18,789/- and subsequently added this amount to the total income of the assessee.

78. The aggrieved assessee filed an appeal before the learned CIT(A), reiterating that the addition was made based on an unsigned document, namely the performance report prepared by the General Manager for his own convenience, and on a statement recorded under undue pressure. The assessee contended that the performance report was not related to the actual accounts of the company, and, therefore, the addition made by the AO should be deleted.

78.1 The learned CIT(A), after considering all the facts, disagreed with the assessee's contention and upheld the addition made by the AO, observing as follows:

*"14.1 With regard to the above, it needs to be stated that the performance report was seized from CPU of the computer maintained by the General Manager of the company. The performance report contained the details about sales, stock, discounts, zakkath, dividend etc., of the company for the period relevant to the AY under consideration. The AO found that the some of the figures, viz., sales, stock, discount etc., mentioned in the audited financials did not tally with the corresponding figures in the performance report while certain other figures viz., advance tax paid, interest paid on income tax, VAT etc., tallied with the figures mentioned in the audited financials. On being asked to explain this discrepancy in the statement u/s.132(4), the General Manager stated that the figures in the performance report represented the actual profit that too for the purpose of calculating the zakkath to be distributed as per the Muslim Personal Law. It is observed that the General Manager has also explained the modus operandi adopted for understating the income to be submitted for taxation. The statement of the General Manager was put before one of the Directors of the appellant company, who again confirmed the contents of the statement of the General Manager. It is seen that the Director has also agreed to pay tax on the undisclosed income in the statement given u/s.132(4) of the Act.*

*Considering the above facts. the argument of the appellant that the addition is based on unsigned and unauthorised performance report, is not factually correct and hence rejected.*

*14.2 The appellant has also contended in para.13(i) that the performance report has been prepared by the General Manager to suit his conveniences and hence is not reliable. In this regard, it needs to be stated that as per the sworn statement, the General Manager who is an employee of the appellant has prepared the report with the purpose of computing the actual income on the basis of which zakkath is to be calculated. The Director of the appellant company has also confirmed the facts stated by the General Manager at the time of search, which clearly reveals that the preparation of the report by the General Manager was with the approval/consent of the Director(s) of the appellant company. Now, after a considerable period of time, the appellant is disowning the statement of the General Manager on the guise that same has been prepared to suit his conveniences. It is surprising that the appellant has not bothered to enquire from his employee the purpose of such report or the type of convenience that would be served by preparing such a report or at least has not revealed it at the appellate stage. Considering the facts of the present case, the various contentions/arguments raised by the appellant at para.13(i) are not sustainable and hence rejected.*

*14.3 The appellant in the grounds raised, as per para.13(i) above, has also justified the retraction made by the General Manager and Direction from their*

earlier statement recorded u/s.132(4) of the IT Act, citing that the statements were recorded under duress. In this regard, it needs to be noted that the retraction from their earlier statement, by the General Manager and the Director of the appellant company was made after a gap of almost one and a half years. As rightly elaborated by the AO in the assessment order, it needs to be affirmed that a statement recorded u/s.132(4) has evidentiary value, as provided in the Act itself that it can be used in evidence. The person who has given the statement can retract from the same if he can establish that

- (i) the statement was given under misconception of facts and law;
- (ii) the statement was given under misconception of facts and law;
- (iii) the statement was not correct in the view of facts or material/evidence on record; and
- (iv) such other facts, material/evidence that cam to light at a later stage show that the statement was not correct.

The assessee did not prove any of the above. A retraction affidavit also was not filed by the assessee. The replies submitted by the assessee itself will prove that the allegation has no basis at all.

14.4 It is a settled position of law that admission made by the assessee u/s.132(4) is an important piece of evidence and the burden is on the assessee to disprove the earlier admission. In the instant case the appellant has not provided any substantiating documents to disprove the earlier admissions made u/s.132(4) by the key persons who are at the helms of affairs. The key persons have retracted all the affirmations made in various statements given on oath during the course of search. Moreover, the retraction is very general in nature without any fresh materials to disprove the facts mentioned in the statements recorded earlier. Merely because a statement is retracted, it cannot become as involuntarily or unlawfully obtained. For any retraction to be successful in the eyes of law, the assessee has to show as to how earlier recorded statements do not state the true facts or that there was coercion, inducement or threat while recording his earlier statements. The burden of proof is on the assessee to establish that the earlier statements were recorded under duress or that they do not reveal the true facts. The Hon'ble High Court of Kerala in the case of CIT Vs. Abdul Razak (2012) 20 taxmann.com 48 [Ker] held that a self-serving retraction, without anything more cannot dispel statement made under oath u/s.132(4). The appellant could neither prove that the earlier statements did not reflect the correct facts nor that the statements were recorded under duress. Considering the above facts and in respectful obedience of the above judgement of the jurisdictional High Court, the grounds raised by the appellant as mentioned in para.13(i) above are rejected.

15. The appellant has raised a ground as mentioned in para.13(ii) above that the "Sales w/o" as appearing in the report of the Manager was dictated by the Inspecting Team u/s. 132 as "sales without", according to their whims and fancies, as evident from the oath statement, which, was corrected immediately

*after knowing the fact. With regard to the above, it needs to be stated that the contentions of the appellant are not based on facts as "sales without" was not based on the whims and fancies of the Investigation Team, but was based on the seized evidences and the statements of the General Manager confirmed by the Director. Further, the purported correction made by the appellant was not immediate but after a lapse of almost one and a half years. All these issues have been discussed in detail in the assessment order which is self-explanatory. In view of the above, the ground raised by the appellant at para.13(ii) is not sustainable and hence rejected.*

*16. As per para. 13(iii) above, the appellant argues that the AO's version that, some figures viz., advance tax paid, VAT paid etc. are same in both regular books of account and the so called report, is not reliable and is patently incorrect and against the settled principles of taxation. With regard to the above, it needs to be stated that though the appellant is contesting the findings of the AO regarding figures of advance tax, VAT etc., in the report and the audited financials, by terming them as patently incorrect, unreliable etc., it has not substantiated its contentions. It is a fact that figures such as advance tax paid, VAT paid etc., are identical in both the audited financials as well as the performance report. Apparently, the appellant has nothing to contend against the findings of the AO and hence has chosen to outrightly find fault with the same by using the words, patently incorrect, unreliable etc. The above arguments of the appellant at para. 13(iii) can only be view as self-serving contentions without any basis and hence is rejected.*

*17. In para. 13 (iv) and 13(v) above, the appellant is arguing that the Department has no case regarding the finding that the appellant has returned lower profit and that the AO has made the addition without conducting any enquiry. The above arguments of the appellant are without any basis in view of the discussions made in the foregoing paragraphs of this order. The appellant itself could not justify such outright statements on the order passed by the AO. Such unsubstantiated statements cannot be the basis for contesting the order passed by an Assessing Authority. Accordingly, the grounds raised by the appellant at para.13(iv) and 13(v) are not sustainable and hence rejected.*

*18. In para. 13(vi) above, the appellant has argued that there is no difference in stock when compared to the physical stock taken during the proceedings u/s.132.*

*With regard to the above, it needs to be stated that as it can be seen from the records, no physical stock was taken during the course of search. However, during the course of search proceedings, the evidence regarding the actual stock of the appellant as on 31st March of the financial year relevant to the AY was found and seized. The same was confirmed by the General Manager and Director of the appellant company vide statement recorded u/s.132(4) of the IT Act. That being the case, the AO was justified in adopting the stock figure reflected in the performance report as against the stock figure mentioned in the audited financials. Hence, the argument of the appellant raised in para.13(vi) above is not sustainable and therefore rejected.*

19. *The appellant's argument at para.13(vii) that it was not afforded opportunity to cross examine the Manager and hence the order of the AO is not sustainable, is not correct. This matter has been considered by the AO in the assessment order and the AO has commented on the same. The relevant extract of the assessment order is reproduced hereunder.*

*" c. An opportunity was sought by the assessee to cross examine their own General Manager.*

*It is a sworn statement recorded under section 132(4) of the Income Tax Act from which the assessee has retracted after a gap of one year. It is not a third party statement. As regards the opportunity to cross examine , Shri Saifuddin the assessee was informed that the statement recorded from him was already shown to the Director of the Company and after having gone through the same he had stated that whatever was deposed by Shri Saifuddin is true and correct. So the assessee had already availed the opportunity for cross examination also. Moreover, it is statement recorded under section 132(4) of the Income Tax Act at the premises of search before all the responsible persons of the company. It is not a statement by a witness. "*

*The argument of the appellant and the comments of the AO in the assessment order have been considered. In the instant case, the statement has been given by the General Manager, who is a part of the appellant company. The statement was not from a third party. The statement of the General Manager was put before the Director of the company who examined it and confirmed the same. That being the case, the request of the appellant to further cross-examine the General Manager can only be viewed as an attempt to frustrate the proceedings. Without prejudice to the above, the assessment order is not just based on the statement of the General Manager but rather on the basis of incriminating evidence/material found during the course of the search. Considering the above, the argument of the appellant in this regard is not sustainable and hence rejected.*

20. *To conclude, it needs to be stated that the search on the premises of the appellant brought to light the evidences regarding the discrepancies in the audited financials of the appellant and also leads to the inescapable conclusion that the taxable profit disclosed by the appellant in the audited financials are not the real profit of appellant. The detailed discussions and conclusions made in the foregoing paragraphs substantiates the above mentioned facts. The AO, during the course of the assessment proceedings has been able to establish the legitimacy of the seized materials based on which the assessment has been framed. On the other hand, the appellant, neither during the course of the assessment proceedings nor during the appellate stage, could come up with any evidence to disprove the reliability or authenticity of the seized materials/ evidences, based on which the assessment has been completed. The appellant has failed to substantiate its arguments against the findings of the AO in the assessment order. Considering the above and also in view of the discussions made in the preceding paragraphs, the additions made by the AO stands confirmed.*

79. Being aggrieved by the order of the Id. CIT-A, the assessee is in appeal before us.

79.1 The learned AR of the assessee before us argues that the performance report found during the search on the General Manager's computer is merely an internal tool prepared by the General Manager to project and monitor business performance. It is not intended to be a representation of the actual financial position of the company, nor does it align with the standards of audited financial statements. The report is speculative in nature and reflects optimistic projections typical of a sales-oriented professional. Thus, it should not be treated as conclusive evidence for unaccounted investments or discrepancies in inventory valuation.

79.2 The learned AR emphasizes that the company's audited financial statements are prepared in strict compliance with GAAP. Inventory valuation in the financial statements is conducted as per established principles, which require the lower of cost or net realizable value (NRV). The performance report, however, reflects a market value-based approach to inventory valuation, which is inherently different and explains the apparent variations. When adjusted for NRV and applicable GST, the differences between the two become negligible.

79.3 The learned AR points out that the search team failed to conduct a physical verification of the inventory. Instead, the AO adopted the figures from the unverified performance report. Without physical verification or corroborative evidence, any conclusions regarding unaccounted inventory are speculative and lack evidentiary value.

79.4 The learned AR highlights that GST and VAT returns filed by the company, based on the audited financial statements, have been accepted by the tax authorities without dispute. This acceptance reinforces the accuracy and credibility of the audited financials, demonstrating that there is no evidence of unaccounted inventory or misreporting.

79.5 The learned AR underscores that the AO failed to provide any credible evidence of unaccounted investments or unexplained financial discrepancies. The additions made are solely based on the speculative performance report, which lacks any corroborative proof, such as invoices or identification of specific transactions. Furthermore, the AO did not establish a direct connection between the performance report and actual financial misreporting.

79.6 The Id. AR argues that despite written requests, the AO did not provide an opportunity to cross-examine the General Manager, whose projections formed the basis of the additions. Denial of cross-examination is a violation of natural justice and undermines the validity of the AO's conclusions.

79.7 The learned AR explains that any alleged difference in inventory valuation arising from discrepancies in the performance report is a neutralizing adjustment. The closing stock of one year becomes the opening stock for the next year, ensuring that no unaccounted income arises over the long term. As such, no addition should be made in the absence of tangible evidence of suppression of sales or inflation of stock.

79.8 The learned AR concludes by requesting to disregard the speculative findings of the AO and delete the unwarranted additions. The performance report prepared by the General Manager is an unaudited, unofficial document with no relevance to the actual financials of the company, and the audited financial statements remain the most reliable representation of the company's financial position.

80. On the other hand, the learned DR submitted that the figures in the performance report, when compared to the audited financial statements for the different assessment years, largely align with each other, except for certain items such as opening stock, closing stock, purchases, and sales. Furthermore, the profit declared by the assessee for the assessment years 2019-20 and 2020-21 is consistent with the performance report. Therefore, the ld. DR argued that the profit declared in the performance report accurately reflects the assessee's actual income, as confirmed in the statements given by Shri Saifuddin, Shri Muhammed Bashir, and later affirmed by Shri Muhammed Madani. Based on this, the learned DR strongly supported the order of the authorities below.

81. The Learned AR for the assessee in the rejoinder reiterated that the performance report relied upon by the AO was prepared internally by the marketing team for internal assessment and projection purposes. It does not accurately represent the company's financial position and cannot be compared to audited financial statements, which adhere to GAAP. The report, being speculative and subjective, holds no evidentiary value for assessing income or discrepancies.

81.1 The AO has not rejected the audited books of accounts under Section 145 of the Income Tax Act. Without such rejection, any addition based on alternative evidence, such as the performance report, is unsustainable. The audited books of accounts remain the most reliable source for determining the company's financial position.

81.2 The major difference is pointed out by the AO for making addition was in the value of inventory. The alleged differences in inventory valuation are due to differences in valuation methodology. There was not discrepancy found in the physical inventory. As per standard accounting practices, the closing stock of one year becomes the opening stock for the next year, effectively neutralizing any differences over time. This adjustment eliminates any tax implications arising from the alleged discrepancies.

81.3 The amounts noted in the performance report in the name under certain type taxes were matching with the financial statement which might be possible due to reason that marketing team also kept record regarding those. Hence, merely for the reason that certain amount of taxes noted in financial statement as well as in performance report does not mean that the performance report is genuine account leading addition of unaccounted sales.

81.4 The appellant has submitted detailed reconciliation statements, demonstrating alignment between the performance report and the audited financials. These reconciliations confirm that the differences are negligible and that the performance report is not comparable to the audited accounts. Unfortunately, these reconciliations have not been duly considered by the AO.

81.5 Income tax returns for subsequent years (FY 2019-20 and FY 2020-21), filed after the search, reflect adherence to the audited financial statements. This further confirms that there are no discrepancies or unaccounted transactions in the company's financials.

81.6 The AO has not identified any defects in the audited books of accounts. Without such findings, the audited accounts must be deemed reliable, and additions based on an unverifiable internal document such as the performance report cannot be justified.

82. The learned DR in response to the contentions raised by the learned AR in rejoinder, submitted that the '**Performance Report**' seized during the search operation forms a legitimate and reliable basis for determining the true income of the assessee. The **General Manager**, responsible for maintaining the accounts, unequivocally confirmed under oath (u/s 132(4)) that the Performance Report reflected actual profits, incorporating unrecorded cash sales, donations, and additional figures not shown in audited accounts. This assertion was corroborated by the **Director**, who also acknowledged the discrepancies and expressed willingness to revise the income tax returns.

82.1 The delayed retraction by the assessee, occurring 18 months post-search, does not negate the evidentiary value of statements made under oath, as upheld by the Hon'ble Kerala High Court in CIT v. O. Abdul Razak. Retraction without evidence of coercion, duress, or contrary proof is insufficient to render the original statements inadmissible. Moreover, minor differences between the Performance Report and audited accounts are attributable to adjustments during finalization and do not undermine the authenticity of the data. Given the

detailed corroborations, the Performance Report reflects the assessee's actual income and profit figures. The learned DR submitted that the income determined in the assessment order, relying on the Performance Report, be accepted as true and accurate for the relevant assessment years.

83. We have heard the rival contention of both the parties and perused the material available on record. From the preceding discussion, we note that during the search, an Excel sheet titled "Performance Report" was found on the laptop of the General Manager, which led the AO to allege discrepancies between the performance report and the company's audited financial statements. Based on the performance report, the AO added Rs. 2,82,18,789/- to the assessee's total income as unaccounted sales. This addition was upheld by the Commissioner of Income Tax (Appeals) [CIT(A)] based on the observations made by the AO and the statements of the General Manager and Director recorded during the search. The assessee, arguing that the addition is speculative and unsupported by evidence, while maintaining that the audited books of accounts are the most reliable source of financial information.

83.1 The AO relied heavily on the performance report prepared by the General Manager and statements recorded under Section 132(4) of the Income Tax Act during the search. The AO considered the performance report a reliable document linked to the company's financials. In this regard we, note that the performance report was not signed, audited, or prepared according to GAAP standards. Though the same are systematically maintained year after year somewhat in the form of profit and loss account. However, the assessee time and again contented that

it was an internal tool prepared by sales team and the General Manager for their reporting purpose. We note that in most business organizations, performance reports are designed to capture both financial and non-financial metrics. These reports, especially the financial ones, are used to assess, analyze, and communicate the organization's financial performance over a given period, helping stakeholders make informed decisions about the company's financial health, profitability, and operational efficiency. The primary objectives of such reports are to:

- Evaluate the profitability
- Analyse the financial health stability
- Enable performance comparison
- Monitor revenue and expenses trend
- Identifying efficiency and cost reduction opportunities etc.

83.2 Further we on the perusal of the performance report available in record note that the major difference arises in the value of opening or closing stock and credit notes. Thus, in light of the above considerations, the performance report prepared for internal management purposes with valuation discrepancies caused by different methodologies (market value in the report versus NRV in audited accounts). An unaudited, speculative document cannot override the audited financials, which are the most reliable representation of the company's position. We also find merit in the argument of learned AR that the physical verification of inventory not carried therefore the inventory discrepancies alleged by the AO stem from differences in valuation methodology rather than physical stock discrepancies. Such difference if any will be neutralized without negating any tax impact. We

agree with the Id. AR that the acceptance of VAT and GST return based on audited books indicates that the tax authorities found no irregularities in the company's audited financials, reinforcing their reliability.

83.3 The AO cited matching figures (e.g., advance tax, service tax and VAT) as proof of the performance report's reliability. In this regard we note that while this may be true, it does not establish the overall reliability of the performance report. Such matching figures could also result from the General Manager maintaining basic tax-related records independently. Usually in business the basic tax payments and compliance-related information are recorded across various internal documents. But this does not validate the performance report as a comprehensive or accurate financial statement.

83.4 It is important to note that the AO has selectively highlighted certain items to emphasize the differences between the audited financial statements and the performance report in order to determine the taxable income of the assessee. Specifically, the AO has focused on the discrepancies in purchases, sales, opening stock, and closing stock. In our considered view, the basis adopted by the Revenue is not appropriate under the given facts and circumstances. Once the Revenue concluded that there were differences in these key figures, the AO should have rejected the books of account under the provisions of section 145(3) of the Act. However, the Revenue has failed to take this step. In the absence of such rejection, reliance on alternative evidence like the performance report is legally unsustainable. The audited financial

statements, prepared in compliance with GAAP, remain the most credible source of the company's financial position.

83.5 We find that no corroborative evidence was provided by the AO to substantiate the claims of unaccounted income or discrepancies in inventory. The search did not reveal any unaccounted invoices, suppressed sales, or discrepancies in physical inventory other than the performance report. Therefore, we concur with the assessee's argument that reliance solely on the performance report and statement of GM during the search which was retracted, without independent verification, is speculative and insufficient to justify additions. While we note that the delay in retraction from statement may weakens the assessee's case, but the AO failed to corroborate the original statement with independent evidence. Without concrete proof to validate the original statement, the performance report remains insufficient as the sole basis for additions.

83.6 Without prejudice to the above the learned AR for the assessee before us contended that lower authorities have not provided the opportunity of the general manager Shri Saifuddeen. In this regard we find the AO on question of cross examination observed that the GM was not a third party to the assessee. He is the key managerial person of the assessee. Further, his statement was confronted to the director of the assessee company and chairman of the ABC Group, and they have confirmed his statement. Therefore, the compliance regarding cross examinations has already been fulfilled. In our considered opinion the finding of the AO and learned CIT(A) in this regard is not well reasoned and

does not have force. Hence, we do not agree with the argument of learned DR and the findings of the authorities below. Hence, the ground of appeal of the assessee is allowed.

**84. The next** issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 1,63,36,238/- on account of foreign investment.

84.1 At the outset, we note that the issue raised by the assessee in the captioned ground of appeal for A.Y. 2017-18 is identical to the issue raised by the sister concern of the assessee namely M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeal for A.Y. 2017-18. The ground of appeal of M/s ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order, wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied for the present assessee as well. Hence, the ground of appeal raised by the assessee is hereby allowed.

85. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,

- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.

85.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

86. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

86.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

87. In the result appeal of the assessee for A.Y. 2017-18 is hereby partly allowed.

**Coming to ITA Nos. 531 & 532/Coch/2024 for A.Y. 2015-16 & 2016-17 in the case of ABC Buildware India (P) Ltd.**

88. The issues raised by the assessee in the captioned appeals for A.Y. 2015-16 & 2016-17 are identical, therefore, for the sake of brevity and convenience, we are inclined to club both of them for the purpose of adjudication of these 2 appeals.

89. The assessee, by letter dated 24 September 2024, filed an additional ground of appeal in the present appeals, which is identical to the additional ground of appeal filed by the sister concern of the assessee, M/s ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for the Assessment Year 2017-18. The additional ground of appeal raised in the case of M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 was admitted by us in paragraph 5 of this order. In light of this, the additional ground raised by the assessee in the present appeals is also hereby admitted.

**90. The first issue** raised by the assessee in the captioned appeals is that the learned CIT(A) erred in confirming the addition made on account of unaccounted sales.

90.1 At the outset, we note that the issues raised by the assessee in its ground of appeal for the AYs 2015-16 & 2016-17 is identical to the issue raised by the assessee in ITA No. 454/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 454/Coch/2024 shall also be applicable for the assessment years 2015-16 & 2016-17.

The ground of appeal of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph No. 83 of this order, wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2017-18 shall also be applied for the assessment years 2015-16 & 2016-17 as well. Hence, the ground of appeal filed by the assessee appeals is hereby allowed.

91. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.

91.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

92. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices

without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

92.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

93. In the result, the appeals of the assessee for 2015-6 & 2016-17 are hereby partly allowed.

**Coming to ITA No. 455/Coch/2024 for A.Y. 2018-19 in the case of ABC Buildware India (P) Ltd.**

94. The assessee, by way of a letter dated 24th September 2024, has filed an additional ground of appeal in the captioned appeals. This ground is identical to the additional ground of appeal filed by the assessee's sister concern, M/s ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for the Assessment Year 2017-18. The additional ground raised in the case of M/s ABC Sales Corporation (Payyannur) has been admitted by us in paragraph 5 of this order. In line with this, the additional ground raised by the assessee in the present appeals is hereby admitted.

**95. The first issue** raised by the assessee in the captioned appeals is that the learned CIT(A) erred in confirming the addition made on account of unaccounted sales.

95.1 At the outset, we note that the issues raised by the assessee in its ground of appeal for the AY 2018-19 is identical to the issue raised by the assessee in ITA No. 454/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 454/Coch/2024 shall also be applicable for the assessment years 2018-19. The ground of appeal of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph No. 83 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever the findings will be for the assessment year 2017-18 shall also be applied for the assessment years 2018-19 as well. Hence, the ground of appeal filed by the assessee is hereby allowed.

**96. The next issue** raised by the assessee in the captioned appeals is that the learned CIT(A) erred in confirming the addition made on account of foreign investment.

96.1 At the outset, we note that the issues raised by the assessee in the captioned ground of appeal for A.Ys. 2018-19 is identical to the issue raised by the sister concern of the assessee namely M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeals for A.Ys. 2018-19. The ground of appeal of the ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order, wherein the issue has been decided in

favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied for the present assessee. Hence, the ground of appeal raised by the assessee is hereby allowed.

97. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.

97.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

98. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

98.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

99. In the result, the appeal of the assessee is hereby partly allowed.

**Coming to ITA Nos. 456 & 533/Coch/2024 for A.Y. 2019-20 to 2020-21 in the case of ABC Buildware India (P) Ltd.**

100. The issues raised by the assessee in the two captioned appeals for the Assessment Years 2019-20 and 2020-21 are identical. Therefore, for the sake of brevity and convenience, we deem it appropriate to club both appeals for the purpose of adjudication.

101. The assessee, vide letter dated 24th September 2024, filed an additional ground of appeal in the captioned appeals, which is identical to the additional ground filed by its sister concern, M/s ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground of appeal raised in the case of M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 has been admitted by us in paragraph No. 5 of this order. Following the same, the additional ground raised by the assessee in the captioned appeals is hereby admitted.

**102. The first** issue raised by the assessee in the captioned appeals is that the learned CIT(A) erred in confirming the addition made on account of foreign investment.

102.1 At the outset, we note that the issues raised by the assessee in the captioned ground of appeal for A.Ys. 2019-20 and 2020-21 is identical to the issue raised by the sister concern of the assessee namely M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeals for A.Ys. 2019-20 and 2020-21. The ground of appeal of the ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order, wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied for the present assessee. Hence, the ground of appeal raised by the assessee is hereby allowed.

103. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.

103.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

104. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

104.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

105. In the result, the appeals of the assessee for A.Y. 2019-20 & 2020-21 are hereby partly allowed.

**Coming to ITA No. 389/Coch/2024 for A.Y. 2017-18 in the case of ABC Buildwares India (P) Ltd.**

106. At the outset, we note that the issues raised by the assessee in ground of appeal for the AYs 2017-18 is identical to the issue raised by the sister concern of the assessee M/s ABC Sales Corporation Kanhangad in ITA No. 578/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 578/Coch/2024 shall also be applicable for issue raised by the assessee for the assessment years 2017-18. The ground of appeal of the sister concern of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph No. 73 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the sister concern in ITA No. 578/Coch/2024 shall also be applied for the issue raised in the assessee appeal assessment years 2017-18 as well. Hence, the ground of appeal filed by the assessee appeals is hereby allowed.

107. In the result appeal of the assessee is hereby allowed.

**Coming to ITA No.s 497 to 500/Coch/2024 in case of Shiri Junaïd KN, ITA Nos. 501 to 504/Coch2024 in case of Shri Abdul Vaheed, ITA Nos. 508 to 511/Coch/2024 in case of Keeran Muhammed Basheer and ITA Nos. 519 to 522/Coch/2024 in case of Muhammed Jabir pertaining to A.Ys. 2017-18 to 2020-21.**

108. The issues raised by the four assesseees in all the 16 captioned appeals for the A.Ys. 2017-18 to 2020-21 are identical. Therefore, for the sake of brevity and convenience, we have decided to club all of them for the purpose of adjudication.

109. All the assesseees, vide letter dated 24th September 2024, filed additional ground in the captioned appeals for A.Ys. 2017-18 to 2020-21,

which is identical to the additional ground of appeal filed by the sister concern of the assessee, namely ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground raised in the case of ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 has been admitted by us in paragraph No. 5 of this order. Following the same, the additional ground raised by the assesseees in the captioned appeals for A.Ys. 2017-18 to 2020-21 is hereby admitted.

**110. The first interconnect issue** raised by the assessee is that the learned CIT(A) erred in confirming the addition made on account of foreign investment.

110.1 At the outset, we note that the issues raised by these assesseees in the captioned grounds of appeal for A.Ys. 2017-18 to 2020-21 is identical to the issue raised by the sister concern of the assesseees namely M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground of appeals for A.Ys. 2017-18 to 2020-21. The ground of appeal in the case of M/s ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order, wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied to the present assesseees for their grounds appeal raised in AY. 2017-18 to 2020-21. Hence, the ground of appeal raised by these assesseees for A.Ys. 2017-18 to 2020-21 is hereby allowed.

111. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.

111.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

112. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

112.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the

benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

113. In conclusion, the appeals of the assessees, namely Shri Junaid KN, Shri Abdul Vaheed, Shri Keeran Muhammed Bahseer, and Shri Muhammed Jabir for A.Ys. 2017-18 to 2020-21 are hereby partly allowed.

**Coming to ITA No. 505 to 507/Coch/2024 for A.Ys. 2018-19 to 2020-21 in the case of Shri Ruchit Parimal Ashar.**

114. The issues raised by the assessee in all three captioned appeals for A.Ys. 2018-19 to 2020-21 are identical. Therefore, for the sake of brevity and convenience, we are inclined to club all of them together for the purpose of adjudication.

115. The assessee, vide letter dated 24th September 2024, filed an additional ground of appeal for the captioned appeals for A.Ys. 2018-19 to 2020-21, which is identical to the additional ground of appeal filed by the sister concern of the assessee, M/s ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground of appeal raised in the case of M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 was admitted by us in paragraph No. 5 of this order. Following the same, the additional ground raised by the assessee in the captioned appeals for A.Ys. 2018-19 to 2020-21 is hereby admitted.

**116. The first interconnect issue** raised by the assessee is that the learned CIT(A) erred in confirming the addition made on account of foreign investment.

116.1 At the outset, we note that the issues raised by the assessee in the captioned grounds of appeal for A.Ys. 2018-19 to 2020-21 is identical to the issue raised by the sister concern of the assessee namely M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 441/Coch/2024 shall also be applicable for the assessee's ground appeal for A.Ys. 2018-19 to 2020-21. The ground of appeal in the case of M/s ABC Sales Corporation (Payyannur) for the A.Y. 2017-18 has been decided by us vide paragraph No. 20 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings in the case of M/s ABC Sales Corporation (Payyannur) shall also be applied for the present assessee. Hence, the ground of appeal raised by the assessee for A.Ys. 2018-19 to 2020-21 is hereby allowed.

117. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153C of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153C of the Act on account of proper satisfaction note not recorded/ provided in accordance with the provision of section 153C of the Act, and

- iii. Challenging the validity of the assessment under section 153C of the Act on account of the limitation of time under section 153B of the Act.

117.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

118. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

118.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

119. In the result, the appeal of the assessee for A.Ys. 2018-19 to 2020-21 are partly allowed.

**Coming to ITA No. 512/Coch/2024 for A.Ys. 2013-14 in the case of Shri Abdul Gafoor Muhammad.**

120. The only effective issue raised by the assessee is that the learned CIT(A) erred in confirming the validity of reopening the assessment under section 147 of the Act and further erred in confirming the addition on account of unexplained investment on merits.

120.1 At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2013-14 is identical to the issue raised by the assessee namely Shri Muhammad Madni in ITA No. 523/Coch/2024 for the assessment year 2013-14. Therefore, the findings given in ITA No. 523/Coch/2024 shall also be applicable for the issue raised by the assessee in captioned appeal for AY 2013-14. The ground of appeal raised by the assessee i.e. Shri Muhammad Madni for the A.Y. 2013-14 has been decided by us vide succeeding paragraph No. 166 of this order in favour of the assessee on technical ground. Accordingly, the issue on merit of the case becomes infructuous. The learned AR and the DR also agreed that whatever will be the findings for the appeal of Shri Muhammad Madni for assessment year 2013-14 shall also be applied for the ground of appeal raised by the assessee. Hence, the ground of appeal filed by the assessee on technical issue is hereby allowed and the ground of filled on merit is hereby dismissed as infructuous.

121. In conclusion, the appeal of the assessee is hereby partly allowed.

**Coming to ITA No. 513/Coch/2024 for A.Y. 2015-16 in the case of Shri Abdul Gafoor Muhammad.**

122. The assessee, through a letter dated 24th September 2024, has filed an additional ground of appeal for the captioned appeal for A.Y. 2015-16, which is identical to the additional ground of appeal filed by the sister concern of the assessee, M/s ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground of appeal raised in the case of M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 was admitted by us as per paragraph No. 5 of this order. In line with this, the additional ground raised by the assessee in the present appeal for A.Y. 2015-16 is also hereby admitted.

**123. The** issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 45,55,803 on account of dividend income.

124. The relevant facts are that the assessee is an individual and a Non-Resident Indian (NRI). The assessee is a shareholder in an Indian company, M/s BathxBathware India Pvt Ltd, and also holds shares in ABC Project W.L.L., Doha, Qatar, and ABC Mercantile FZC, Dubai, UAE. During the course of search proceedings, an excel sheet titled "206134-01 ABC MARKETING \_ BATHX- LATEST" was retrieved from the computer marked as "CHN/CLT132/2019-20/ABCT1/HD5". This sheet contains the heading "second face abc marketing to Bathx Bathware," and below this heading, it outlines certain working capital, profit, drawings, and dividend figures for the period from 31st March 2015 to

31st March 2018. According to the details in the sheet, the assessee received dividends as follows:

(1)	31 <sup>st</sup> March 2015	Rs. 45,55,803/-
(2)	31 <sup>st</sup> March 2016	Rs. 23,59,172/-
(3)	31 <sup>st</sup> March 2017	Rs. 13,59,548/-

124.1 As per the AO such dividend was not offered to tax by the assessee and therefore, the same was added to the total income of the assessee.

125. The aggrieved assessee filed an appeal before the learned CIT(A), who upheld the addition made by the Assessing Officer (AO).

126. Being aggrieved by the order of the learned CIT(A), the assessee has filed an appeal before us.

127. The learned AR before us submitted that no dividend was declared by the company, M/s BathxBathware India Pvt Ltd. Furthermore, the revenue has not initiated any proceedings against M/s BathxBathware India Pvt Ltd. for the corporate dividend tax on the distribution of dividends. In other words, since the revenue has accepted that no dividend was distributed by M/s BathxBathware India Pvt Ltd, the question of making an addition in the hands of the assessee on account of dividend income does not arise.

127.1 Regarding the allegation of the revenue for the receipt of dividend by the assessee from the company namely ABC Project W.L.L- Doha Qatar, the learned AR submitted that both the company and the assessee are not resident and therefore the question of making the

addition on account of alleged dividend by the company namely ABC Project W.L.L- Doha Qatar does not arise.

128. On the other hand, the learned DR before us reiterating the findings contained in the order of lower authorities and vehemently supported the order of the authorities below.

129. We have heard the rival contentions of both parties and perused the materials available on record. It is a fact that no proceedings were initiated against the company, M/s BathxBathware India Pvt Ltd, by the revenue with regard to corporate dividend tax under section 115-O of the Act. Therefore, it can be conclusively stated that no dividend was paid by the company as alleged by the revenue. On this ground alone, the addition made by the AO is not warranted.

129.1 Furthermore, the dividend income in the hands of the recipient was exempt under section 10(34) of the Act up to the assessment year 2020-21. The issue before us pertains to the earlier assessment years, prior to the amendment introduced by the Finance Act 2020, under which the recipient of dividend income became liable to pay tax on such income effective from AY 2021-22.

129.2 Regarding the revenue's allegation of dividend receipt from the company ABC Project W.L.L - Doha, Qatar, we note that both the assessee and the company are non-residents. Therefore, the question of making the impugned addition in the hands of the assessee does not arise. Consequently, we set aside the findings of the learned CIT-A and direct the AO to delete the addition made by him. Thus, the ground of appeal raised by the assessee is allowed.

130. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153C of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153C of the Act on account of proper satisfaction note not recorded/ provided in accordance with the provision of section 153C of the Act, and
- iii. Challenging the validity of the assessment under section 153C of the Act on account of the limitation of time under section 153B of the Act.

130.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

131. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

131.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

132. In the result, the appeal of the assessee is partly allowed.

**Coming to ITA Nos. 514 to 518/Coch/2024 for A.Y. 2016-17 to 2020-21 in the case of Shri Abdul Gafoor Muhammed.**

133. The issue raised by the assessee in all the 5 captioned appeals for the A.Ys. 2016-17 to 2020-21 is identical. Therefore, for the sake of brevity and convenience, we are inclined to club all of them for the purpose of adjudication.

134. The assessee, vide letter dated 24 September 2024, filed an additional ground of appeal for the captioned appeals for A.Y. 2016-17 to 2020-21, which is identical to the additional ground of appeal filed by the sister concern of the assessee, namely M/s ABC Sales Corporation (Payyannur), in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground of appeal raised in the case of M/s ABC Sales Corporation (Payyannur) in ITA No. 441/Coch/2024 has been admitted by us, as seen in paragraph No. 5 of this order. Following the same, the additional ground raised by the assessee in the captioned appeals for A.Y. 2016-17 to 2020-21 is hereby admitted.

**135. The** issue raised by the assessee is that the learned CIT(A) erred in confirming the addition made on account of dividend income.

135.1 At the outset, we note that the issues raised by the assessee in the captioned ground of appeal for A.Ys. 2016-17 to 2020-21 is identical to the issue raised by the assessee in ITA No. 513/Coch/2024 for the assessment year 2015-16. Therefore, the findings given in ITA No. 513/Coch/2024 shall also be applicable for the assessee's ground appeal for A.Y. 2016-17 to 2020-21. The ground of appeal of the for the A.Y. 2017-18 has been decided by us vide paragraph No. 129 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for issue raised for A.Y. 2015-16 shall also be applied for the appeal of the assessee for A.Ys. 2016-17 to 2020-21. Hence, the ground of appeal raised by the assessee in the said A.Ys. is hereby allowed.

136. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153C of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153C of the Act on account of proper satisfaction note not recorded/ provided in accordance with the provision of section 153C of the Act, and
- iii. Challenging the validity of the assessment under section 153C of the Act on account of the limitation of time under section 153B of the Act.

136.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

137. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

137.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

138. In the result, all the appeals of the assessee for A.Ys. 2016-17 to 2020-21 are hereby partly allowed.

**Coming to ITA Nos. 436 to 438/Coch/2024 for A.Y. 2014-15 to 2016-17 in the case of M/s Bathx Bathware India Pvt Ltd.**

139. At the outset we note that the issue involved in all the 3 captioned appeal are interconnected. Therefore, we for shake of brevity and convenience clubbed the appeals.

140. The assessee has filed additional grounds of appeal in the captioned appeals for A.Ys. 2014-15 to 2016-17 through a letter dated 24 September 2024. These additional grounds are identical to the additional grounds filed by the sister concern of the assessee in ITA No. 441/Coch/2024 for A.Y. 2017-18, which were admitted by us vide Paragraph No. 5 of this order. Accordingly, following the same reasoning, the additional grounds raised by the assessee in the captioned appeals for A.Ys. 2014-15 to 2016-17 are hereby admitted.

**141. The** interconnected issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 31,96,339/- on account of difference in stock, Rs. 40,99,720/- on account of difference in GP and Rs. 1,11,04,007/- on account of difference in NP in A.Y. 2014-15 to 2016-17 respectively.

142. The necessary facts are that during the search proceeding at the assessee's group, an excel sheet containing financial data relevant to A.Ys. 2015-16 and 2016-17 was discovered on a hard drive. A comparison between the figures in this sheet and those reported in the assessee's ITR for A.Ys. 2015-16 and 2016-17 were drawn. Based on which the AO observed significant discrepancies in the figures reported by the assessee in its ITR and those found in the seized excel sheet during the search operation. The opening stock for the assessment year 2015-16, as per the ITR, was ₹ 39,54,244/-, whereas the seized excel sheet reflected ₹ 71,50,583/-, resulting in a difference of ₹ 31,96,339/-

only. Similar deviations were noted in purchases, direct expenses, resulting into the under-reporting of gross profit by ₹ 40,99,720/- for A.Y. 2015-16. Likewise, there was similar difference in data for A.Y. 2016-17 resulting under reporting of net profit by ₹ 1,11,04,007/- only which raised concerns about the accuracy of the assessee's financial reporting. Accordingly, the AO proposed to increase the value of closing stock of the A.Y. 2014-15 by the amount of ₹ 31,96,339/- being difference in opening stock of A.Y. 2015-16, likewise, proposed to make addition to the total income for the A.Y. 2015-16 by the amount of ₹ 40,99,720/- being under reported amount of GP in A.Y. 2015-16 and similarly proposed to make addition to total income of A.Y. 2016-17 by ₹ 1,11,04,007/- being alleged underreporting of net profit.

142.1 The assessee argued that the data in the seized excel sheet did not represent their actual financials but were projections or proposals prepared for internal management purposes. They contended that these figures were never finalized, operationalized, or implemented. According to the assessee, the projections were formulated by a partner of ABC Marketing to explore potential benefits of reducing group units, but the proposal was ultimately scrapped due to lack of consensus among the stakeholders. The assessee asserted that they had no connection with the figures in the excel sheet, which they claimed lacked evidentiary value and should not be used as a basis for assessment. Additionally, the assessee stated that the inclusion of inflated stock figures in the projections led to artificially enhanced gross profit, which had no relevance to their actual financials. They requested the AO to accept the income as declared in the return and disregard the data in the seized excel sheet as baseless.

142.2 However, the AO rejected the assessee's explanation, stating that the discrepancies in opening stock, purchases, and direct expenses were not satisfactorily addressed. The AO emphasized that the seized data clearly indicated higher financial figures, and the assessee failed to provide any substantive evidence to disprove the reliability of the seized material. It was observed that the assessee's claim that the data represented projections was unsubstantiated, as no supporting documents or corroborative evidence were presented. The AO also noted that the assessee's contention of basing projections on hypothetical scenarios lacked credibility and could not override the evidentiary weight of the seized material. The AO concluded that the difference in opening stock, gross profit and net profit could not be ignored and added the difference amount to the total income of the assessee for A.Y. 2014-15, 2015-16, and 2016-17.

143. The aggrieved assessee preferred an appeal before the learned CIT(A). The assessee claimed that the addition made by the Assessing Officer (AO) was based on unsigned and unauthenticated excel sheets. They emphasized that the AO ignored their regular books of account audited under the Income Tax Act. The assessee argued that these documents did not have evidentiary value as per Section 132(4A) of the Act and should not have formed the basis for additions to their income.

143.1 The assessee further contended that the AO ignored the audited books of account maintained in the regular course of business and instead relied on projections and unverified documents, which was not sustainable under the law. The assessee argued that the AO relied on unsupported presumptions rather than actual evidence, leading to an

unsustainable assessment. They submitted that projections or hypothetical figures cannot substitute actual transactions reflected in their books of accounts.

143.2 The assessee also argued that the AO made excessive additions without conducting any proper inquiry or allowing the assessee to explain the discrepancies. The assessment was claimed to be arbitrary and in violation of due process.

143.3 However, the learned CIT(A) held that as per Section 132(4A), the seized materials, including the excel sheets, are presumed to be true unless proven otherwise. Since, the assessee failed to disprove the authenticity of the seized documents, the reliance placed by the AO was deemed justified. The learned CIT(A) upheld the AO's action of relying on seized materials over the audited books of account. It was noted that the books maintained by the assessee failed to reflect the income and transactions as evidenced by the seized documents, warranting the additions. The learned CIT(A) observed that the AO's reliance on the seized materials, which demonstrated significant discrepancies in the assessee's reported income, was supported by specific evidence. The presumptions were therefore considered valid.

143.4 The learned CIT(A) concluded that the AO had followed due process and conducted the assessment as per prescribed procedures. The assessee failed to provide contrary evidence or explanations to rebut the additions, and hence their arguments were found unsustainable. The Commissioner reviewed the judicial precedents cited by the assessee but found them irrelevant to the facts of the present case. It was emphasized that the seized documents had direct relevance

to the assessee's financials, making them actionable. In conclusion, the learned CIT (A) upheld the findings and additions made by the AO, dismissing the assessee's contentions as unsubstantiated and unsupported by evidence.

144. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

145. The learned AR before us argued that the excel sheet, which formed the basis of the addition made by the AO, lacks identification criteria such as the name of any person or entity. It was submitted that the document is a "dumb document" with no evidential value. In support of the argument reliance was placed on legal precedents, including the Hon'ble Gujarat High Court judgment in the case of **Kaushik Majithia** reported in R/ tax appeal No. 20 of 2024 and the Delhi High Court judgment in the case of **Vivek Agrawal** reported in 67 taxmann.com 372, where similar documents were held inadmissible due to the lack of identification and evidentiary value.

145.1 The learned AR further contended that there was no evidence of any discrepancy in the quantity of inventory or unaccounted cash sales and emphasized that no incriminating material had been found to support the AO's conclusion of a mismatch in stock or sales.

145.2 It was also submitted that there is no direct correlation between the Gross Profit (GP) and Net Profit (NP) reported in the books of account and those calculated based on the seized excel sheet. Specifically, for AY 2016-17, the GP in the audited financial statements was higher than that reflected in the excel sheet, contradicting the AO's basis for the addition.

145.3 The learned AR further argued that the regular books of account maintained and audited under the Income Tax Act were not rejected by the AO under Section 145 of the Act. In the absence of rejection of the books, reliance on the excel sheet was unwarranted. It was argued that the AO failed to bring on record any corroborative evidence to substantiate the additions. Therefore, in the absence of incriminating material or corroborative evidence, no addition could be made merely based on assumptions or projections derived from an unauthenticated excel sheet.

145.4 Based on the above points, the representatives submitted that the addition made by the AO based on a "dumb document" is unsustainable and requested that it be deleted. They emphasized the reliability of audited financial statements over unauthenticated and unverified projections.

146. On the contrary, the learned DR before us reiterated the findings contained in the order of the authorities below and vehemently supported the order of the Authorities below.

147. We have heard the rival contention of both the parties and perused the material available on record. Upon a thorough review of the facts, evidence, and legal submissions, we note that the core issue pertains to the reliance placed by the AO and the CIT(A) on an unauthenticated excel sheet discovered during a search operation. This document, which lacks identification criteria such as the name of any entity or individual, was used as the basis for making additions to the assessee's income across multiple assessment years. However, the evidentiary value of such a document is highly questionable. As held in

judicial precedents, including the Hon'ble Gujarat High Court in *Kaushik Majithia* and the Delhi High Court in *Vivek Agrawal*, unsigned and unauthenticated documents, without corroborative evidence, cannot be relied upon for making additions. The excel sheet in this case falls squarely within the category of a "dumb document," which lacks probative value and should not override the audited financials maintained by the assessee.

147.1 Furthermore, the assessee has maintained regular books of accounts that were duly audited under the Income Tax Act. The AO did not reject these books under section 145 of the Act, which is a mandatory prerequisite for disregarding the reported financials. The audited accounts represent a true and fair view of the financial position and performance of the assessee. In contrast, the seized excel sheet was argued to be a set of projections prepared for internal management purposes, which were never operationalized or implemented. These projections, being hypothetical and speculative, cannot be equated with actual financial transactions. The reliance on such unverified data, without rejecting the audited books, undermines the validity of the additions made by the AO.

147.2 The assessee has also highlighted the absence of any corroborative evidence to support the alleged discrepancies. There were no findings of unaccounted cash sales, discrepancies in inventory quantities, or any other incriminating material to substantiate the claim of under-reported income. The additions made by the AO were based solely on assumptions derived from the excel sheet, which were not backed by any concrete evidence. Such speculative assessments violate

the principles of natural justice and fair play, which mandate that assessments must be based on tangible and verifiable evidence.

147.3 It is also pertinent to note that the Gross Profit (GP) for Assessment Year (AY) 2016-17, as per the audited financial statements, was higher than the GP reflected in the excel sheet. This fact directly contradicts the AO's assumption of under-reported GP in A.Y. 2015-16 ignoring the overreporting in the next year and highlights the reliability of the audited financials over the unverified projections. Moreover, the assessee pointed out that the excel sheet contained inflated stock figures that artificially enhanced GP. This further underscores the hypothetical and unreliable nature of the data in the seized document.

147.4 Additionally, the provisions of Section 132(4A), which presume the truth of seized documents, are rebuttable. The assessee has successfully rebutted this presumption by providing a plausible explanation for the nature and purpose of the excel sheet. The onus then shifted back to the AO to provide corroborative evidence linking the seized data to the assessee's actual financials. However, the AO failed to discharge this burden, rendering the additions unsustainable. Judicial precedents consistently emphasize that projections or hypothetical figures cannot substitute actual financial transactions and must be supported by corroborative evidence.

147.5 The AO's approach also reflects a failure to adhere to due process. The assessee was not provided adequate opportunity to explain the discrepancies, and the AO did not conduct a proper inquiry to substantiate the additions. The assessment was based on unsupported presumptions, which is contrary to the principles of due process

enshrined in the Income Tax Act. Furthermore, the CIT(A) overlooked critical facts and judicial precedents favoring the assessee and instead upheld the AO's reliance on the unauthenticated excel sheet.

147.6 In conclusion, the reliance on an unauthenticated, unsigned, and unverifiable excel sheet over the audited financial statements is not legally tenable. The audited books of accounts, which reflect the true and fair financial position of the assessee, have not been rejected, should form the basis of assessment. The absence of any corroborative evidence to substantiate the alleged discrepancies further weakens the case of the Revenue. Therefore, the additions made by the AO for AYs 2014-15, 2015-16, and 2016-17 are unsustainable and should be deleted. The findings are firmly in favor of the assessee, emphasizing the precedence of reliable and audited financials over speculative and unverified projections. Hence, the ground of appeal filed by the assessee is hereby allowed.

148. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153C of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153C of the Act on account of proper satisfaction note not recorded/ provided in accordance with the provision of section 153C of the Act, and

148.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and

thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

149. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

149.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

150. In the result appeal of the assessee for A.Y. 2014-15 to 2016-17 are hereby partly allowed.

**Coming to ITA No. 743/Coch/2024 for A.Y. 2019-20 in the case of the assessee namely ABC Import and Export India Pvt Ltd.**

151. The sole issue raised by the assessee in this appeal pertains to the disallowance of commission expenses amounting to ₹1,16,43,000/-, which was confirmed by the learned Commissioner of Income Tax

(Appeals) [CIT(A)]. The assessee has challenged the decision, arguing that the disallowance is unjustified.

152. The assessee, a private company based in Morbi, Gujarat, is engaged in the business of purchasing ceramic tiles in bulk from local manufacturers and exporting them to East African and Gulf countries. During a search operation conducted on the ABC Group, of which the assessee is a part, an Excel sheet (marked as pages 3, 5, and 6 of Annexure CHN/CLT/132/2019-20/ABC/GUJ/A/4) was seized. This document became a crucial piece of evidence in the proceedings.

152.1 A meeting held on February 25, 2019, authorized the distribution of profit-based commissions to directors in proportion to their shareholding, with a total commission payout of ₹ 1,16,43,000. However, instead of directly crediting the commissions to the directors' accounts, the amounts were transferred to the bank accounts of certain employees working under the directors' supervision. These transactions were recorded in the company's books as "other commission" and were subjected to tax deduction at source (TDS).

152.2 After the deposits were made, the employees withdrew the funds and transferred them back to the respective directors. Each employee then filed an individual income tax return under Section 44AD of the Income Tax Act, declaring income below the basic exemption limit, and subsequently claimed refunds for the TDS amounts deducted.

152.3 The Assessing Officer (AO) disallowed the commission expense, characterizing it as an indirect payment to the directors rather than a

legitimate business expense. The AO also pointed out that routing the funds through employees was a deliberate strategy to evade tax liabilities.

153. On appeal, the learned CIT(A) upheld the disallowance made by the Assessing Officer (AO), noting the following observations:

*"(v) The appellant, in grounds at para.5(vi), 5(vii) and 5(viii) has contended that the commission payments made are actual business expenditure and that there ' is nothing on record to prove that the commission expenses are not incurred for the purpose of business. The appellant further contended that the AO has made excessive additions without adequate evidence. In this regard, it needs to be stated that the evidence seized during the course of search clearly indicates that the appellant has booked bogus expenditure under the guise of commission. This fact was further supported by the statement of one of the Directors. Further, the Chief Financial Officer (CFO) of the company, Shri Bineesh Babu also confirmed the fact that bogus expenditure under the guise of commission payments to employees was booked in the P&L account of the company. The said amounts so paid to the employees through banking channel were in turn handed over in cash to the Directors of the company. In substance, the employees had not performed any services to have earned such commission and also they did not benefit from such payments as the purported commission so received by the employees were in turn handed over to the Directors of the company. Considering all of the above facts, it becomes clear that the amount claimed as commission payments by the appellant in its books of account was not related to the business activity of the appellant, rather a ploy devised by the Directors of the appellant to siphon off money. Hence, the AO was justified in disallowing the expenditure u/s.37 of the IT Act. In view of the above, the argument of the appellant is not sustainable and hence rejected.*

*(vi) In the ground taken at para.5(ix) above, the appellant has submitted that the commission payments, even if made to the Directors, is an allowable deduction while computing income under section 37 of the IT Act. The above statement/submission of the appellant admitting to the payment of commission to its Directors at the later stages of the appellate proceedings appears to be frantic attempt to validate such payments as allowable business expenditure. The appellant has not been able to prove the exceptional circumstances or exemplary services rendered by the Directors warranting payment of commission. The genuineness of the*

*argument/contention made by the appellant remains to be substantiated and can only be treated as an afterthought to categorise the commission payments as genuine business expenditure. The action of the AO disallowing the same u/s.37 of the IT Act is therefore justified. The ground raised, raised by the appellant in this regard is rejected.*

*7. In view of the discussion made in paragraphs 6(c) to 6(vi) above, the addition made by the AO in disallowing the expenditure of Rs.1,66,43,000/- is confirmed. Without prejudice to the above discussion, it is worthwhile to mention here that the issue relating to payment of commission came up during the course of appellate proceedings in the case of the Directors of the Company. In the referred case, the AO held that the amounts paid as commission to the employees do not qualify to be treated as an expense as the same was not a business expenditure and accordingly disallowed such expenditure in the hands of the company. While doing so the AO, however made a protective addition in the hands of the Directors as unaccounted commission receipts. The protective addition made in the hands of the Directors was deleted in appeal.*

154. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

155. The learned Authorized Representative (AR) for the assessee argued before us that the assessee company, which is engaged in the business of trading and exporting ceramic tiles, paid commissions to employees of group entities for services rendered in the ordinary course of business. The commissions were paid only after the requisite tax deduction at source (TDS), ensuring full compliance with tax regulations.

155.1 The Id. AR further contended that the Revenue's claim—that the employees filed their income under Section 44AD of the Act—is incorrect. Section 44AD, which applies to presumptive taxation for small businesses, does not extend to commission income. Therefore,

according to the Id. AR, the Revenue's argument regarding the employees' tax returns is invalid.

155.2 Additionally, the Id. AR argued that even if the employees withdrew the commission amounts from their accounts, it should not undermine the genuineness of the commission expenses incurred by the assessee. Since the commissions were subjected to TDS and reported as taxable income by the recipients, disallowing the commission expenses would lead to double taxation, as the amounts had already been taxed in the hands of the recipients. Therefore, the AR maintained that the expenses should be allowed as legitimate business expenditures.

156. On the other hand, the learned DR strongly supported the findings of the authorities below by reiterating the findings contained in their respective orders.

157. We have considered the rival contentions of both parties and reviewed the materials available on record. In this case, the revenue authorities disallowed the commission expense claimed by the assessee, contending that the funds were routed through employees to the directors, which was perceived as an indirect method to reduce tax liabilities. While TDS was deducted on the commission payments and the employees reported the amounts as income, the structure of the transactions raises substantial concerns.

157.1 The assessee routed the commission payments through employees, who subsequently transferred the funds back to the directors. Although the commission was reported and taxed in the hands

of the employees, the structure of the transactions raises the possibility of an arrangement designed to conceal the true nature of the payments.

157.2 Furthermore, the AR's argument concerning the provisions of section 44AD of the Act, which deals with presumptive taxation for small businesses, is irrelevant in this context and does not hold strong. If the employees filed returns under Section 44AD, it could suggest that the payments were treated as personal income, which contradicts the nature of commission payments. The use of this section could undermine the credibility of the claim that the payments were genuinely related to business activities. While the assessee claims that the commissions were paid for services rendered, the routing of funds through employees raises concerns about whether this was a legitimate business expenditure or merely a tax-saving arrangement. Additionally, the fact that the employees filed income tax returns under a presumptive taxation scheme and claimed refunds for the TDS amount further complicates the matter.

157.3 The AO and the Id. CIT(A) correctly observed that while the commission payments were subject to TDS, they were not made directly to the directors, which could suggest an attempt to misrepresent the true nature of the payments. The disallowance of the commission expense aligns with tax regulations, which require that payments to directors be accurately recorded and substantiated as legitimate business expenses.

157.4 Given the structure of the payments and the routing of funds through employees, the commission expenses should be disallowed. This arrangement fails to meet the criteria for a genuine business

expenditure. The fact that the employees filed returns under Section 44AD further reinforces the conclusion that the transactions were not consistent with standard business practices. In the light of the above facts and circumstances, we find no reason to interfere with the findings of the learned CIT(A). Accordingly, the ground of appeal raised by the assessee is dismissed.

158. In the result, appeal of the assessee is hereby dismissed.

**Coming to ITA No. 523/Coch/2024 for A.Y. 2013-14 in case of assessee Shri Kodiyal Muhammed Madni.**

159. The only effective issue raised by the assessee is that the learned CIT(A) erred in upholding the validity of the reopening of the assessment under Section 147 of the Act and, further, in confirming the addition on account of unexplained investment on merit.

160. The facts, in brief, that the assessee and its group, ABC Group, were subject to search proceedings on 27<sup>th</sup> February 2020. During the search, a property purchase agreement dated 9th August 2012 was found in the possession of the assessee. According to the agreement, the assessee (Shri Muhammad Madni) and Shri Abdul Gafoor Muhammed had entered into an arrangement to purchase land measuring 17.41 Acres from Shri Abdul Shukoor and others for a total consideration of ₹2,79,50,000/-, of which ₹55 lakh was paid through cheque and ₹45 lakh in cash. Based on the findings from the search, the AO issued a notice under Section 148 of the Act for reopening the assessment.

161. During the assessment proceedings, the AO obtained information from the office of the sub-registrar by issuing a notice under Section 133(6) of the Act. According to the information received, the property bearing Survey No. 2/12, measuring 16.96 Acres, was purchased by the assessee along with five other parties from Shri Abdul Shukoor and others through a registered sale deed dated 15th August 2013 for a total consideration of ₹2,16,90,600/-, on which stamp duty of ₹13,01,500/- was paid. The AO noted a discrepancy between the purchase value of the property mentioned in the agreement dated 9<sup>th</sup> August 2012 and the registered sale deed dated 15<sup>th</sup> August 2013, with the difference amounting to ₹ 68,52,400/- only. Treating this as an unexplained investment, the AO made an addition in the hands of the assessee for 1/6<sup>th</sup> portion of the unexplained investment, amounting to ₹11,42,066/- only.

162. The aggrieved assessee filed an appeal before the learned CIT(A), challenging the validity of the addition made in the assessment order passed under Section 147 of the Act, both on technical grounds and on merits. The learned CIT(A) rejected the grounds raised by the assessee, making the following observations:

*"(i) The ground raised by the appellant at para. 5(i) above is general in nature and therefore does not require any specific adjudication.*

*(ii) In the ground raised at para. 5(ii) above, the appellant contests the legality of the assessment made by the AO u/s.147 of the IT Act and hence they are taken up together for adjudication. In the first place, the appellant argues that there is no fresh information for reopening of the assessment and in the absence of the same, the reopening itself is invalid. With regard to the above, it needs to be stated that the assessment was reopened on the basis of specific information gathered during the course of search u/s.132 and that being the case, the argument of the appellant is not tenable and is therefore rejected.*

*(iii) In the ground raised at para. 5(iii) above, the appellant contests that the assessment is completed without providing reply to letter submitted by the appellant calling for reason to re-open the assessment and hence for*

*this reason as well, the complete proceedings under reference is invalid and is liable to be quashed. With regard to the above, it needs to be stated that though the appellant has made the above contention, he has not adduced any evidence to substantiate that the reasons for reopening were requested from the AO. In view of the above, the argument of the appellant cannot be taken on face value. Accordingly, the ground raised by the appellant is rejected.*

*(iv) In the ground raised at para. 5(iv) above, the appellant contests that there is no investment etc., not fully disclosed in the books of account during the previous year ended 31/03/2013, relevant to the AY 2013-14 as the document relied by the AO is stated to be registered only on 15/08/2013 i.e., during the previous year ended 31/03/2014. With regard to the above, it needs to be stated that though the date of registration falls within the financial year relevant to the AY 2014-15, the evidence seized indicate that the investment was made in the financial year relevant to the AY 2013-14 as the agreement dated 09/08/2012 revealed that payments in lieu of the said land was made through banking channel and cash in the AY under consideration. Hence, the argument of the appellant is not acceptable and therefore rejected.*

*(v) In the ground raised at para. 5(v) above, the appellant raises certain general contentions against the addition such as that the addition made by the AO is based on presumption etc. The contention of the appellant in this regard are not acceptable as they apparently unsubstantiated and therefore rejected.*

*(vi) In the ground raised at para. 5(vi) above, the appellant contends that the notices were not properly served on him. It is not understood as to what the appellant means by 'notices not being properly served'. Further, the appellant also has not substantiated the same with any evidence. Considering the above, the contention of the appellant is not acceptable and hence, rejected."*

163. Aggrieved by the order of the learned CIT(A), the assessee has filed an appeal before us.

164. The learned AR, among other contentions, before us submitted that there was no tangible material available with the AO at the time of issuing the notice under Section 148 of the Act suggesting that income had escaped assessment. According to the learned AR, the agreement to sell itself did not provide any basis to believe that the assessee's income had escaped assessment.

165. On the other hand, the learned DR strongly supported the orders of the authorities below by reiterating the findings contained in their respective orders.

166. We have heard the rival submissions of both parties and perused the materials available on record. From the preceding discussion, we note that the AO received information from the investigation wing via a letter (date not available), which was seized and marked as CHN/CLT/132?2019-20/ABC/T-8/A-15. The information contains the details about the sale agreement of the property dated 9th August 2012. According to the information, the assessee, along with another person, was purchasing land for a total consideration of ₹2,85,43,000/-.

166.1 Based on the information discussed above, the AO issued a notice under Section 148 of the Act on 20th March 2020. Subsequently, during the assessment proceedings, the AO issued a notice under Section 133(6) of the Act on 15<sup>th</sup> September 2021 to the Sub-Registrar to ascertain the actual value of the impugned property. According to the information received from the Sub-Registrar, the property was purchased by six persons for ₹ 2,16,90,600/- only. The AO, therefore, noted a discrepancy of ₹68,52,400/- between the actual consideration and the amount recorded in the sale agreement. Consequently, the AO treated the difference as an unexplained investment by the assessee, attributing 1/6th share of ₹11,42,066 to the assessee, which was added to the total income. The view taken by the AO was subsequently upheld by the learned CIT(A).

166.2 The first issue before us is whether the proceedings under Section 148 of the Act are valid in the given facts and circumstances. It is undisputed that the proceedings were initiated under Section 148 based on information received from the investigation wing of the Income Tax Department regarding the sale agreement of the property, as discussed above. The key question is whether the information provided by the investigation wing gave the AO reasonable grounds to believe that income had escaped assessment. From the discussion above, we observe that the AO merely received information about the purchase of the property, but this alone was insufficient to conclude that there was escapement of income. At the time of issuing the notice under Section 148, the AO was unaware of the actual consideration of the property in question, which was only discovered at a later stage, as discussed earlier. Therefore, we are of the view that there was no tangible material available with the AO at the time of issuing the notice to justify a belief that income had escaped assessment. In light of the above, we hold that the proceedings under Section 148 of the Act are not valid and, accordingly, are liable to be quashed. Therefore, the ground of appeal raised by the assessee is hereby allowed.

166.3 Since the assessee has succeeded on the technical ground, we find no reason to address the merits of the case. As a result, the issue on merits becomes infructuous. Accordingly, we dismiss the other grounds raised by the assessee in the memorandum of appeal.

167. In conclusion, the appeal filed by the assessee is hereby partly allowed.

**Coming to ITA No. 524/Coch/2024 by the assessee Muhammad Madni K. for A.Y. 2017-18.**

168. The assessee, vide letter dated 24th September 2024, filed an additional ground in the captioned appeals, which is identical to the additional ground of appeal filed by the assessee's sister concern in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground of appeal raised by the sister concern for A.Y. 2017-18 was admitted by us in Paragraph No. 5 of this order. In light of this, the additional ground raised by the assessee in the present appeals for A.Y. 2017-18 is hereby admitted.

**169. The effective issue** raised by the assessee is that the learned CIT(A) erred in confirming the addition on account of unexplained foreign investment.

170. The necessary facts are that the assessee, Shri Muhammed Madani, identified as the key person and Chairman of the ABC Group of concerns. As such, the ABC Group was subject to search proceeding resulting in discovery of incriminating evidence in the form of various excel sheets, financial data, audit reports, and sworn statements, copies of board resolution, minutes of meeting, email-correspondence etc. Based on search documents, it was alleged that the assessee Shri Madani had substantial investments in multiple foreign entities, namely ABC Mercantile FZCO in UAE, ABC Project WLL in Qatar, and ABC Impex Africa Ltd in Uganda. Mr. Madni is also shareholder/ director in other companies of ABC group which are registered and operating in India. One such company is M/s Bathx Bathware India Pvt Ltd.

170.1 During the search, an investor agreement in relation to the formation of ABC Mercantile FZCO-Dubai was found. Based on the said investor agreement it was alleged that the three companies namely M/s Bathx Bathware India Pvt Ltd, ABC Project WLL in Qatar, and ABC Impex Africa Ltd in Uganda had merged to form ABC Mercantile FZCO in Dubai.

170.2 The capital contributions by the shareholder of the 3 existing companies as stated above and their profit details in ABC Mercantile FZCO were clearly outlined in the seized excel sheets and financial records.

170.3 The AO raised significant allegations based on the evidence. The AO alleged that Mr. Madani had made substantial undisclosed foreign investments, which were taxable under Indian laws. The AO based on the Directors Report of ABC Mercantile FZCO as on 31<sup>st</sup> March 2018 found that the Mr. Madani, held a 70% shareholding in ABC Mercantile FZCO. Accordingly, the AO asserted that the data in the seized excel files was genuine and not merely projections, as claimed by the assessee. Further, the AO pointed out that the income arising from these investments had not been declared in India, and the provisions of the Act, did not exempt the said income. The AO also alleged that the investments violated the regulatory provisions of the Foreign Exchange Management Act (FEMA) and RBI guidelines, as there was no evidence to prove that these foreign investments were made through proper channels. The income and capital contributions were therefore proposed to be treated as unexplained investment taxable under Section 69 of the Act.

170.4 In his counter-arguments, Mr. Madani denied having any financial stake in the foreign entities specially in the ABC Mercantile FZCO. He claimed that the investments reflected in his name were actually made by his brother, Kodiyil Muhammed Shameen, who is settled and working in Qatar. The assessee stated that he was only managing the affairs of the foreign companies on a consultancy basis and had no ownership or financial interest in them. He argued that the figures appearing in the seized excel sheets were mere projections prepared for managerial purposes and attracting potential investors, and therefore, did not represent actual profits or investments. Additionally, he contended that any dividends or income received from foreign entities had already been declared and taxed under the provisions of the Act. He further defended the appearance of his name in the company records, claiming it was a legal requirement for foreign entities in the UAE to have a resident's name included for licensing purposes. The assessee in support of his contention relied on audit reports and financial statements filed in support of his arguments, asserting that the data presented in the excel sheets was unreliable and incomplete.

170.5 However, the AO rejected the assessee's defense, citing inconsistencies and lack of substantive evidence to support his claims. The AO established that the investments were indeed made by the assessee and not his brother, as alleged. The seized excel sheets and financial documents were found to be authentic and reflected actual capital contributions, shareholding patterns, and profits earned. The AO confirmed that assessee held a **70% shareholding** in **ABC Mercantile FZCO**, which contradicted his earlier statements. The officer also observed that the investments were not routed through proper Indian

banking channels, which amounted to a violation of **FEMA and RBI guidelines**. Additionally, the AO held that the income arising from these investments had not been disclosed in India, and the assessee had failed to provide credible evidence proving otherwise.

170.6 The AO further noted that while the assessee argued the figures in the excel sheets were projections, he did not provide any independent audit trail or verifiable evidence to substantiate this claim. On the contrary, the documents clearly showed substantial financial transactions, capital additions, and profits, all pointing to undisclosed foreign investments. The AO highlighted that Mr. Madani had filed his return of income for the assessment year **2020-21**, wherein he admitted to investments in **M/s ABC Project WLL** in the foreign asset schedule of his ITR. This contradicted his earlier claim of having no financial stake in these foreign entities.

170.7 Accordingly, the AO concluded that the investments in ABC Mercantile FZCO, Dubai, and other foreign entities were undisclosed and unexplained, falling under the purview of Section 69 of the Act. As these investments had not been disclosed in India, and tax implications were to be borne by the assessee. The AO further found that part of the investment in ABC Project WLL was sourced from ABC Group's funds, thereby adding to the complexity of the case.

170.8 In conclusion, the AO held that the assessee had substantial **undisclosed foreign investments**, in the foreign entities amounting to **Rs. 6.36 crore**, which were undisclosed and unexplained. The AO rejected the assessee's arguments regarding his brother's involvement,

projections in the excel sheets. The investments were deemed to have violated FEMA and RBI guidelines, and an addition was made to the assessee's income under Section 69 of the Act.

171. The aggrieved assessee preferred an appeal before the learned CIT(A).

171.1 The assessee before the learned CIT(A) contends that there are no incriminating materials to justify the application of Section 153A of the Act for reassessment. The assessee argues that the materials extracted, particularly excel sheets from iPhones and CPUs, are unverified and lack any corroborative evidence. These excel sheets were allegedly prepared by other individuals based on projections and valuations without the assessee's involvement or authorization. The additions made on such projections, which include premium, dividends, and profit figures, are arbitrary and speculative. The assessee asserts that the excel sheets are intended for management purposes like valuation and inviting investments, not as evidence of actual income or foreign investments.

171.2 The assessee further claims that there is no substantive proof of real investments in foreign entities. The small capital investments reflected in his name are, in fact, attributable to non-resident Indians, including family members, who have confirmed the same. The learned assessing officer has allegedly relied on assumptions and ignored the onus of proving the figures to be taxable in India. The assessee emphasizes that suspicion, however strong, cannot replace actual

evidence, citing legal precedents like DCIT vs. Venu Raman Kumar in ITA No. 2977/Mum/2018.

171.3 Additionally, the assessee argues that the figures in the excel sheets, up to 2016, are mere projections and not actual incomes. These projections include management estimates and speculative values for dividends and premiums. The income, if any, derived from foreign entities is taxable in the respective countries of registration, not in India. Moreover, the assessee points out that foreign incomes, such as dividends or zakat, were neither received nor accounted for in his returns. Therefore, taxing such projections in India violates the provisions of the Income Tax Act.

171.4 The assessee further claims that the assessing officer has acted without jurisdiction, relying on unverified materials like extracts, resolutions, and incomplete records, which were never shared with the assessee during the proceedings. This violation of natural justice renders the proceedings void. The assessee also cites legal precedents to argue that unexplained additions under Section 69 of the Act are not justified, as there is no concrete evidence of unexplained foreign investments.

171.5 Finally, the assessee submits that all foreign assets, whether attributable or not, have been disclosed in his ITR filings for the assessment year 2020-21, and any contrary findings by the officer are incorrect. The order passed is therefore flawed, arbitrary, and requires quashing for lack of evidence and procedural fairness.

172. The learned CIT(A) after considering the facts in totality rejected assessee's contention and confirmed the finding of the AO. The finding of the learned CIT(A) discussed follows.

172.1 The appellant argued that the absence of incriminating materials invalidated the additions under Section 153A of the Act. The learned CIT-A dismissed this claim, affirming that the AO relied on seized incriminating evidence found during search operations, which included hard disks, mobile phones, and excel sheets. The CIT-A observed that the materials retrieved were directly linked to unaccounted investments and income of the appellant. The AO had thoroughly verified and corroborated these materials, establishing their authenticity.

172.2 The appellant contended that the seized excel sheets were merely projections and did not represent actual financial transactions. The learned CIT-A, after examining the records, noted that the excel sheets contained specific details such as month-wise data, investment patterns, share allocations, and payments. These details could not be dismissed as mere projections. Statements recorded from the Accountant Shri Jabir P.K., board resolutions, and bank statements further corroborated the authenticity of the data. Hence, the learned CIT-A held the excel sheets as **valid evidence** of unaccounted income.

172.3 The appellant claimed that the foreign investments belonged to his NRI brother, **Shri Kodyil Muhammed Shameem**. The learned CIT-A rejected this argument, stating that no conclusive evidence was provided to substantiate the claim. The foreign asset schedule filed in the appellant's ITR contradicted the claim. Additionally, it was evident

from the seized materials that the appellant was the key person managing and controlling the foreign entities. The Learned CIT-A concluded that the investments were indeed owned by the appellant and not his brother.

172.4 The appellant cited several judicial pronouncements to support his claims, including cases like A John Kumar Vs. Dy.CIT in ITA No. 3028/Chen/2019, PCIT Vs. STC Developers 2022 187 TR(A) 299 Delhi-HC, and others. The learned CIT-A concluded that the judgments relied upon by the appellant were not relevant to the present case. The facts and circumstances in the cited cases were substantially different, as the seized materials in the appellant's case directly referenced unaccounted income and investments. Therefore, the judicial precedents offered no relief to the appellant.

172.5 The appellant argued that the AO violated principles of **natural justice** by relying on excel sheets instead of audited financial records. The learned CIT-A dismissed this contention, explaining that during search operations, seized materials take precedence over audited books, especially when evidence of unaccounted income emerges. The appellant failed to disprove the reliability or authenticity of the seized materials, and therefore the argument lacked merit.

172.6 The appellant argued that the terms "dividend" and "zakkath" were misinterpreted and incorrectly treated as income. The learned CIT-A clarified that the terms were used broadly to denote income received in lieu of investments made in foreign entities. The term "zakkath" was calculated proportionately based on the investment quantum. Payments

received through banking channels confirmed these as income/payables rather than mere labels, and the appellant's argument was found unsustainable.

172.7 The learned CIT-A rejected the appellant's argument that the seized materials, including excel sheets, were "dumb documents." The learned CIT-A observed that the documents contained month-wise financial details, share allocations, and income patterns, which were corroborated with other evidence such as bank statements and board resolutions. The learned CIT-A affirmed that the evidence was authentic, reliable, and directly linked to the appellant's unaccounted income.

172.8 After reviewing the appellant's contentions, the learned CIT-A found that the appellant failed to provide any substantial evidence to disprove the seized materials or the findings of the AO. The judicial pronouncements cited by the appellant were unrelated to the facts of the case. The foreign investments and unaccounted income were clearly established through corroborative evidence, and the appellant's arguments were deemed baseless.

172.9 Thus, the learned CIT-A upheld the findings of the AO, confirming that the appellant had unaccounted investments and income linked to foreign entities. The arguments raised by the appellant were found unsustainable, and the evidence provided by the AO was deemed valid and reliable. Accordingly, the appeal was dismissed, and the additions made by the AO were confirmed.

173. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

174. The AR before us contended that there was no actual investment made by the assessee M/s ABC Mercantile FZC. It was clarified that although the name of Shri Muhammed Madni appeared as a shareholder, the actual investment was made on behalf of Shri Muhammed Abdul Gafoor and Shri Shameem, who are non-resident individuals and the brother and associate of Shri Muhammed Madni, respectively. The AR further emphasized that the actual ownership of shares in M/s ABC Mercantile FZC vests with Shri Muhammed Abdul Gafoor and Shri Shameem, with Shri Muhammed Madni being a registered shareholder on their behalf. This was substantiated by the confirmations from Shri Muhammed Abdul Gafoor and Shri Shameem, placed on pages 227 and 231 of the factual paper book.

174.1 Further the learned AR retreated the contention made in the case of other assessee of ABC Group in connection with the issue of unexplained investment in M/s ABC Mercantile FZC. As such the learned AR submitted that the investor agreement, excel sheets etc. found during the search were mere initial planning and projection to lure investors which had not materialized into actual transactions. These projections, according to the AR, lacked any corroborating evidence to confirm their realization, and therefore, no adverse inferences should be drawn based on these documents.

174.2 In conclusion, the AR submitted that the Excel sheets, investor agreements, and other documents found during the search were merely "dumb documents," and since there was no corroborative evidence to

support their contents, no adverse inference should be drawn against the assessee based on these documents. The AR also contended that the statements recorded under Section 132(4) of the Income Tax Act, without any incriminating material, cannot serve as a valid basis for making additions in the hands of the assessee.

175. On the other hand, the learned DR before us contended that the search operation conducted uncovered significant unexplained investments and undisclosed foreign assets held by the assessee. It was revealed that the group's flagship companies in Uganda, Qatar, and India were consolidated under a single entity, ABC Mercantile FZCO, Dubai, which currently manages operations in GCC and East Africa. Despite generating income and sharing profits through these businesses, the assessee failed to disclose these investments and foreign assets in his income tax returns filed in India. This omission highlights a deliberate attempt to evade taxation and conceal foreign wealth.

175.1 The material found further revealed undisclosed capital investments made by the assessee during FY 2016-17 to FY 2019-20. These capital inflows into ABC Mercantile FZCO were never reported, violating provisions of the Act. Such non-disclosure is a clear indication of the group's intent to hide foreign investments from regulatory authorities. Additionally, the search uncovered substantial foreign income received by the assessee. This income includes dividend payouts, zakat payments, salaries, and capital gains, all of which were undisclosed in their Indian tax filings.

175.2 The search material identified that dividend payments were distributed across multiple financial years, as evidenced by the seized excel file "Dividend 2018.xlsx" from the corporate office of ABC Mercantile Group. Similarly, the Zakat payments from ABZ Mercantile FZCO for the year 2018, documented in PDFs found during the search indicate further non-disclosure. The extracted evidence also revealed significant salary payments received by the assessee.

175.3 The learned DR contended the department's case is backed by strong corroborative evidence, including extracted mobile phone data, hard disk files, bank statements, and PDF documents. These pieces of evidence confirm the transfer of undisclosed foreign income into Indian bank accounts while matching the values declared in seized financial documents. For instance, detailed reconciliation of dividend data, such as payments made in Qatari Riyals and their conversion to USD, demonstrates the accuracy of the department's findings.

176. The learned AR in rejoinder before us retreated contends that Mr. Madani has never made any investment in the share capital of ABC Mercantile FZCO, Dubai or ABC Project WLL, Qatar, despite being a shareholder in both entities. No evidence was found during the search to indicate any such investment.

176.1 The learned AR further submitted that the investment of AED 500,000/- in ABC Mercantile FZCO was made entirely by PACE Group DMCC, managed by Mr. Pallikere Abdulla Ibrahim, as evidenced by cheque details and bank statements wherein an amount of AED 1000,000/- credited from PACE group DMCC dated 26<sup>th</sup> February. Additionally, the financial statements of ABC Mercantile FZCO classify

this amount as share capital and an additional AED 500,000 as a loan. Furthermore, Mr. Madani has not received any dividends from ABC Mercantile FZCO.

177. We have heard the rival contentions of both the parties and carefully examined the case, including the evidence presented, contentions of both parties, and the findings of the AO and the learned CIT(A). The case pertained to the alleged undisclosed foreign investments made by the assessee, Mr. Muhammed Madani, in an entity namely ABC Mercantile FZCO (Dubai). The search operation conducted under Section 132 led to the discovery of alleged incriminating materials, including seized excel sheets, bank records, board resolutions, and sworn statements, leading the allegation of substantial capital investments and income accrued. The AO relied on these documents to make additions under Section 69 of the Income Tax Act, treating the investments as unexplained and undisclosed.

177.1 We note that the case revolves around allegations of undisclosed foreign investments and unreported income based on materials seized during a search operation. Upon close scrutiny of the matter, several critical factors emerge in favor of the assessee, including the complexity of shareholding arrangements, gap in evidence, and procedural lapses. These findings, particularly addressing the significance of the assessee's status as a registered shareholder, are elaborated in following paragraphs.

177.2 The additions made under Section 69 of the Income Tax Act are primarily based on Excel sheets, projections, and other digital documents

found during the search. These materials, while suggestive of financial planning or business intentions, cannot independently establish actual transactions or investments without corroboration through reliable evidence such as bank statements, contracts, or financial disclosures. Judicial precedents have consistently held that such unverified materials are speculative and insufficient to justify additions. Without substantiating evidence, the reliance on projections undermines the credibility of the findings.

177.3 Furthermore, it is pertinent to note that while dealing with an identical issue of unexplained investment in the case of other assesseees of the ABC Group, we thoroughly examined the genuineness and reliability of the search materials, such as the investment agreement, Excel sheets showing the valuation of shares of three existing companies, Excel sheets based on the valuation of existing companies showing individual shareholder values, and Excel sheets detailing investment and profit sharing. This was analysed in detail in paragraphs 20 of this order. Accordingly, we held that these Excel sheets, shareholder agreements, and similar documents were merely projections that had not materialized into actual transactions. For a detailed discussion, please refer to the aforementioned paragraphs. Therefore, we reject the findings of the lower authorities that these documents contained specific month-wise details of investments, profit distributions, and shareholding patterns, which allegedly aligned with other corroborative evidence such as bank records and board resolutions.

177.4 Be that as may be, a critical aspect of the case is the fact that Shri Madani is listed as a **registered shareholder** in ABC Mercantile

FZCO, Dubai, among other foreign entities. This fact, while significant, cannot be interpreted in isolation. The assessee consistently argued that his inclusion as a shareholder was merely a regulatory requirement and did not reflect actual ownership or financial interest. Foreign entities in jurisdictions like the UAE often mandate the inclusion of a local or resident individual as a shareholder or director to comply with licensing requirements. The assessee also clarified that the actual financial contributors were his brother, Kodyil Muhammed Shameen, and another associate, Shri Abdul Gafoor Muhammad, both of whom are non-resident Indians.

177.5 In our considered opinion the significance of being a registered shareholder cannot be entirely disregarded, as it does indicate a formal association with the foreign entities. However, this status alone is not conclusive proof of ownership or investment unless corroborated by evidence demonstrating the flow of funds or actual financial benefits received by the assessee.

177.6 The seized documents, including Excel sheets, are speculative in nature, outlining projections and plans rather than executed transactions. The assessee argued that these materials were created for management purposes, such as attracting investors or outlining business plans, and did not represent actual financial transactions. Tax liability cannot be based on hypothetical scenarios; it must be tied to actual realizations. The authorities failed to demonstrate how these projections materialized into investments or income, further weakening their case. The Hon'ble Supreme In *CIT v. Shoorji Vallabhdas & Co.* [1962] 46 ITR 144 (SC) emphasis on income tax being levied on real income as

opposed to hypothetical income, the relevant observation reads as under:

*"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.*

177.7 The assessee argued that income generated by foreign entities is taxable in their respective jurisdictions, not in India. This argument aligns with international taxation principles, particularly for dividends, capital gains, or other incomes originating abroad. Additionally, the assessee claimed that all foreign assets attributable to him had been disclosed in his income tax returns. The AO and CIT(A) failed to counter these claims with substantive evidence, further supporting the assessee's defense.

177.8 Furthermore, while the assessee's name as a registered shareholder is a notable fact, it must be analyzed in the context. Being a registered shareholder does not necessarily equate to financial ownership or investment. The assessee provided reasonable explanations for his inclusion in the foreign entities, backed by third-party confirmations and evidence demonstrating that the actual financial contributors were others. In our considered opinion without direct evidence of funds flowing from the assessee or benefits received by him, the shareholder status alone cannot justify additions under Section 69.

177.9 The AO and CIT(A) relied heavily on documents outlining investment agreements and profit-sharing projections. However, no evidence was presented to show that these agreements or plans

resulted in actual financial transactions. Additionally, the assessee demonstrated that investments attributed to him were funded by third parties, corroborated by bank statements. The absence of direct financial inflows or outflows involving the assessee significantly weakens the allegations.

177.10 The assessee contended that all foreign assets attributable to him had been disclosed in his income tax returns, and no unreported income or assets were identified. This level of disclosure further supports the argument that the additions are unwarranted.

177.11 The case against Mr. Madani hinges significantly on his status as a registered shareholder in foreign entities. While this fact cannot be ignored, it must be viewed in conjunction with the broader evidence, or lack thereof. The reliance on speculative materials like Excel sheets, the absence of corroborative evidence for actual transactions, and the explanations provided regarding shareholding attribution all point to a lack of substantive proof of undisclosed investments or income.

177.12 It is also significant to note that the revenue has sought information under FT & TR but nothing adverse was brought on record despite after the lapse of so many years post search/ reference made. Given these considerations, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition. Hence ground of appeal raised by the assessee is hereby allowed.

178. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.

178.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

179. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

179.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

180. In the result appeal of the assessee is hereby partly allowed.

**Coming to ITA No. 528 & 529/Coch/2024 by the assessee  
Muhammad Madni K. for A.Y. 2018-19 & 2019-20.**

181. The assessee, vide letter dated 24th September 2024, filed an additional ground in the captioned appeals, which is identical to the additional ground of appeal filed by the assessee's sister concern in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground of appeal raised by the sister concern for A.Y. 2017-18 was admitted by us in Paragraph No. 5 of this order. Following the same reasoning, the additional ground raised by the assessee in the present appeals for A.Y. 2018-19 and 2019-20 is hereby admitted.

**182. The effective issue** raised by the assessee is that the learned CIT(A) erred in confirming the addition on account of unexplained foreign investment.

182.1 At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2018-19 & 2019-20 is identical to the issue raised by the assessee in ITA No. 524/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 524/Coch/2024 shall also be applicable for the issue raised by the assessee in captioned appeal for AY 2018-19 & 2019-20. The ground of appeal raised by the assessee for the A.Y. 2017-18 has been decided by us vide in the succeeding paragraph No. 177 of this order, wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the for the assessment year

2017-18 shall also be applied for the ground of appeal raised by the assessee for A.Y. 2018-19 & 2019-20. Hence, the ground of appeal filed by the assessee is hereby allowed.

183. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,
- ii. Challenging the validity of the assessment under section 153 of the Act on account of limitation of time under section 153B of the Act.

183.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

184. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

184.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

185. In the result, the appeals of the assessee for A.Y. 2018-19 and 2020-21 are hereby partly allowed.

**Coming to ITA No. 530/Coch/2024 by the assessee Muhammad Madni K. for A.Y. 2020-21**

186. The assessee, vide letter dated 24th September 2024, filed an additional ground in the captioned appeals, which is identical to the additional ground of appeal filed by the assessee's sister concern in ITA No. 441/Coch/2024 for A.Y. 2017-18. The additional ground raised by the sister concern for A.Y. 2017-18 was admitted by us in Paragraph No. 5 of this order. Following the same reasoning, the additional ground raised by the assessee in the present appeals for A.Y. 2020-2021 is hereby admitted.

**187. The first effective issue** raised by the assessee is that the learned CIT(A) erred in confirming the addition on account of unexplained foreign investment.

187.1 At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2020-21 is identical to the issue raised by the assessee in ITA Number 524/Coch/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 524/Coch/2024 shall also be applicable for the issue raised by the assessee in captioned appeal for AY 2020-21. The ground of appeal raised by the assessee for the A.Y. 2017-18 has been decided by us vide in the succeeding paragraph No. 177 of this order, wherein the issue has been decided in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the for the assessment year 2017-18 shall also be applied for the ground of appeal raised by the assessee for A.Y. 2020-21. Hence, the ground of appeal filed by the assessee is hereby partly allowed.

**188. The next** issue effective raised by the assessee is that the learned CIT-A erred in confirming the addition on account of capital gain on transfer of share of an entity registered in Qatar.

189. The relevant facts are that the assessee held a 24.5% share in the foreign entity, ABC Project WLL-Qatar, which was valued at Qatari Riyals 49,000.00 only. During the year under consideration, the assessee entered into a share transfer agreement with Shri Abdul Gafoor Muhammed and Kodyal Muhammed Shameem (the assessee's brother) for the transfer of 12.5% of his holding, for a consideration of Qatari Riyals 375,000.00 only. However, no capital gain was offered to tax by the assessee on the transfer of these shares. The assessee contended that both parties to whom the shares were transferred were part of the assessee's group and were brought in as official stakeholders in ABC

Project WLL-Qatar. The consideration mentioned in the share transfer agreement was never actually received, and it was only stated for documentary or procedural purposes.

189.1 However, the AO disagreed with the assessee's contention by holding that the share transfer agreement was a registered document issued by the Qatari Government Authority, which clearly stated that the consideration had been paid by the buyer to the assessee prior to the transfer of the shares. Therefore, the AO computed the capital gain arising from the transfer of the shares and brought it to tax as capital gain in the hands of the assessee, making an addition of ₹68,97,397/- only.

190. On appeal by the assessee, the learned CIT(A) confirmed the finding of the AO.

191. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

192. The learned AR before us contended that while Shri Madani was the legal owner of the shares, the actual investment was made by Shri Abdul Gafoor and Shri Shameem, and Mr. Madani himself made no investment or received consideration for the transfer. The shares were held only for regulatory purposes, and no transfer of money occurred, as confirmed by the assessee in statement recorded under section 131 of the Act as well as confirmed by Shri Abdul Gafoor and Shri Shameem in the confirmation letter.

192.1 The learned AR argues that capital gains are chargeable only to the actual investor, not a nominal holder, as no money was invested or received by him. It is a well-accepted principle that in the absence of consideration, **section 45 of the Act** does not apply. Additionally, the AO relied on excel sheets, which lack corroborative evidence or identification, and therefore have no evidentiary value. The appellant argues that without substantial evidence, the addition cannot be justified, relying on judgments to support the claim.

192.2 The learned AR without prejudice submitted that assessee Shri Madni has transferred share to Shri Shameem who is real brother of the assessee therefore even assuming it a transfer under section 45 of the but the same not taxable as gift to brother under section 56 of the Axt.

193. On the contrary, the learned DR before us vehemently supported the finding of the authorities below.

194. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the appellant assessee and one Shri Zayed Mahmood both were legal owners of the shares of ABC Project WLL-Qatar for 49% valued at QAR 49,000/- in equal proportion i.e. 24.5% each. In the year under dispute the assessee and Zayed Mahmood relinquished their holding by 12.5% and 11.5 % respectively in favour of Shri Abdul Gafoor and Shri Shameem who became share holder for 12% each. As per the transfer agreement found during the search consideration for transfer was fixed at QAR 7,50,000/- only. The AO accordingly worked out the capital gain on account of transfer at ₹

68,97,397/- and added to total income of the assessee which was also confirmed by the learned CIT(A).

194.1 The assessee consistently submitted before search team, the AO, the learned CIT(A) and before us that though the shares in M/s ABC Project WLL was held in his name but he was not the actual or the beneficial owner of the such share as the investment in said entity was made by Shri Abdul Gafoor Mohammed Pottichi and his brother Shri Muhammed Shameem Kodyil who are NRI residing outside India. But due to some reason they cannot hold share in their own name at that time accordingly share was held in his name. In support of his claim the assessee has furnished the copy of confirmation letter from Shri Abdul Gafoor and Shri Shameem along with copy of remittance certificate dated 03 October 2010 from UAE to Qatar by the entity namely DIGITAL Information Technology LLC in which Shri Abdul Gafoor hold 100% share. All these documents are placed at pages 227 to 232 of the "Factual Paper book- Unexplained (foreign) Investment". During the year, he transferred part of the share to the actual or beneficial owner without any consideration. However, for procedural and legal purpose and to comply with the law of the land made the share transfer agreement wherein transfer was shown for consideration. Based on the above explanation it is the contention of the assessee that the question of transfer of share does not arise for the reason that he was not the actual or beneficial owner of the share and secondly the question of capital gain does not arise as the transfer was made without any consideration. The learned AR for the assessee before us alternatively submitted that even assuming the assessee was legal and beneficial owner of the share in ABC Project WLL, still the provision of capital gain

cannot be applied for the reason that the share was transferred by the assessee to his brother which shall be treated as gift.

194.2 Based on the above detailed discussion, we proceed to analysis and adjudicate the issue on hand. We note that the revenue for the capital gain in the hand of the assessee has heavily relied on share transfer agreement copy. In this regard, we are of the view that while the share transfer agreement is indeed a formal document filed with a Foreign Government Authority, its existence alone does not establish that the assessee was the beneficial owner of the shares or that the transaction resulted in taxable capital gains under Indian Tax Laws. The assessee has consistently argued, supported by confirmation letters and remittance certificates, that he was merely a nominal holder of the shares for regulatory compliance. The actual investors, Shri Abdul Gafoor and Shri Muhammed Shameem, have confirmed their ownership through written statements. The filing of the share transfer agreement in a foreign jurisdiction was a procedural necessity to transfer nominal ownership and cannot override the substantive fact that the assessee had no beneficial interest in the shares.

194.3 Indian tax law and judicial precedents emphasize substance over form in determining tax liability. In *State of AP v. Kone Elevators India Ltd.* 2005 taxmann.com 1542 (SC)/[2005] 181 ELT 156 (SC), it was held that the substance of a contract is determinative but not form. The essence of a contract is to be ascertained taking into account the intention of the parties. In *Sundaram Finance Ltd. v. State of Kerala* AIR 1966 SC 1178 (SC), the emphasis was placed on substance of a transaction taking into account surrounding circumstances. It was held that the Court is entitled to go behind a transaction ignoring its form. In

a benami transaction, a wholesome appreciation of evidences - documentary, oral and circumstantial is a requirement. In the process, the form of a transaction has to be evaluated keeping in view the substance of a transaction. If the form of the transaction points to a dubious device, the said transaction needs to yield to substance of the transaction.

194.4 In the case on hand the substantive evidence provided by the assessee, including documentation of the actual flow of funds and confirmation letters from the beneficial owners, outweighs the procedural formalities of the foreign-filed share transfer agreement. Thus, we in the given facts and circumstances accept the contention of the assessee that he was mere a nominal share holder not the beneficial shareholder.

194.5 The AO's reliance on the share transfer agreement to impute a taxable capital gain assumes that the consideration mentioned in the agreement—QAR 375,000—was actually paid to the assessee. However, the assessee has demonstrated through consistent statements that no such consideration was ever received. Even though the document is filed with a foreign authority, the critical requirement under Indian tax law is the actual receipt of consideration for the applicability of section 45 of the Act. Therefore, in our considered opinion without evidence of payment, the notional figure mentioned in the agreement lacks relevance for tax purposes. The AO has not presented any corroborative evidence, such as banking records or financial transactions, to substantiate the claim of receipt of consideration. The revenue has made several requests with FTTR, but nothing brought on record against the

assessee. It is settled position of law that, in the absence of actual consideration, section 45 the Act, does not apply. As per the section 48 of the Act of the Act the income chargeable under capital gain computed by deducting cost from the consideration. In the case where capital asset is transferred without consideration, the condition precedent for computation of capital gain under the provision of section 48 of the Act cannot be fulfilled and accordingly the provision of section 45 of the Act cannot be applied. In holding so, we draw support and guidance from the judgment of Hon'ble Supreme Court in the case of PNB Finance Ltd. vs. CIT reported in 307 ITR 75 wherein it was observed as under:

*17. As regards applicability of section 45 is concerned, three tests are required to be applied. In this case, section 45 applies. There is no dispute on that point. The first test is that the charging section and the computation provisions are inextricably linked. The charging section and the computation provisions together constituted an integrated Code. Therefore, where the computation provisions cannot apply, it is evident that such a case was not intended to fall within the charging section, which, in the present case, is section 45.*

194.6 In the present case, other than the share transfer agreement, which is a procedural or formal document, nothing is on record to establish that the assessee has received any consideration in any form on account of transfer or relinquishment of certain percentage of his holding in ABC Project WLL in favour of his brother or business partner. Hence, in the absence of economic substance or realization of monetary gain by the transferor the provision of capital gain cannot be applied.

194.7 Moving ahead, we note that even if we accept the AO's premise that the assessee was the beneficial owner and that the transfer agreement reflects a valid transaction, the transfer of shares to the assessee's brother, Shri Shameem, qualifies as a gift under Indian tax law. Section 56 of the Act, explicitly exempts gifts between specified relatives, including siblings, from taxation. The share transfer agreement

relied by the revenue does not negate the fact that the transferee is the assessee's brother, and the relationship qualifies for exemption under Indian tax law.

194.8 We are also of the view that the share transfer agreement is a document prepared and filed to comply with Qatari laws, where strict procedural requirements govern the transfer of shares. However, taxability under Indian law is determined by the actual substance of the transaction rather than procedural filings. The assessee has demonstrated that the agreement does not reflect an actual commercial transfer involving economic benefit to him, but merely formalizes the transfer of nominal ownership to the actual beneficial owners.

194.9 The AO's reliance on the foreign filing ignores the context and intent behind the document, which was regulatory compliance rather than economic realization of gains. The AO has placed significant reliance on the said transfer agreement, but the same in our considered opinion lacks the corroborative evidence to substantiate the claim that the stated consideration was received. No banking records, financial statements, or independent confirmations have been presented to establish that the transaction resulted in a monetary gain for the assessee. The revenue has made enquiry with FTTR also, but nothing brought on record. This evidentiary gap undermines the AO's reliance on the said agreement, and the taxation cannot be based solely on procedural documentation without supporting evidence.

194.10 In view of the above detailed discussion and case laws referred therein we hold that the assessee has successfully demonstrated that he was not the beneficial owner of the shares, no actual consideration was received, and the transfer qualifies as a gift to

a specified relative exempt under section 56 of the Act. The procedural nature of the foreign filing does not override the substantive facts and evidence provided by the assessee. We further hold that in the absence of corroborative evidence of monetary gain or actual consideration, the addition of ₹68,97,397 as capital gains is unsustainable. Therefore, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal is hereby allowed.

**195. The last** significant issue raised by the assessee is that the learned CIT(A) erred in upholding the addition of ₹60 lakh on account of unexplained investment in land.

196. Based on the information obtained during the search, the AO discovered that the assessee had purchased 25 cents of land on January 31, 2020, for a consideration of ₹1.87 crore. However, the property was registered at a value of ₹1.10 crore only. This indicated that a cash payment of ₹60 lakh had been made over and above the registered value.

196.1 In contrast, the assessee argued that the disputed land property was purchased by his mother along with four other co-buyers, with her share amounting to only 12.5%. The assessee further contended that his mother had independent income and that the investment was made from her own resources. It was also stated that the source of the investment and other relevant details should be explained by the buyers themselves.

196.2 However, the AO rejected the assessee's claim, stating that the explanation provided was not supported by documentary evidence. Consequently, the AO added ₹60 lakh to the assessee's income on account of unexplained investment.

197. On appeal by the assessee the learned CIT(A) upheld the findings of the AO, stating that the assessee's arguments were not supported by adequate evidence.

198. Being aggrieved by order of the learned CIT(A), the assessee is in appeal before us.

199. The learned AR submitted before us that the addition of ₹60 lakh as on-money for the purchase of land was made solely based on the statement of the assessee recorded under section 132(4) of the Act. In that statement, the assessee had explained that the property was purchased by his mother along with other co-owners. However, the AO made the addition in the hands of the assessee without considering the explanation and without providing any evidence to suggest that the assessee had made the investment. The learned AR further argued that if any undisclosed payment was made for the purchase of the property, the addition should be made in the hands of the assessee's mother and the other co-owners.

200. On the other hand, the learned DR vehemently supported the findings of the lower authorities.

201. We have heard the rival contentions of both parties and carefully examined the materials on record. During the search, certain materials were found and presented to the appellant-assessee while recording his statement under section 132(4) of the Act on February 27, 2020. In his statement, the assessee stated that the property in question was purchased in the name of his mother for a consideration of ₹1.87 crore, of which ₹1.1 crore was declared, and ₹60 lakh was paid in cash.

201.1 During the assessment proceedings, the assessee explained that the property was purchased by his mother along with four other individuals, with his mother's share being 12.5%. However, the AO and subsequently the learned CIT(A) rejected this explanation due to the absence of documentary evidence.

201.2 Upon review, we find that the assessee submitted supporting documents, including a copy of the sale/purchase deed and a declaration letter from his mother, which are included on pages 1 to 16 of the factual paper book dated September 18, 2024. The purchase deed clearly indicates that the property was purchased in the names of five individuals, including the assessee's mother.

201.3 Therefore, in our considered opinion, the entire cash payment of ₹60 lakh as on-money cannot be attributed solely to the assessee's mother. Instead, the cash payment should be apportioned among all co-buyers according to their ownership shares. Since the assessee's mother owns only 12.5% of the property, her attributable share of the cash payment amounts to ₹7.5 lakh ( $₹60 \text{ lakh} \times 12.5\%$ ). Thus, the unaccounted cash investment should be taxed in the hands of the co-

buyers in proportion to their respective ownership shares, with ₹7.5 lakh attributed to the assessee's mother

201.4 The question that arises is whether the undisclosed or unexplained cash payment made for the purchase of property in the name of the assessee's mother can be added to the assessee's income. In this regard, it is noted that the assessee has failed to provide a satisfactory explanation regarding the source of income in the hands of his mother.

201.5 In light of the above findings, it is evident that the assessee was unable to satisfactorily explain the source of the investment made in his mother's name. Furthermore, the assessee has alternatively agreed to the addition on account of the investment attributed to his mother. Considering these facts, we conclude that the proportionate unexplained cash payment of ₹7.5 lakh, corresponding to his mother's 12.5% ownership share in the property, should be added to the assessee's income as unexplained investment. This conclusion is based on the failure to substantiate the source of the cash payment and the assessee's concession regarding the addition. Hence, the ground of appeal of the assessee is hereby partly allowed.

202. Coming to the technical issues raised by the assessee through various ground Nos. enumerated below:

- i. Challenging the validity of the assessment under section 153A of the Act on account of lack of proper approval under section 153D of the Act,

- ii. Challenging the validity of the assessment under section 153A of the Act on account of limitation of time under section 153B of the Act.

202.1 At the outset, we note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue raised by the assessee on technical grounds. Accordingly, we hereby dismiss the ground of appeal raised by the assessee on said technical grounds as infructuous.

203. Coming to the additional ground of appeal. The assessee in the additional ground of appeal has challenged the validity of the addition made by the AO based on the data retrieved from the electronic devices without following the procedure prescribed under section 65B of the Indian Evidence Act 1872.

203.1 At the outset, we note that the issue raised by the assessee in additional grounds of appeal is technical in nature. We further note that we have deleted the addition made by the AO and subsequently confirmed by the Id. CIT-A on merit and thereby allowed the assessee's ground of appeal on merit of the case. Since the assessee gets the benefit on merit, we are not inclined to adjudicate the issue on technical ground raised by the assessee. Accordingly, we hereby dismiss the issue raised by the assessee in the additional ground as infructuous.

204. In the result appeal of the assessee is hereby partly allowed.

**Coming to ITA No. 835, 836 & 837/Coch/2024 by the assessee  
Muhammed Madni for A.Y. 2018-19 to 2020-21**

205. At the outset, we note that the issues raised in the captioned appeals of 3 different assessments year are identical. Therefore, for the shake of brevity and convenience, we club the same. Therefore, the finding given will be applicable to all the 3 captioned appeals.

206. The necessary facts are that the AO during the assessment proceeding received information from sub-registrars of property containing the details of immovable property registered in the name of appellant assessee during the period starting from A.Y. 2018-19 to 2020-21. Based on the information received, the AO sought explanation with respect to the source of investment in property.

206.1 The assessee explained that the properties were purchased by different entities of ABC group, and being representative of group entities, he signed the documents. The entities being firm or companies duly accounted for the properties as their assets in their respective books of accounts. Hence, the assessee contended that he has not made any investment in the properties as alleged by the AO.

206.2 However, the AO rejected the explanation furnished by the assessee and found that the properties were registered in the name of the assessee, and he is the legal owner. There is no reason for the firm to purchase the properties in the name of the assessee who is not a partner in the firm. The properties were sold in the subsequent year. However, the firm did not offer any capital gain on the same by

contending that they were not the owners of the properties. Therefore, the AO held that the assessee being legal owner of the property is required to explain the source of investment, but he failed. Accordingly, the AO made additions in the hands of the assessee on account of unexplained investment in the A.Ys. 2018-19 to 2020-21.

207. The assessee preferred an appeal before the learned CIT(A) who originally deleted the addition made by the AO by holding that no incriminating material was found during the search proceedings in relation to the investment in properties by the assessee. Therefore, no addition shall be made in search proceeding in the absence of incriminating materials. However, the Id. CIT(A) subsequently passed rectification order under section 154 of the Act and reversed the original finding by holding the concept on incriminating material only applies for the completed/unabated assessment years whereas the years under consideration (A.Y. 2018-19 to 2020-21) were not unabated/completed assessment years. Hence, the learned CIT(A) in the rectification order confirmed the addition made by the AO.

208. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

209. The learned AR before us argued that the property investments reflected in the appellant's accounts were in the name of firm and companies of ABC Group and not personally owned by the appellant. All investments were made from declared and verifiable sources, and the revenue records showed ownership by respective legal entities. Additionally, no incriminating material was found during searches,

therefore the additions made in absence of incriminating material in search proceeding unjustified. The appellant also submitted supporting documents, including purchase deeds, leger copies of property accounted in respective entities.

210. On the other hand, the learned DR before us vehemently supported the finding of the authorities below.

211. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the addition on account of investment in immovable property was made in the hand of the assessee based on the information received from office of sub-registrar that certain immovable properties were registered in the name of the assessee. However, it is the contention of the assessee that the properties were purchased by the companies or firm in which he is authorized signatory and in the execution of sale/purchase deed, he signed the document in the capacity of authorized representative. The contention of the assessee is backed by the purchase/sale deed of the properties. For example, in the year relevant to A.Y. 2018-19 there were 3 properties which were alleged by the revenue to be purchased by the assessee. However, on perusal of the deed which is placed on pages 1 to 44 of "factual paper book-II- Unaccounted investment in Land" we note that the buyer is mentioned as Superb Infra Developers India Pvt Ltd represented by its chairman & managing director Shri Muahmmmed Madni. Thus, from the sale/purchase deed, it is clear that the properties were purchased by the companies and the assessee merely participated as authorized representative of the companies.

211.1 It is also noted that the properties purchased were accounted by the firm or companies in their respective books of account as assets. This fact can also be verified from the finding of the assessing officer for A.Y. 2020-21 which is extracted as under:

*There is a firm viz., M/s ABC Market Place, a partnership firm under the umbrella of the ABC Group. This firm had also purchased land and constructed a shopping complex and the same was sold to various buyers. Till the sale of the shops in the shopping complex, the property was in the name of the firm. The property purchased by the firm was reflecting as fixed asset in its Balance Sheet of the assessee firm. This is evident from the return of income filed by the assessee."*

211.2 Thus, from the above discussion it is clear that the properties in dispute were purchased by the firm or companies and not by the appellant assessee in his individual capacity. Therefore, in the given facts and circumstances, no addition can be made in the hand of appellant assessee on account of investment in properties. Accordingly, we hereby set aside the finding of learned CIT-A and direct the AO to delete the addition made in the A.Y. 2018-19, 2019-20 and 2020-21. Hence the ground of appeal raised by the assessee is hereby allowed.

212. In the result, all the appeals of the assessee are allowed.

213. In the combined results, all the appeals of assessee are partly allowed except ITA Nos. 404-578-389-835-836-837/Coch/2024 are allowed and ITA No. 743/coch/2024 is dismissed.

Order pronounced in court on 20<sup>th</sup> day of December, 2024

Sd/-

**(SOUNDARARAJAN K)**

Judicial Member

Bangalore

Dated, 20<sup>th</sup> December, 2024

/ vms /

Sd/-

**(WASEEM AHMED)**

Accountant Member

Copy to :

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore