



आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ ITA. Nos. 447 to 449/JP/2024
निर्धारण वर्ष / Assessment Years : 2015-16 to 2017-18

Shri Tarachand Gupta 9 Keshav Nagar Sch 13, Alwar	बनाम Vs.	ACIT, Central Circle, Alwar
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAYPC 5777 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA. No. 514/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18

ACIT, Central Circle, Alwar	बनाम Vs.	Shri Tarachand Gupta 9 Keshav Nagar Sch 13, Alwar
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAYPC 5777 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal, C.A.
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 08/01/2025
उदघोषणा की तारीख / Date of Pronouncement : 10/03/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present bunch of four appeals consists of three appeals filed by the assessee and one by the revenue. These appeals were filed against the order of the learned Commissioner of Income Tax,

Appels-4, Jaipur [for short CIT(A)] passed on 15.02.2024 for the assessment year as detailed herein below. That order was passed by the Id. CIT(A) because the assessee challenged the various assessment order passed under section 143(3) r.w.s. 153 of the Income Tax Act [for short Act] passed by the Assistant Commissioner of Income Tax, Central Circle, Alwar [for short AO], details of the order against which the present appeal filed are tabulated here in below :

ITA no.	A.Y.	Date of order of CIT(A), - 4 Jaipur	Date of order and section under which the order of the assessment was passed by the ACIT, Central Circle, Alwar	
447/JP/2024	2015-16	15.02.2024	143 r.w.s.153	30.12.2019
448/JP/2024	2016-17	15.02.2024	143 r.w.s.153	30.12.2019
449/JP/2024	2017-18	15.02.2024	143 r.w.s.153	31.12.2019
514/JP/2024	2017-18	15.02.2024	143 r.w.s.153	31.12.2019

2. At the instance of both parties these appeals were heard together and are disposed off with common order.

3.1 The grounds of appeal taken by the assessee in ITA No. 447/JP/2024 for A.Y 2015-16 are as under;

“1 The Ld. CIT(A) has erred on facts and in law in upholding the action of AO in treating the P&L A/c of proprietary concern M/s Raja Bricks prepared by the assessee for obtaining the limit from the bank seized during the search as actual P&L A/c and thereby confirming the

addition of Rs.8,75,085/- as undisclosed profit, being difference between the profit as per seized P&L A/c and the declared profit.

2 The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.57,930/- u/s 68 of the Act on account of alleged unaccounted sales on the basis of Pg 47 of Annexure AS-3. He has further erred in confirming the addition for the entire sale amount instead of confirming the addition of the profit earned on alleged unaccounted sales.

3 The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.66,000/- u/s 69C of the Act on the basis of Pg 29 of Exhibit 3 ignoring that it is payment made by M/s Jai Ambey Motors and not by the assessee.

4 The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.50,000/- u/s 69C of the Act on the basis of Pg 4 & 5 of Exhibit 10 by not accepting the explanation of assessee that advance was given out of the available cash balance of M/s Raja Bricks and such advance was received back after 2-3 months.

5 The appellant craves to alter, amend and modify any ground of appeal.

6 Necessary cost be awarded to the assessee.

3.2 The grounds of appeal taken by the assessee in ITA No. 448/JP/2024 for A.Y 2016-17 are as under;

"1. The Ld. CIT(A) has erred on facts and in law in upholding the action of AO in treating the P&L A/c of proprietary concern M/s Raja Bricks prepared by the assessee for obtaining the limit from the bank seized during the search as actual P&L A/c and thereby confirming the addition of Rs. 15,55,043/- as undisclosed profit, being difference between the profit as per seized P&L A/c and the declared profit.

2. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.91,010/- u/s 69C of the Act on the basis of Pg 34 of Annexure AS-3 ignoring that there is no evidence to prove that the expenditure is incurred by the assessee.

3. The appellant craves to alter, amend and modify any ground of appeal.

4. Necessary cost be awarded to the assessee.”

3.3 The grounds of appeal taken by the assessee in ITA No. 449/JP/2024 for A.Y 2017-18 are as under;

“1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.3,27,370/- u/s 68 of the Act on account of alleged unaccounted sales on the basis of Pg 10, 11 & 39 of Annexure AS-3. He has further erred in confirming the addition for the entire sale amount instead of confirming the addition of the profit earned on alleged unaccounted sales.

2. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.90,500/- u/s 68 of the Act on the basis of Pg 23 of Exhibit 3 ignoring that it is a dumb paper and therefore the presumption that it represents money received against sale of land is misplaced.

3 The Ld. CIT(A) has erred on facts and in law in upholding the action of AO in treating the P&L A/c of proprietary concern M/s Raja Bricks prepared by the assessee for obtaining the limit from the bank seized during the search as actual P&L A/c and thereby confirming the addition of Rs. 12,55,058/- as undisclosed profit, being difference between the profit as per seized P&L A/c and the declared profit.

4 The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 1.20 crores on the basis of lump sum surrender made by the assessee in the statement recorded u/s 132(4) of the Act in respect of M/s Raja Bricks, a proprietary concern of assessee ignoring that when the AO has separately made addition on the basis of seized documents, no addition on the basis of lump sum surrender made by the assessee can be made.

5. The Ld. CIT(A) has erred on facts and in law in taxing the above additions u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made applicable from 01.04.2017 is not applicable to AY 2017-18.

6. The appellant craves to alter, amend and modify any ground of appeal.
7. Necessary cost be awarded to the assessee.”

3.4 The grounds of appeal taken by the revenue in ITA No. 514/JP/2024 for A.Y 2017-18 are as under;

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in deleting the addition of Rs.65,02,600/- made on account of unexplained investment in cash loans on the ground that unaccounted receipts have been taxed earlier and the assessee had funds available for advance of Rs.65,02,600/- made during the year.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in deleting the addition of Rs.6,57,000/- made on account of unaccounted cash deposit in labour account during the demonetization period without appreciating the fact that the assessee himself has deposited his unaccounted cash in bank accounts of labourers and subsequently withdrawn the amount from their bank accounts.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in deleting the addition of Rs 7,08,500/- made on account of disallowance made u/s 40A(3) of cash payment without appreciating the fact that the assessee has failed to establish the fact that these transactions were covered under clause(g) of rule 6DD of the Income Tax Act.

4 The appellant craves leave to add, amend or withdraw any of the ground of appeal during the course of appellant proceeding.”

First, we take up appeal of the assessee in ITA No. 447/JP/2024 for A.Y 2015-16.

4. The fact as culled out from the records is that a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") was

carried out by the Income Tax Department on the members/concerns of Gupta Group, Alwar on 22/09/2017 of which the Assessee is one of the members. During that search action(s), cash, jewellery, valuables, stock-in-trade, documents, books of account and/or loose papers were found and/or seized from the premises of the members of the Gupta Group of which one such member happens to be the Assessee. Pursuant that search notice under section 153A of the Act was issued and served upon the Assessee on 09/10/2018 requiring the assessee to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules, 1962 within 15 days of the service of the said notice.

4.1 The assessee filed its return of income u/s 139 on 30/09/2015 declaring income of Rs. 4,10,650/-. In response to the said notice issued u/s. 153A return declaring an income of Rs. 4,10,650/ was e-filed by the Assessee. The Assessee primarily derives its income from Business, House Property Income and Income from Other Sources. The proceedings of assessment of income were initiated by issuing of notices u/s 143(2) of the Act on 08.08.2019 & 142(1) of the Act on 03-09-2019 and served online on the e-mail of the assessee. Notice u/s 142(1) dated 03-09-2019 was issued to the assessee and information and details pertaining

to the case of the Assessee relevant to assessment of his income were called for u/s 142(1) of the Act by means of a questionnaire.

4.2 During the course of assessment proceedings, the assessee vides notice u/s 142(1) dated 03/09/2019 was asked as to submit the reply on the issue as detailed herein below :-

"Please refer page no. 30, 31, 58 & 59 of Exhibit-1 of Annexure seized from your residence. The pages are P&L a/c of M/s Raja Bricks, your proprietorship concern, for the period 01.08.2014 to 31.07.2016. The reason for maintaining a/c for the aforesaid period could be understood as the manufacturing of bricks in bricks business generally starts after rainy season. However, as per the provisions of Income Tax the profit is declared for the period April to March. On perusal of the P&L a/c it is noticed that total sales declared on the pages under question for the mentioned period and net profit shown therein are not matching with those declared in your regular books of accounts submitted. The comparative chart is drawn below for reference:-

Head	Period as per pages of the exhibit	Figures (in Rs.)	Period as per Audited books	Figures (in Rs.)
Sales	01.08.2014 to 31.07.2015	3,27,28,170 ✓	01.04.2014 to 31.03.2015	80,36,986
	01.8.2015 to 31.07.2016	4,25,35,511 ✓	01.04.2015 to 31.03.2016	2,05,23,123
			01.04.2016 to 31.03.2017	1,17,65,979

Total	01.08.2014	to	7,52,63,681	01.04.2014	to	4,03,26,088
	31.07.2016			31.03.2017		
Net Profit	01.08.2014	to	11,56,508	01.04.2014	to	2,81,423
	31.07.2015			31.03.32015		
	01.8.2015	to	38,62,712	01.01.2015	to	6,68,101
	31.07.2016			31.03.2016		
				01.04.2016	to	3,84,510
				31.03.2017		
Total	01.08.2014	to	50,19,219	01.04.2014	to	13,34,034
	31.07.2016			31.03.2017		

The total of the sales and net profit mentioned in the pages be compared with the figures declared in the audited books from A.Y. 2015-16 to A.Y. 2017-18 are not matching. There is difference of total sales comes to Rs. 3,49,37,593/- and difference of Net profit comes to Rs. 36,85,185/-. It is evident that sales are suppressed either by way of cash/unaccounted sales or otherwise and in this way the profit has been minimized with an intention to evade taxes.

It is evident that during the year under consideration difference of Net profit be calculated for numerical/calculation purpose by taking ration of net profit declared in A.Y. 2016-17 & 2017-18 comes to Rs. 8,75,085/-. In this regard you are required to justify the difference of the said amount of net profit with supporting documentary evidences. In absence on any proper justification/explanation you are asked to show cause as to why the amount of Rs. 8,75,085/- may not be treated as your unaccounted income and may not be added in your total income for the year under consideration."

In response to the notice the A/R of the assessee filed written submission on 18/09/2019. The reply of the assessee was given a thoughtful consideration by the Id. AO. He noted that the document is P&L account of M/s Raja Bricks found and seized during the course of search proceedings. The document depicts much higher profit than that declared in the return of income by the assessee. In this regard, the contention of the assessee is that this is a provisional balance sheet and profit & loss account prepared for

taking loans from Kotak Mahindra Bank by inflating the figures of profit in the P&L account. The contention of the assessee was not considered by the Id. AO. It can be presumed that obtaining loan figures could be inflated by the business entity to lure the banking institution. But, it cannot be accepted that the inflated figures are provisional. For obtaining better loan from the banks the inflated profit has to be declared in the return of the income and the Balance Sheet should be inflated accordingly. The assessee failed to prove with supporting document that the P&L account found during search has no meaning. It is clearly believed that the P&L is the actual profit, however, by manipulation of figures not declared in the returned income. The other contention of the assessee is that nothing supporting was found during the course of search proceedings in support of the said P&L account and Balance Sheet. This contention was also not found acceptable as during the course of search proceedings various incriminating documents were found and seized, which shows that the assessee was engaged in unaccounted sales. Also, an addition on account of unaccounted sales is made in the assessment year 2017- 18 & 2018-19 on the basis of documents seized during search. Thus, the reply of the assessee is not found acceptable and based on the

P&L account and Balance Sheet seized during search, it can be held that the amount of Rs. 8,75,085/ is the undisclosed receipts u/s 68 of the Act of the assessee and addition of Rs. 8,75,085/- was made in the total income of the assessee.

4.3 During the course of assessment proceedings, the assessee vide notice u/s 142(1) dated 03/09/2019 was asked to refer page no. 1 to 53 of Exhibit-3 except page -37 (query in this regard raised separately in relevant year) impounded from M/s Gupta Iron Store, assessee's proprietorship concern. These loose papers were found at the business premise of Gupta Iron store. These are hand written kachi parchis showing various cash transactions relating to their money lending business, property and unaccounted expenses. Since no Books of accounts have been maintained, all these transactions may consider to be unaccounted. At the time of statements recorded during the search, assessee stated that these papers are related to his money lending business and sale of property at Plot no 29, Jail ka Chauraha, Alwar whose registry has not been done as yet. During the post search proceedings, assessee was asked to explain these transactions, however no explanation was provided for these pages. Ld. AO noted that merely the narrating of the entries were provided. Even to which

F.Y, it pertains are not mentioned in the reply. In this regard assessee was request to furnish year wise explanation of these transactions entries along with supporting documents/books of accounts. The total amount of transactions mentioned in these pages were for Rs. 1,12,17,853/-. In absence of any proper justification, Id. AO can draw inference in respect of these transactions in the relevant years reflecting in the pages. In response to the notice, the A/R of the assessee filed written submission on 24/12/2019. The reply of the assessee has been considered carefully by Id. AO. Ld. AO noted that the page no. 47 is related to sale of garters and sariya. In this regard the justification given by the assessee for the transactions that are said to be related to business transaction of the assessee viz sale of garters, sariya etc, it is noticed that the bills and vouchers produced by the assessee was not matching with the amount mentioned therein nor the name on the bill and that mentioned in the seized documents was also not found matching. The justification given by the assessee is just an afterthought but not found verified from the books of accounts of the assessee. Thus, the plea taken by the assessee was not found acceptable and thereby the addition of Rs. 57,930/- was made u/s 68 r.w.s.115BBE of the Act in the total

income of the assessee on account of unaccounted sales mentioned in the parallel books of accounts of the assessee.

4.4 The page no. 29 is related to some payment on account of M/s Jai Ambe Store through Ashok Gupta. The assessee replied that the transaction mentioned on it is not related to the assessee. But the reply of the assessee is not found acceptable as the document found at the business premises of the assessee and secondly the payment was made through Ashok Gupta, brother of assessee. The onus is upon the assessee to prove the nature of the transaction which he fails to discharge. In view of the above discussion, the payment of Rs. 66,000/- was considered as unexplained expenditure of the assessee and addition was made in the total income of the assessee as per provisions of section 69C r.w.s. 115BBE of the Act.

4.5 During the course of assessment proceedings, the assessee vides notice u/s 142(1) dated 03/09/2019 was asked to refer page no. 4 & 5 of Exhibit-10 seized from his residential premise situated at 9, Keshav Nagar, Alwar. The documents refer as affidavit of Shri Kailash Bairwa for receipt of cash payment of Rs. 50,000/- in advance from him. This transaction appears to be related with the proprietorship concern M/s Raja Bricks. In this regard assessee

was asked to explain the source of payment of Rs. 50,000/- made with supporting documents. In absence of any proper justification, assessee was asked to show cause as to why the payment of Rs. 50,000/- may not be treated as his unexplained expenditure and may not be added in your total income for the year under consideration. In response to the notice the A/R of the assessee filed written submission on 18/09/2019. The reply of the assessee was considered carefully by the Id. AO. The assessee submitted that the amount of Rs. 50,000/- was given as temporary advance to Shri Kailash Bairwa in cash as he has sufficient cash balance. But the assessee failed to verify it from the books of accounts such as cash book. In view of the above, the assessee failed to explain the source of advance given to Shri Kailash Bairwa. Therefore, it is held that the amount of Rs. 50,000/- held as unexplained expenditure of the assessee and addition of the amount is being made in the total income of the assessee as per provisions of section 69C r.w.s. 115BBE of the Act.

4.6 The other addition of as unexplained investment for Rs. 31,65,500/- u/s. 69 was made and addition u/s. 56(2)(vii)(b)(ii) for Rs. 1,46,933/- was made which were not disputed before us as the

same was considered by the Id. CIT(A) therefore, that part of the facts is not repeated here.

5. Aggrieved by the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

Finding of Id. CIT(A) on the issue of addition of Rs. 8,75,085/-

Ground No. 2

5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

In search action page no. 30, 31, 58 & 59 of Exhibit 1 of Annexure was seized which is a P&L A/c of M/s Raja Bricks for the period 01.08.2014 to 31.07.2016. The sales declared in above mentioned pages are not matching with sales as per audited account. The Id. AO therefore held that if inflated profits are shown for obtaining loans from the bank, the same should have been declared in the income tax return filed. Accordingly, the AO made addition for the difference in profit declared at Rs.8,75,085/- (1156508 undisclosed receipts u/s 68 of the Act. 281423) as

The facts recorded in the notice as stated in the assessment order are as under:-

"During the course of assessment proceedings, the assessee vides notice u/s 142(1) dated 03/09/2019 was asked as under:-

"Please refer page no. 30, 31, 58 & 59 of Exhibit 1 of Annexure seized from your receipt. The pages are P&L a/c of M/s Raja Bricks, your proprietorship concern, for p 01.08.2014 to 31.07.2016. The reason for maintaining alc for the aforesaid period code understood as the manufacturing of bricks in bricks business generally starts attarrany season. However, as per the provisions of Income Tax the profit is declared for the period April to March. On perusal of the P&L a/c it is

noticed that total sales declared on the pages under question for the mentioned period and net profit shown therein are not matching with those declared in your regular books of accounts submitted. The comparative chart is drawn below for reference:

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	01.8.2015 to 31.07.2016	4,25,35,511	01.04.2015 to 31.03.2016	2,05,23,123
			01.04.2016 to 31.03.2017	1,17,65,979
Total	01.08.2014 to 31.07.2016	7,52,63,681	01.04.2014 to 31.03.2017	4,03,26,088
Net Profit	01.08.2014 to 31.07.2015	11,56,508	01.04.2014 to 31.03.2015	2,81,423
	01.8.2015 to 31.07.2016	38,62,712	01.01.2015 to 31.03.2016	6,68,101
			01.04.2016 to 31.03.2017	3,84,510
Total	01.08.2014 to 31.07.2016	50,19,219	01.04.2014 to 31.03.2017	13,34,034

The total of the sales and net profit mentioned in the pages be compared with the figures declared in the audited books from A.Y. 2015-16 to A.Y. 2017-18 are not matching. There is difference of total sales comes to Rs. 3,49,37,593/- and difference of Net profit comes to Rs. 36,85,185/-. It is evident that sales are suppressed either by way of cash/unaccounted sales or otherwise and in this way the profit has been minimized with an intention to evade taxes.

It is evident that during the year under consideration difference of Net profit be calculated for numerical/calculation purpose by taking ratio of net profit declared in A. Y. 2016-17 & 2017-18 comes to Rs. 8,75,085/-. In this regard you are required to justify the difference of the said amount of net profit with supporting documentary evidences. In absence of any proper justification/explanation you are asked to show cause as to why the amount of Rs. 8,75,085/- may not be treated as your unaccounted income and may not be added in your total income for the year under consideration."

The Ld. AR of the appellant argued that the profit & loss account found in the seized document is prepared for obtaining the bank limit from Kotak Mahindra Bank. These are only estimations and have no relation with the actual profit. The actual figures are duly recorded in the regular books of accounts. He alternatively argued that even if the same is considered as

undisclosed profit and taxed than the set off of the same should be allowed against the subsequent investment/expenditure.

On perusal of the overall facts, I find that the figures mentioned in the profit & loss account are exact figure and not in round figure. The assessee has also not brought any document to support his contention. As per appellant the document was prepared by the appellant and was used by the appellant to submit to the bank for obtaining the bank loan. It is expected that the appellant would have submitted correct information to the bank. Further in the assessment order the figures pertaining to period 01.08 to 31.07 have been taken. The Id. AO has given reason for the same. Alternatively the profit figures could be worked out for respective months in the financial year taking data on proportionate basis however the overall impact of the same will be same over the years. Accordingly the approach adopted by the Id. AO is upheld.

There is another aspect to this issue that such practice as claimed and admitted by the appellant (without accepting appellant's contention that these are only estimates) of giving misleading financial results to the bank is against the public policy and needs to be curbed. The onus is on the appellant to prove this document as wrong which has not been discharged by the appellant. As per law the learned assessing officer is justified in treating the financial information submitted by the appellant to the bank to be correct and in making the addition considering the same.

In the case of Suraj Bhan Oil (P.) Ltd. v. Deputy Commissioner of Income- tax [2022] 138 taxmann.com 19 (Madhya Pradesh)/[2022] 286 Taxman 680 (Madhya Pradesh)/[2022] 446 ITR 539 (Madhya Pradesh)[18-02-2022], the decision of the Hon'ble High Court upheld the order of the Hon'ble ITAT whereby the addition made on the basis of financial statement submitted to bank was confirmed. SLP against this judgement was dismissed by the Hon'ble Supreme Court in the judgement reported at [2022] 141 taxmann.com 477 (SC)//20221 288 Taxman 635 (SC)[25-07-2022]. Headnotes of the judgement of Hon'ble High Court are as under.

Headnotes: Section 69B of the Income-tax Act, 1961 - Undisclosed investments (Stock) Assessment year 2005-06 Assessee was engaged in manufacturing and trading of edible oils and grains Assessing Officer having found that value of stock shown by assessee in stock statement as on 28-3-2005 submitted to bank was far in excess to value of stock shown in audit report for period ending 31-3-2005 and difference was to extent of Rs. 2.71 crores and assessee despite opportunity afforded could not either reconcile difference or explain reasons therefor, treated difference amount as unexplained investment in stock from undisclosed sources and added same to total income of assessee under section 69B Commissioner (Appeals) deleted impugned addition by referring to a chart indicating stock position as on 28-3-2005 submitted to bank with

stock position as per stock register on 28-3-2005 Tribunal held that assessee was bound to explain difference either before Assessing Officer or before Commissioner (Appeals) or before Tribunal and same was not done It taking view that excess stock represented income of assessee from undisclosed sources, set aside order of Commissioner (Appeals) and upheld order of Assessing Officer It was noted that once it was found by Assessing Officer that there was excess stock, in absence of explanation by assessee, conclusion was inescapable that excess stock, if any, was from undisclosed sources Further once assessee's explanation, if any, had not been accepted, resultant position was that there was excess stock undisclosed in books of account and non disclosure was on with a view to suppress income - Whether order of Assessing Officer and that of Tribunal deserved to be affirmed - Held, yes [Para 10] [In favour of revenue]

At the same time the contention of the appellant that this document was prepared for submitting to the bank is a self serving statement and the appellant has not produced any document like bank confirmation to show that this claim of the appellant is correct.

Further there is presumption in the law under section 292C of the Act and under section 132(4A) of the Act.

Section 292C

Presumption as to assets, books of account, etc.

292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true, and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person,

(ii) that the contents of such books of account and other documents are true, and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested

Further as noted by the Id. AO "The other contention of the assessee is that nothing supporting was found during the course of search proceedings in support of the said P&L account and Balance Sheet. This contention was also not found acceptable as during the course of search proceedings various incriminating documents were found and seized which shows that the assessee was engaged in unaccounted sales. Also, addition on account of unaccounted sales is made in the assessment year 2017-18 & 2018-19 on the basis of documents seized during search."

Therefore the AO has correctly treated the profit as per the seized profit & loss account as actual profit and determined the unaccounted income by reducing the declared profit therefrom. In these facts, the addition of Rs. 8,75,085/- made by the id. AO is hereby confirmed and this ground of appeal is dismissed.

Finding of Id. CIT(A) on the addition of Rs. 57,930/-

Ground No. 3

6.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

This ground of appeal pertains to turnover in M/s Gupta Iron Store. The AO on the basis of Page 47 of exhibit 3 observed that this relates to sale of garters and sariya. The assessee has not matched the same with the sales recorded in books and therefore he made addition for the same.

The submission of the appellant as mentioned in the assessment order on the issue is

"It is submitted that partnership concern M/s Gupta Iron Store & M/s Gupta Iron Traders deals in trading of Sariya & Garter. These products are purchases mainly from movement is Jindal Steels & organized parties maintained and complete stock by assessee, hence there is no question of any out of book purchase or sales of these items. Noting made in these papers are mainly of sale of these items on some reference basis. If some reference is received for sale to particular person and payment received within short period of time, assessee note down the same in its diaries. All these entries are verifiable from respective sale invoices raised on the respective persons which is marked in the explanation on Ex-3 enclosed with this letter.

Without prejudice to above, in case your good self is not satisfied in that case also only profit amount of these transaction is required to be added instead of entire transaction amount"

The Ld. AR pleaded that page No. 47 is only a summary of transaction of sales made to Naresh Saini.

The appellant has also argued that the AO has already considered much higher sale as per the profit & loss account found at page 30 & 31 of Exhibit 1 as discussed in ground No. 2 above and therefore no separate addition for the same is called for.

In this regard, Ground No. 2 pertains to different business M/s Raja Bricks and the items traded are also completely different.

As noted in the assessment order, the page no. 47 is related to sale of garters and sariya. In this regard the justification given by the assessee for the transactions that are said to be related to business transaction of the assessee viz sale of garters, sariya etc, it is noticed that the bills and vouchers produced by the assessee was not matching with the amount mentioned therein nor the name on the bill and that mentioned in the

seized documents was also not found matching. The justification given by the assessee is just an afterthought but not found verified from the books of accounts of the assessee.

Appellant has also stated that further AO has made addition u/s 68. This section applies when any sum is found credited in the books of accounts, the source of which is not explained to the satisfaction of the AO. The amount of Rs. 57,930/- is noted on a loose paper. The same can't be equated with the books of accounts.

In this regard, once it is held that the appellant had indulged into unaccounted sales it is clear that the sale proceeds are either in the form of unexplained cash taxable u/s 69A or in the form of unexplained debtors/ unexplained investment not recorded in books taxable u/s 69 of the Act. It is held accordingly.

As per CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC), A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC), the complete onus is on the assessee.

The Ld. AR alternatively argued that the AO treated the entire sales as income whereas it is a settled law that in case of out of books sales only the gross profit there on can be taxed. For this he relied on various cases.

In this regard the appellant has not shown the tally of the quantitative reconciliation of the items in terms of opening stock, purchases, sales and closing stock after considering the unaccounted sales and the onus is on the appellant to show that the unaccounted sales are made from the accounted purchases. This onus has not been discharged by the appellant.

In the case of Commissioner of Income Tax, Jaipur-II v. Bright Future Gems [2017] 88 taxmann.com 476 (Rajasthan) [HON'BLE HIGH COURT OF RAJASTHAN), entire bogus purchases were disallowed and upheld. The assessee was not maintaining quantitative details of day to day purchases and manufacturing of the items. Further on verification it was also noticed by the Ld. AO that purchases from two parties were bogus. The reasons like non- availability of the said two suppliers at the given addresses, non production of two suppliers by the assessee in spite of various opportunities granted. Assessee has failed to produce the owners of the two concerns, Hon'ble High Court also observed that merely voucher of the import export challans or chilans of the custom clearance will not prove physical delivery of the material (precious stones). There is nothing on record to certify the stones which were verified by any of the value. In our view it is all paper transactions for the purpose of taking benefit of the export and tax benefits.

On perusal of the overall facts, I find that this paper is found tom the premises of the assessee and payment is made through assessee's brother. The presumption u/s 132(4A) and 2930 of the Act is available to the assessing authority. Therefore it is the duty of the assessee to explain the transaction which he failed to do. The appellant has not furnished any verifiable document from Jai Ambey and his brother Ashok Gupta. Had such information been provided and provided in time, action, if any, could be taken against such persons. The source of the funds is not explained. Therefore the payment of Rs. 66,000/- is treated as unexplained payment/investment. It is held. accordingly.

However, the alternate argument of the appellant that set off of the same should be allowed against the income separately taxed appears to be acceptable. The Ld. AR relied upon the decision of Rajasthan High Court in case of CIT Vs. Tyaryamal Bal Chand 165 ITR 0453 and Supreme Court decision in case of Anantharam Veerasinghaiah & Co. Vs. Commissioner of Income Tax 123 ITR 0457 which supports the case of the assessee. The appellant has also filed cash flow statement.

The redrafted cash flow statement of unaccounted incomes on the basis of finding given in this order which is tabulated as under:-

Statement indicating cash flow statement for AY 2015-16.

Particulars	Assessment year
	2015-16
Opening balance	0
Income from Raja Bricks	875085
Unaccounted Sales as per page 1 to 53 of Exhibit 3	57930
Total sources	933015
Payment/Utilisation	
Unexplained Expenditure as per page 1 to 53 of Ex- 3	66000
Temporary Cash Advance	50000
Total utilisation	116000

Net cash balance available	817015
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As per this cash flow statement also the sources are much more than the investment. Accordingly, the set off of the income already taxed is allowed against this addition. Resultantly, the addition of Rs. 66,000/- made by the AO is hereby deleted.

Accordingly, this ground of appeal is allowed in above terms.

Finding of Id. CIT(A) on the addition of Rs. 50,000/-

Ground No. 5

8.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:

The Id. AO on perusal of page 4 & 5 of Exhibit 10 seized from residential premise of assessee observed that assessee has given advance of Rs. 50,000/- to Sh. Kailash Bairwa. The AO observed that assessee has failed to explain the source of advance given to Sh. Kailash Bairwa and made addition for the same.

The Ld. AR of the appellant argued that Kailash Bairwa is staff of the assessee. During the year assessee has given temporary advance of Rs. 50,000/- to him which was received back after some time. The assessee is having sufficient cash balance in the regular books and therefore simply because the same are not recorded in the books, the same cannot be treated as unexplained. He alternatively argued that even if it is presumed to be unexplained advance of the assessee, the source of the same is out of the unrecorded profit added by the AO as per ground No. 2 above and therefore no separate addition for this amount is called for.

On perusal of the overall facts I find that the assessee has given the advance of Rs.50,000/- to the staff which is not recorded in the regular books of accounts This is a business advance as it is to the business staff. The source is not explained by the appellant. Therefore the AO has correctly treated the same as unexplained.

As per CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC), A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC), the Revenue is not to find out the source and the assessee is required to explain the source with supportings. There is no onus on the Revenue to find out or

link the source. Further, there can be no presumption in this regard (as per ratio of judgement of Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC)[01-08-1968]).

In the present case, in view of the above discussion, the source remains unexplained.

Further, the contention of the appellant that the advanced was received back during the same year is without any basis as when the transaction of giving advance is noted in the documents the transaction of recipes back of the same must have also been recorded in the documents. Further there is a presumption in the law regarding the documents under section 132(4A) and 292C of the Act and anything over and above such document if is being claimed by the taxpayer that has to be proven with the strong evidences, Considering the entries in the documents and the law on the issue the claim of the appellant that the advance was received back during the same year is not acceptable and is rejected.

However the alternate argument of the appellant that the source of the same is covered out of the unrecorded profit is acceptable. The Ld. AR relied upon the decision of Hon'ble Rajasthan High Court in case of CIT vs. Tyaryamal Bal Chand 165 ITR 0453 and Hon'ble Supreme Court decision in case of Anantharam Veerasinghaiah & Co. Vs. Commissioner of Income Tax 123 ITR 0457 which supports the case of the assessee. The assessee has also filed cash flow statement.

The cash flow statement on the basis of finding given in this order which is tabulated in ground No. 4 supra. As per this cash flow statement the sources are much more than the unexplained investment. Accordingly the set off of the income already taxed is allowed against this addition. In the result, the addition of Rs. 50,000/- made by the AO is hereby deleted.

Accordingly, this ground of appeal is allowed in above terms.

6. As the assessee appeal of the assessee was considered in part by the Id. CIT(A), the assessee preferred the present appeal for the sustained addition by the Id. CIT(A). To support the various grounds raised by the assessee, Id. AR of the assessee of the assessee has filed the written submissions and the same is reproduced below:

1. The assessee is proprietor of M/s Raja Bricks and M/s Gupta Iron Store. M/s Raja Bricks is engaged in manufacturing of bricks and M/s Gupta Iron Store is engaged in trading iron garter (distributor of Jindal hissar). He filed his return of income on 30.09.2015 declaring total income of Rs.4,10,650/- (PB 10-13). A search u/s 132 of the Act was carried out at the premises of the assessee group on 22.09.2017.

2. In search a paper at Pg No.30, 31, 58 & 59 (PB 17-20) of Exhibit-1 of Annexure was seized. This is the P&L A/c of M/s Raja Bricks for the period 01.08.2014 to 31.07.2015. The AO noted that it is not understood as to why the profit & loss account for the aforesaid period is drawn since as per the provisions of Income Tax, profit is to be declared for the period April to March. He further noted that the sales declared in above mentioned pages are not matching with sales as per audited account as there is difference of Rs.3,49,37,593/- in the figure of total sales and of Rs.36,85,185/- in the figure of net profit.

3. The assessee vide submission dated 18.09.2019 which is reproduced at Pg No.5-6 of assessment order explained the reason for preparing the profit & loss account for the period 01.08.2014 to 31.07.2015 and 01.08.2015 to 31.07.2016. The AO, however, held that if inflated profits are shown for obtaining loans from the bank, the same should have been declared in the return filed. Accordingly, AO made addition of difference in profit declared at Rs.8,75,085/- (11,56,508-2,81,423) as undisclosed receipts u/s 68 of the Act.

4. The Ld. CIT(A) at Para 5.2, Pg 12-17 of the order held that the figures mentioned in P&L A/c are exact figure and not in round figure. It is expected that the appellant would have submitted correct information to the bank. Giving misleading financial result to the bank is against public policy and needs to be curbed. Reliance was placed on the decision of Suraj Bhan Oil (P.) Ltd. Vs. DCIT 446 ITR 539 (MP) and section 292C of the Act. Accordingly, addition made by the AO is confirmed.

Submission:-

1. It is submitted that P&L A/c found in the seized document is prepared for obtaining the bank limit from Kotak Mahindra Bank. This P&L A/c is prepared only for obtaining higher loan. The figures noted in this P&L A/c is not in round figure only to demonstrate before the banking authorities that this is the actual turnover/ profit. Further this P&L A/c is not for the FY but till 31st July and therefore no cognizance can be taken for such paper found in search. The search party has not recorded any statement of the assessee during the course of search with reference to this paper. The decision of MP High Court in case of Suraj Bhan Oil (P.) Ltd. Vs. DCIT 446 ITR 539 is with reference to the excess stock declared to the bank vis-à-vis that recorded in the books but in the

absence of explanation by assessee the AO found that excess stock is income from undisclosed sources. However, in the present case assessee has furnished the explanation. Otherwise also, on excess stock declared to the bank, the decision of jurisdictional High Court in case of CIT Vs. Relaxo Footwear (2003) 259 ITR 744 and CIT Vs. Laxmi Engg. Industries (2009) 308 ITR 279 are in favour of the assessee. Hence the addition confirmed by Ld. CIT(A) is unjustified.

2. Without prejudice to above, it is submitted that the assessee in the statement dt. 23.09.2017 recorded in search has offered income of Rs.1.20 crores towards undisclosed income from M/s Raja Bricks (PB 36). AO has made addition for the same in AY 2017-18. The same is confirmed by Ld. CIT(A) but income of Rs.12,55,058/- determined on the basis of these papers relating to AY 2017-18 was allowed set off against the amount of Rs.1.20 crores taxed in that year. Hence on the same analogy, the Ld. CIT(A) ought to have allowed the set off of Rs.8,75,085/- against the income of Rs.1.20 crores taxed in AY 2017-18 by deleting the addition in the year under consideration.

Ground No.2

The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.57,930/- u/s 68 of the Act on account of alleged unaccounted sales on the basis of Pg 47 of Annexure AS-3. He has further erred in confirming the addition for the entire sale amount instead of confirming the addition of the profit earned on alleged unaccounted sales.

AO Pg 7-14
CIT(A) Pg 17-26

Facts:-

1. In search certain hand written kachi parchis were found in Exhibit 3. The AO observed that Page 47 (PB 21) of this Exhibit relates to sale of garters and sariya. The bills and vouchers submitted by the assessee are not matching with the details mentioned in the seized paper. Accordingly, AO made addition of Rs.57,930/- u/s 68 of the Act.

2. The Ld. CIT(A) held that the paper relates to the turnover of M/s Gupta Iron Store. Once unaccounted sales are found, the sale proceeds are either in form of unexplained cash taxable u/s 69A or in the form of unexplained debtors/ unexplained investment not recorded in the books taxable u/s 69 of the Act. Accordingly the addition was confirmed. Further the alternative contention that only gross profit on such sales can be taxed is also rejected for the reason that assessee has not proved that unaccounted sales are made from accounted purchase for which reference was made to the decision of Rajasthan High Court in case of CIT Vs. Bright Future Gems 88 Taxman.com 476 and decision of

Gujarat High Court in case of N.K. Industries Ltd. Vs. DCIT 72 Taxman.com 289.

Submission:-

1. Pg No.47 of Exhibit 3 records certain transaction of sale of sariya and gartar under the heading 'naresh saini ka hisab'. Both the lower authorities have accepted that it is sales made to Naresh Saini. Hence the entire sale amount of Rs.57,930/- cannot be added to income. What can be added to income is only the profit on such sale. The Ld. CIT(A) has incorrectly stated that when the purchases in relation to such sale is not taxed u/s 69C, then the sale has to be taxed as such ignoring that when profit from Raja Bricks is already taxed, such profit is the source against the purchase of sariya and gartar sold to Naresh Saini. Hence what can be added is the profit on such sale for which reliance is placed on the following decisions:-

CIT Vs. President Industries 258 ITR 654 (Guj.) (HC)

The amount of sales could not represent the income of the assessee who had not disclosed the sales. The sales only represented the price received by the seller of the goods; only the realization of the excess over the cost incurred could form part of the profit included in the consideration for the sales. Since there was no finding to the effect that investment by way of incurring the cost in acquiring the goods, which were sold, had been made by the assessee and that investment was also not disclosed, only the excess over the cost incurred could be treated as profit. Accordingly, only profits embedded in sale proceeds can be taxed.

Abhishek Corporation Vs. DCIT 63 TTJ 651 (Ahd.) (Trib.)

Seized documents indicating that assessee was receiving premium/'on money' on booking of flats belonging to other parties. AO justified in rejecting the books of accounts. However, entire premium charged by assessee cannot be treated as undisclosed income for block period because AO had not proved by bringing material on record that assessee did make any investment to make the alleged unaccounted receipts/sales. Only net profit rate can be applied on unaccounted sales/receipts. AO not justified in making further addition as the undisclosed income offered by assessee covers such amount.

Mohan Sadhani Vs. CIT 304 ITR 52 (MP)

Held that entire sale proceeds cannot be added to income, only NP rate to be adopted.

CIT Vs. Balchand Ajit Kumar 263 ITR 610 (MP)

The facts of this case were that in a search conducted at the business and residential premises of the assessee, it was found that there were credit sales which were not reflected in the books of account. On

scrutiny of the books of account of the assessee, the Assessing Officer added a sum of Rs.8,19,255/- towards the sales profit of the assessee. The Commissioner (Appeals) came to the conclusion that the entire credit sales could not have been included in the total income of the assessee and accordingly followed the method of adding net profit rate of five per cent, on these sales and accordingly Rs.40,960/- was included on that score. The Tribunal held that the Commissioner (Appeals) had recourse to a reasonable method by adopting the net profit rate of five per cent in as much as the entire sale could not have been regarded as the profit of the assessee. The Tribunal, however, did not think it appropriate to reduce the rate which was added by the first appellate authority. On appeal, it is held that the total sale could not be regarded as the profit of the assessee. The net profit rate had to be adopted and once it was adopted it could not be said that there was perversity of approach.

Agrawal Motors Vs. ACIT 68 ITD 407 (Jab)

Addition can be made only of G.P./N.P. on suppressed sales and not entire sale price itself.

ITO Vs. Gurubachan Singh J. Juneja 216 ITR 99 (Ahd.) (Trib.) (TM)

It was held that value of the cash sales can't be added to the total income as there was no material on record that assessee made investment to make unaccounted sales. Gross profit rate should be applied to the unaccounted sales. This decision is approved by Hon'ble Gujarat High Court reported in 302 ITR 63.

2. The Ld. CIT(A) has not distinguished these cases but relied on the decision of Rajasthan High Court which is with reference to the disallowance of bogus purchases. The case of assessee is not of bogus purchases. Similarly Gujarat High Court decision is in respect of fictitious purchase invoices where the High Court disallowed 25% of such purchases. Hence this decision is also distinguishable on facts.

In view of above, addition confirmed by Ld. CIT(A) be restricted by applying appropriate g.p. rate on sale of Rs.57,930/-.

Ground No.3

The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.66,000/- u/s 69C of the Act on the basis of Pg 29 of Exhibit 3 ignoring that it is payment made by M/s Jai Ambey Motors and not by the assessee.

AO Pg 14

CIT(A) Pg 26-30

Facts & Submission:-

1. The AO from Pg 29 of Exhibit 3 (PB 22) observed that it is some payment on account of M/s Jai Ambey Motors through Ashok Gupta. The assessee explained that the said transaction is not related to assessee but assessee failed to discharged his onus. Accordingly addition of Rs.66,000/- is made u/s 69C of the Act.

2. The Ld. CIT(A) held that paper is found from the premises of assessee and payment is made through assessee's brother. Thus presumption u/s 132(4A) and 292C is attracted. Assessee has not furnished any verifiable document from M/s Jai Ambey Motors and his brother Ashok Gupta so that action could have been taken against these persons. Accordingly addition of Rs.66,000/- made by AO is confirmed.

3. It is submitted that paper is receipt dt. 27.02.2015 issued by Government of Rajasthan regarding payment of Rs.66,000/- made by M/s Jai Ambey Motors through Ashok Kumar Gupta against some consumer dispute case. Thus the presumption u/s 132(4A) and 292C is that what is written in the document found is true & correct. The document shows that payment is made by M/s Jai Ambey Motors. Only because this paper was found from the premises of assessee, it cannot be presumed that payment is made by the assessee. Hence the addition confirmed by Ld. CIT(A) is unjustified and the same be deleted.

Ground No.4

The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.50,000/- u/s 69C of the Act on the basis of Pg 4 & 5 of Exhibit 10 by not accepting the explanation of assessee that advance was given out of the available cash balance of M/s Raja Bricks and such advance was received back after 2-3 months.

*AO Pg 14-15
CIT(A) Pg 31-34*

Facts & Submission:-

10. We have heard the rival contentions and perused the material placed on record. Vide Ground no. 1 the assessee challenges the finding of the Id. CIT(A) while confirming the addition of Rs. 8,75,085/- being the alleged undisclosed profit being the difference between the profit as per seized profit and loss account and the declared profit of the assessee.

The brief facts related to the issue are that page no. 30, 31, 58 & 59 of Exhibit -1 of Annexure seized from the resident of the assessee deals with the profit and loss account of M/s. Raja Bricks, a proprietary concern of the assessee. Ld. AO noted that the sales and profit recorded on these pages does not match with the regular books of account of the assessee and thereby the difference in profit for Rs. 8,75,085/- was determined and added as income of the assessee. In support of the ground so raised by the assessee the Id. AR of the assessee submitted that P&L A/c found in the seized document was prepared for obtaining the bank limit from Kotak Mahindra Bank. This P&L A/c was prepared only for obtaining higher loan. The figures noted in this P&L A/c was not in round figure only to demonstrate before the banking authorities that this is the actual turnover/ profit. Further this P&L A/c is not for the FY but till 31st July and therefore no cognizance can be taken for such paper found in search. The search party has not recorded any statement of the assessee during search with reference to this paper. Therefore, as per the decision of MP High Court in case of Suraj Bhan Oil (P.) Ltd. Vs. DCIT 446 ITR 539 is with reference to the excess stock declared to the bank vis-à-vis that recorded in the books but in the absence of explanation by assessee the AO found

that excess stock is income from undisclosed sources. However, in the present case the assessee has furnished the explanation. Otherwise also, on excess stock declared to the bank, the decision of jurisdictional High Court in case of CIT Vs. Relaxo Footwear (2003) 259 ITR 744 and CIT Vs. Laxmi Engg. Industries (2009) 308 ITR 279 are in favour of the assessee. Hence the addition confirmed by Ld. CIT(A) is unjustified. The Id. AR of the assessee alternatively argued that the assessee in the statement dt. 23.09.2017 recorded in search has offered income of Rs.1.20 crores towards undisclosed income from M/s Raja Bricks (PB 36). AO has made addition for the same in AY 2017-18. The same is confirmed by Ld. CIT(A) but income of Rs.12,55,058/- determined based on these papers relating to AY 2017-18 was allowed set off against the amount of Rs.1.20 crores taxed in that year. Hence on the same analogy, the Ld. CIT(A) ought to have allowed the set off of Rs.8,75,085/- against the income of Rs.1.20 crores taxed in AY 2017-18 by deleting the addition in the year under consideration. The bench noted that so far as to the issue of profit declared in the profit and loss account submitted to the bank shows higher profit than what is shown in the regular books but at the same time the assessee vide statement recorded in the search disclosed a sum of

Rs. 1.20 cr. And Id. CIT(A) has already considered the set off of income while dealing with the appeal of the assessee for the assessment year 2017-18. On this issue we also note that the assessee vide making surrendered income of Rs. 1.20 cr., specifically stated his disclosure covers all the loose papers so found and therefore, even on this count the benefit of set off that disclosure cannot be denied as the issue of profit earned has already invested in that firm and the assessee has already disclosed 1.20 cr and therefore, we considered the alternative plea and thereby grant the set off of profit for Rs. 8,75,085/- against the income disclosed by the assessee. Based on this observation ground no. 1 raised by the assessee is allowed.

11. Vide ground no. 2 assessee challenges the finding of the Id. CIT(A) confirming the addition of Rs.57,930/- u/s 68 of the Act on account of alleged unaccounted sales on the basis of Pg 47 of Annexure AS-3, the assessee also challenges that the addition for the entire sale amount cannot be made instead the profit earned on alleged unaccounted sales can alternatively be added.

The brief facts related to the dispute are that the assessee was asked to refer the page no. 1 to 53 of Exhibit-3 except page - 37 (query in this regard raised separately in relevant year)

impounded from M/s Gupta Iron Store, assessee's proprietorship concern. These loose papers were found at the business premises of Gupta Iron store. These were handwritten kachi parchis showing various cash transactions relating to their money lending business, property and unaccounted expenses. Since no Books of accounts have been maintained, all these transactions may consider to be unaccounted as proposed and the same were considered so in the show cause notice to the assessee. Assessee submitted reply to that show cause notice. Ld. AO noted that the page no. 47 is related to sale of garters and sariya. In this regard the justification given by the assessee for the transactions that are said to be related to business transaction of the assessee viz sale of garters, sariya etc, it is noticed that the bills and vouchers produced by the assessee was not matching with the amount mentioned therein nor the name on the bill and that mentioned in the seized documents was also not found matching. The justification given by the assessee is just an afterthought but not found verified from the books of accounts of the assessee. Thus, the plea taken by the assessee was not found acceptable and thereby the addition of Rs. 57,930/- was made u/s 68 r.w.s.115BBE of the Act in the total

income of the assessee on account of unaccounted sales mentioned in the parallel books of accounts of the assessee.

When the matter carried before the Id. CIT(A) he stated that assessee has not brought on record evidence that this sale is duly recorded in the books of accounts. He has not brought on record that the expenses related to these sales are not recorded in the books. The appellant has also not furnished the quantitative reconciliation to show that the sale is made from the accounted purchases. In view of that fact the entire sale proceeds (unexplained purchases plus the profit earned) considered as taxable.

On the impugned addition the bench noted that page 47 of Exhibit 3 records certain transaction of sale of sariya and gartar under the heading 'naresh saini ka hisab'. Both the lower authorities have accepted that it is sales made to Naresh Saini. Hence the entire sale amount of Rs.57,930/- cannot be added to income. What can be added to income is only the profit from such sales. The Ld. CIT(A) has incorrectly stated that when the purchases in relation to such sale is not taxed u/s 69C, then the sale has to be taxed as such ignoring that when profit from Raja Bricks is already taxed, such profit is the source against the

purchase of sariya and gartar sold to Naresh Saini. As held by the Gujarat High Court in the case of CIT Vs. President Industries 258 ITR 654 (Guj.) (HC) holding that the amount of sales could not represent the income of the assessee who had not disclosed the sales. The sales only represented the price received by the seller of the goods; only the realization of the excess over the cost incurred could form part of the profit included in the consideration for the sales. Since there was no finding to the effect that investment by way of incurring the cost in acquiring the goods, which were sold, had been made by the assessee and that investment was also not disclosed, only the excess over the cost incurred could be treated as profit. Accordingly, only profits embedded in sale proceeds can be taxed. Ld. CIT(A) has not distinguished these cases but relied on the decision of Rajasthan High Court which is with reference to the disallowance of bogus purchases. The case of the assessee is not of bogus purchases. Similarly Gujarat High Court decision is in respect of fictitious purchase invoices where the High Court disallowed 25% of such purchases. Hence this decision is also distinguishable on facts. Considering that overall facts we direct the Id. AO to consider the income on the transaction to the extent of the gross profit declared

by the assessee in the books of accounts. Based on this observation ground no. 2 raised by the assessee is partly allowed.

12. Ground no. 3 raised by the assessee state that Id. CIT(A) erred in confirming the addition of Rs. 66,000/- but in fact the Id. CIT(A) has allowed that ground based on the submission placed on record and therefore, this ground becomes infructuous as there was no addition confirmed by the Id. CIT(A).

13. Vide Ground no. 4 the assessee challenges sustained addition of Rs.50,000/- u/s 69C of the Act by Id. CIT(A) based on the basis of Pg 4 & 5 of Exhibit 10 by not accepting the explanation of assessee that advance was given out of the available cash balance of M/s Raja Bricks and such advance was received back after 2-3 months. In the assessment proceeding vide notice dated 03/09/2019 assessee was asked to refer page no. 4 & 5 of Exhibit-10 seized from his residential premise of the assessee. The documents refer to an affidavit of Shri Kailash Bairwa for receipt of cash payment of Rs. 50,000/- in advance from him. This transaction appears to be related with the proprietorship concern M/s Raja Bricks. In this regard the assessee was asked to explain the source of payment of Rs. 50,000/- made with supporting documents. In absence of any proper justification, the assessee

was asked to show cause as to why the payment of Rs. 50,000/- may not be treated as his unexplained expenditure. In response to that notice the A/R of the assessee filed written submission on 18/09/2019. The reply of the assessee was considered carefully by the Id. AO, the assessee submitted that the amount of Rs. 50,000/- was given as temporary advance to Shri Kailash Bairwa in cash as he has sufficient cash balance. But the assessee failed to verify it from the books of accounts such as cash book. In view of the above, the assessee failed to explain the source of advance given to Shri Kailash Bairwa.

When the matter taken up before the Id. CIT(A), he confirmed the addition by noting that the assessee has given the advance of Rs.50,000/- to the staff which is not recorded in the regular books of accounts. This being business advance as it is to the business staff. The source is not explained by the assessee- appellant. Therefore, the AO has correctly treated the same as unexplained.

On this aspect of the dispute we note that assessee has given advance of Rs.50,000/- to Shri Kailash Bairwa. The assessee explained that Shri Kailash Bairwa is working as labour in M/s Raja Bricks and the amount of Rs.50,000/- was given as temporary advance out of available cash balance with M/s Raja Bricks which

were received back after 2-3 months. However, AO rejected the contention of the assessee by stating that the assessee failed to explain the source of advance given to Sh. Kailash Bairwa. Accordingly, he made an addition of Rs.50,000/- as unexplained expenditure u/s 69C of the Act. Ld. CIT(A) confirmed that view of the Id. AO. The bench noted that it is not under dispute that Shri Kailash Bairwa is staff of M/s Raja Bricks. He was provided temporary advance for which his affidavit was obtained. This affidavit was found in search. The source of such advance is the cash balance available in the books of accounts. Since the advance was returned back after 2-3 months, the advance given and the amount received back was not recorded in the books of accounts. We note that the assessee has not filed any confirmation and availability of the cash book as on the date of affidavit. Therefore, the Id. AO is directed to examine the employee of the assessee and confirm whether the assessee was having the sufficient balance or not. Based on that verification Id. AO may consider the claim of the assessee. Therefore, this ground 4 raised is disposed off as indicated as above.

14. Ground no 5 & 6, being general in nature, does not require our adjudication.

In the result the appeal filed by the assessee in ITA no. 447/JP/2024 stands partly allowed.

15. Now we take the appeal of the assessee **ITA No. 448/JP/2024 for A.Y 2016-17.**

16. The bench noted the ground no. 1 taken by the assessee is similar to the ground no. 1 taken by the assessee in ITA no. 447/JP/2024 for Assessment year 2015-16. Therefore, it is not imperative to repeat the facts and finding recorded again here while dealing ground no. 1 raised by the assessee in ITA no. 448/JP/2024 for assessment year 2016-17 and therefore, decision taken by us in Ground no. 1 in ITA no. 447/JP/2024 shall apply mutatis mutandis to the ground no. 1 in ITA no. 448/JP/2024 and therefore, the same is treated as allowed.

17. Vide ground no. 2 the assessee challenges the fact that Id. CIT(A) erred in confirming the addition of Rs. 91,010/- u/s. 69C of the Act on the basis of page 34 of Annexure AS-3. The relevant finding of the Id. CIT(A) is reproduced herein below :

5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

In the assessment order, the AO observed that page 34 found in search relates to expenses on Berka Land. The assessee failed to explain the bills and vouchers in support of the expenses and how the same is verifiable from the books of accounts. Accordingly he made addition of Rs.91,010/-u/s 69C.

The Ld. AR of the appellant argued that this paper is the account of expenditure incurred on certain land. There is no name on this paper. The AO has not brought any evidence to prove that this is the expenditure incurred by the assessee. He alternatively argued that even if it is presumed to be unexplained expenditure of the assessee, the source of the same is out of the unrecorded profit added by the AO as per ground No. 1 above. Copy of the cash flow statement is filed in support of the set off and also placed reliance on the various decision.

On perusal of the overall facts, I find that this paper is found from the premises of the assessee and therefore it is the duty of the assessee to explain the transaction which he failed to do. The presumption u/s 132(4A) and 292C is against the submissions of the appellant. Therefore the payment of Rs. 91,010/- is treated as unexplained investment. Accordingly, the addition in this regard is upheld. This is subject to further discussion in the following para.

However the alternate argument of the appellant that set off of the same should be allowed against the income separately taxed appears to be acceptable. The Ld. AR relied upon the decision of Rajasthan High Court in case of CIT Vs. Tyaryamal Bal Chand 165 ITR 0453 and Supreme Court decision in case of Anantharam Veerasinghaiah & Co. Vs. Commissioner of Income Tax 123 ITR 0457 which supports the case of the assessee. The assessee has also filed cash flow statement.

The redrafted cash flow statement on the basis of finding given in this order is tabulated as under:-

Statement indicating cash flow statement from AY 2015-16 to 2016-17

Particulars	Assessment year
-------------	-----------------

	2015-16	2016-17
Opening balance	0	817015
Income from Raja Bricks	875085	1555043
Profit on alleged Unaccounted Sales as per page 1 to 53 of Exhibit 3	57930	
Total sources	933015	2372058
Payment/Utilisation		
Unexplained Expenditure as per page 1 to 53 of Ex- 3	66000	91010
Temporary Cash Advance	50000	
Total utilisation	116000	91010
Net cash balance available for subsequent year investment	817015	2281048

As per this cash flow statement, also the sources are much more than the investment. Accordingly, the set off of the income already taxed is allowed against this addition. In the result, the addition of Rs. 91,010/- made by the AO is hereby deleted only on this subjective reasoning.

Accordingly, this ground of appeal is allowed in these terms.

The bench noted in fact the Id. CIT(A) has allowed this addition while dealing with the appeal of the assessee based on the submission so made by the assessee and therefore, this ground become infructuous as the ground itself is incorrect.

18. In the result, the appeal of the assessee in ITA No. 448/JP/2024 is partly allowed.

19. Now we take the appeal of the assessee **ITA No. 449/JP/2024 and that of the revenue in ITA no. 514/JP/2024 for A.Y 2017-18.**

20. First we take up the appeal filed by the assessee. Succinctly, the fact related to the issue raised before us as culled out from the records is that a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") was carried out by the Income Tax Department on the members/concerns of Gupta Group, Alwar on 22/09/2017 of which the Assessee is one of the members. Notice under section 153A of the Act was issued and served upon the Assessee on 09/10/2018 requiring his to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules, 1962 within 15 days of the service of the said notice. The assessee filed its return of income u/s 139 on 02/11/2017 declaring income of Rs. 5,56,900/-. In response to the said notice, a return declaring an income of Rs. 5,56,900/ was e-filed by the Assessee. The Assessee primarily derives its income from Business, House Property Income and Income from Other Sources. The proceedings of assessment of income were initiated by issuing of notices u/s 143(2) of the Act on 08.08.2019 & 142(1) of the Act on 03-09-2019 and served online on the e-mail of the assessee.

Notice u/s 142(1) dated 03-09-2019 was issued to the assessee and information and details pertaining to the case of the Assessee relevant to assessment of his income were called for u/s 142(1) of the Act by means of a questionnaire.

21. During the course of assessment proceedings, the assessee vides notice u/s 142(1) dated 03/09/2019 was asked as under:-

"Please refer page no. 1 to 53 of Exhibit-3 except page -37 (query in this regard raised separately in relevant year) impounded from M/s Gupta Iron Store, your proprietorship concern. These are loose papers were found at the business premise of Gupta Iron store. These are hand written kachi parchis showing various cash transactions relating to their money lending business, property and unaccounted expenses. Since no Books of accounts have been maintained, all these transactions may be considered to be unaccounted. At the time of statements recorded during the search, you stated that these papers are related to his money lending business and sale of property at Plot no 29, Jail ka Chauraha, Alwar whose registry has not been done as yet. During the post search proceedings you are asked to explain these transactions, however no explanation has been provided for these pages. The reply dated 12.01.2018 for these loose papers tabulated by you are reproduced here:-

these loose papers tabulated by you are reproduced here:-

S.no	Page No of Exhibit As-3	Amounts pertaining to money lending business (in Rs.)	Amounts pertaining to expenses done in cash(in Rs.)	Amounts pertaining to property(in Rs.)	Extracts from the reply dated 12.01.2018 submitted by the assessee
1.	5		99,070/-		manju thekedar against gatar sale

2.	6			23,81,890/-	
3.	7		1,52,575/-		narendra ji gainst sariya sale
4.	8		2,88,160/-		Mistri Imrat
5.	9		1,44,910/-		Nandu thekedar
6.	10		1,25,940/-		kalu thekedar
7.	11		1,40,890/-		exp against putli land
8.	12		91,030/-		ramsingh thekedar
9.	13		1,36,440/-		dilip ji against sariya sale
10.	19		97,670/-		
11.	20			3,62,000/-	against belaka land sale
12.	22 to 30			15,69,945/-	5,32,445 received against naharpura land sale
13.	31	2,25,000/-			
14.	32		86,750/-		against sale of pratap bas
15.	33	3,04,500			cash received detail
16.	34		91,010/-		exp for Belaka land
17.	35		1,50,000/-		exp for by pass jamin
18.	36		15,000/-		bartan wala
19.	37	1,16,00,000/- -(addition already discussed in para 8.5.6)			
20.	38		22,000/-		Niravan hotel against sale
21.	39	60,540/-			sagar ji against sale
22.	40	6,47,455/-			447505 exp for shrijapur plat
23.	41		2,26,690/-		exp against land
24.	42	6,49,522/-			against agriculture sale
25.	44		1,80,000/-		
26.	45	3,40,000/-			kotputli land
27.	47	57,930/-			naresh saini
28.	48* to 52	25,16,756/-			cash received against sale of sariya
29.	53	54,180/-			rajendra ji agarwal
	Total	48,55,883/-	20,48,135/-	43,13,835/-	

of the entries are provided.

It is seen from the reply that merely the narration of the entries are provided. Even to which F.Y it pertains are not mentioned in the reply. In this regard assessee was required to furnish year wise explanation of these transactions entries along with supporting

documents/books of accounts. The total amount of transactions mentioned in these pages is Rs. 1,12,17,853/-.

22. In response to the notice the A/R of the assessee filed written submission on 24/12/2019. The reply of the assessee has been considered carefully from the perusal of the seized documents of the exhibit, it is found that the following documents are related to the year under consideration.

Page No.	AY	Amount in Rs.
39	2017-18	60540
28	2017-18	34625
23	2017-18	90500
11	2017-18	140890
10	2017-18	125940
	Total amount	4,52,495/-

The page no. 10, 11, 39 is related to sale of garters, sariya. Further, regarding justification given by the assessee for the transactions that are said to be related to business transaction of the assessee viz sale of garters, sariya etc, it is noticed that the bills and vouchers produced by the assessee was not matching with the amount mentioned therein nor the name on the bill and that mentioned in the seized documents was also not found

matching. The justification given by the assessee is just an afterthought but not found verified from the books of accounts of the assessee. Thus, the plea taken by the assessee was not found acceptable to Id. AO. Therefore, the addition of Rs. 3,27,370/- was made u/s 68 of the Act in the total income of the assessee on account of unaccounted sales maintained in the parallel books of accounts of the assessee.

23. The page no. 23 of the exhibit is related to the transaction of Rs. 90,500/- received against the sale of land. The assessee failed to verify the transaction from his regular books of accounts. Therefore, the addition of Rs. 90,500/- was made in the total income of the assessee for unaccounted receipts u/s 68 of the Act against sale of property.

24. During the course of assessment proceedings, the assessee vides notice u/s 142(1) dated 03/09/2019 was asked to refer page no. 30, 31, 58 & 59 of Exhibit-1 of Annexure seized from his residence. The pages are P&L a/c of M/s Raja Bricks, proprietorship his concern, for the period 01.08.2014 to 31.07.2016. On perusal of the P&L a/c it is noticed that total sales declared on the pages under question for the mentioned period

and net profit shown therein are not matching with those declared in his regular books of accounts submitted. During the year under consideration difference of Net profit be calculated for numerical/calculations purpose by taking ratio of net profit declared in A.Y 2016-17 & 2017-18 comes to Rs. 16,39,568/-. In this regard the assessee asked to show cause as to why the amount of Rs. 16,39,568/- may not be treated as his unaccounted income and may not be added in his total income for the year under consideration. In response, the Ld. AR of the assessee filed written submission on 18/09/2019. The contention raised in the reply was also not found acceptable as during the course of search proceedings various incriminating documents were found and seized which shows that the assessee was engaged in unaccounted sales. Also, addition on account of unaccounted sales is made in the year under consideration and in the assessment year 2018-19 on the basis of documents seized during search. Thus, the reply of the assessee is not found acceptable and on the basis of the P&L account and Balance Sheet seized during search, it can be held that the amount of Rs. 16,39,568/- is the undisclosed receipts u/s 68 of the Act of the assessee and

addition of Rs. 16,39,568/- is being made in the total income of the assessee.

25. The assessee has offered additional income of Rs. 1,20,00,000/- in their sworn statements recorded u/s 132(4) of the I.T. Act, 1961. The disclosure made during search proceedings is supported by sworn statements of the assessee which have evidentiary value and accordingly the disclosure made by assessee is being taxed in his hands. However, the surrendered unaccounted income of Rs. 1,20,00,000/- has not been honored by the assessee in the return of income filed u/s 153A of the Act. The assessee has also not furnished any documents of retraction which clearly shows that the disclosure made during the course of search is not true and correct. Further the assessee in the aforesaid statement has tried to relate the undisclosed income with the loose papers found during the course of search proceedings which reveals the undisclosed investments and other transactions along with cash of Rs. 63.00 Lacs. However, the assessee has not furnished any date wise working of the undisclosed income earned from M/s Raja Bricks. Hence, it cannot be determined whether the aforesaid undisclosed income was available cash in hand with the assessee on the date of such investments and transactions

revealed in loose papers found during the course of search. Further no cash flow has been furnished by the assessee during the course of search and assessment proceedings to substantiate that cash amounting to Rs. 63.00 Lacs were available with assessee as a part of undisclosed income so declared i.e. Rs. 1,20,00,000/-. In view of above discussion, it is evident that the assessee has earned undisclosed income amounting to Rs. 1,20,00,000/- from his business concern M/s Raja Bricks and voluntarily surrendered the same in his statements recorded during search proceedings which the assessee failed to disclose in his return filed u/s 153A. Therefore, the same is held as undisclosed income of the assessee and a sum of Rs. 1,20,00,000/- is hereby added to the total income for the period relevant to the assessment year under consideration.

26. Aggrieved from the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds raised before us the relevant finding of the Id. CIT(A) is reiterated here in below:

Ground No. 2

5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The

contentions/submissions of the appellant are being discussed and decided as under:-

I have decided the similar issue in the case of the appellant for the assessment year 2015-16 in the ground of appeal number 3 where the addition made by the Id. AO has been upheld and grounds of appeal have been dismissed. Material facts of the present appeal being parimateria with the facts of the appeal in the assessment year 2015-16, the findings of the appeal order in the case of assessment year 2015-16 in the ground of appeal number 3 will apply mutatis- mutandis to the present appeal for the assessment year 2017-18 and it is held accordingly.

Accordingly, this ground of appeal is hereby dismissed.

Ground No. 3

6.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

On this issue the Id. AO observed that page no. 23 of Exhibit-3 relates to transaction of Rs.90,500/- received against the sale of land. The assessee failed to verify the transaction from his regular books of accounts. Therefore, AO made an addition of Rs.90,500/- in the total income of the assessee as unaccounted receipts u / s 68 of the Act.

The Ld. AR of the appellant argued that the noting on the paper nowhere indicates that this represents sale of the land. This appears to be account of particular person. The AO has also not brought any evidence to establish that this is the sale of the land. The same at the most can be considered as out of books sale of the Saria. The AO has already considered much higher sale as per the profit & loss account found at page 58 & 59 of Exhibit 1 as discussed in ground No.5. AO further made addition u/s 68. This section applies when any sum is found credited in the books of accounts, the source of which is not explained to the satisfaction of the AO. The amount of Rs.90,500/- is noted on a loose paper. The same can't be equated with the books of accounts. The Ld. AR alternatively argued that the AO treated the entire sales as income whereas it is a settled law that in case of out of books sales only the gross profit there on can be taxed. For this reliance is placed on the various cases,

On perusal of the overall facts, I find that this paper represents the sale as held by the AO. The Ld. AR has not brought on record evidence that this sale is duly recorded in the books of accounts or the other sales

mentioned in the seized profit & loss account. He has further not brought on record that the expenses related to this sales(if any)are not recorded/claimed in the books. Further the purchase was from explained sources or unexplained sources has not been shown. If the purchase is out of unexplained sources such purchase is disallowable u/s 69C of the Act.

Therefore, the addition of Rs. 90,500/- made by the AO is confirmed. Accordingly, this ground of appeal is hereby dismissed.”

Ground No. 5

8.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

I have decided the similar issue in the case of the appellant for the assessment year 2015-16 in the ground of appeal number 2 where the addition made by the Id. AO has been upheld and grounds of appeal have been dismissed. Material facts of the present appeal being pari-materia with the facts of the appeal in the assessment year 2015-16, the findings of the appeal order in the case of assessment year 2015-16 in the ground of appeal number 2 will apply mutatis- mutandis to the present appeal for the assessment year 2017-18 and it is held accordingly.

Therefore the AO has correctly treated the profit as per the seized profit & loss account as actual profit and determined the unaccounted profit. However while making the addition AO forget to reduce the declared profit of Rs. 3,84,510/-as reduced in AY 2015-16. Considering these facts the correct addition for unaccounted profit as per these papers works out to Rs. 12,55,058/- (16,39,568 - 3,84,510) by reducing the declared profit therefrom. In these facts, the addition of Rs. 16,39,568/- made by the AO is restricted to Rs. 12,55,058/ and the same is hereby confirmed.

Accordingly, this ground of appeal is hereby partly allowed.”

Ground No. 8

11.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

On the issue the Id. AO observed that the assessee in course of search has admitted undisclosed income of Rs.1,20,00,000/- from his business

ie. M/s Raja Bricks for the A.Y. 2017-18 and surrendered the same in his statements. recorded during search proceeding.

Relevant part of the assessment order is as under:-

"During the course of search proceedings, statements of Shri Tara Chand Gupta were recorded on oath u/s 132(4) of the I.T. Act on 23.09.2017 wherein the vehemently surrendered an amount of Rs. 1,20,00,000/- as unaccounted income earned from M/s Raja Bricks during the period relevant to the assessment year under consideration. The relevant part of the statements is as under for ready reference:-

X

X

X

"However, the surrendered unaccounted income of Rs. 1,20,00,000/-has not been honored by the assessee in the return of income filed u/s 153A of the Act. The assessee has also not furnished any documents of retraction which clearly shows that the disclosure made during the course of search is true and correct. Further the assessee in the aforesaid statement has tried to relate the undisclosed income with the loose papers found during the course of search proceedings which reveals the undisclosed investments and other transactions alongwith cash of Rs. 63.00 Lacs However, the assessee has not furnished any datewise working of the undisclosed income earned from M/s Raja Bricks. Hence, it cannot be determined whether the aforesaid undisclosed income was available as cash in hand with the assessee on the date of such investments and transactions revealed in loose papers found during the course of search. Further no cash flow has been furnished by the assessee during the course of search and assessment proceedings to substantiate that cash amounting to Rs. 63.00 Lacs was available with assessee as a part of undisclosed income so declared ie. Rs. 1,20,00,000/-.

In view of above discussion, it is evident that the assessee has earned undisclosed income amounting to Rs. 1,20,00,000/- from his business concern M/s Raja Bricks and voluntarily surrendered the same in his statements recorded during search proceedings which the assessee failed to disclose in his return filed u/s 153A. Therefore, the same is held as undisclosed income of the assessee and a sum of Rs. 1,20,00,000/- is hereby added to the total income for the period relevant to the assessment year under consideration."

The Ld. AR of the appellant argued that the assessee in course of search surrendered the income of Rs. 1,20,00,000/- by considering the document of income from business found, investment made in advances and other loose papers. The AO has already taxed the income on the basis of each loose paper and therefore separate addition for the same is uncalled for and be deleted. The Ld. AR alternatively argued that if this

x	x	x	x
CIT, Bikaner vs. Shri Ravi Mathur (D.B. Income-tax Appeal No. 67/2002), Hon'ble Rajasthan High Court.			
x	x	x	x
CIT vs. MAC Public Charitable Trust (2022) 144 taxmann.com 54 (Madras)/(2023) 450 ITR 368 (Madras)[31.10.2022]			
x	x	x	x
Dr. S.C. Gupta v. CIT [2001] 118 Taxman 252 (Allahabad)			
x	x	x	x
Bachittar Singh vs CIT [2010] 328 ITR 400 (Punjab & Haryana)			
x	x	x	x
CIT vs. Hotel Meriya [2010] 195 Taxman 459 (Kerala)/(2011) 332 ITR 537 (Kerala) [26.05.2010]			
x	x	x	x
CIT vs. Lekh Raj Dhunna [2012] 20 taxmann.com 554 (Punjab & Haryana)/[2012] 344 ITR 352 (Punjab & Haryana)/(2010) 236 CTR 414 (Punjab & Haryana) [29.09.2010]			
x	x	x	x
Kantilal C. Shah vs. ACIT, Circle-03, Ahmedabad [2011] 14 taxmann.com 108 (Ahmedabad-ITAT)/[2012] 15 ITR(T) 62(Ahmedabad-ITAT)/[2011] 133 ITD 57 (Ahmedabad-ITAT)/(2011) 142 TTJ 233(Ahmedabad-ITAT) (26.06.2011).			
x	x	x	x

Appellate has not produced any complaint lodged with higher officials supported by affidavit swearing that the contents of statement are incorrect and it was obtained under force, coercion. The statements in the retraction has to be duly supported with evidences. Similarly the allegations of coercion etc., if any, in the retraction has to be supported with evidences.

The appellant has not furnished evidences to prove the earlier evidence statement u/s 132(4); as incorrect. The statement u/s 132(4) itself is evidence (as per judgement in Kantilal C. Shah (supra)).

Accordingly, this ground of appeal is hereby dismissed.”

Ground No. 10

13.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The appellant has raised the issue of date of applicability of provisions of Section 115BBE of the Act as amended by second amendment Act by the Taxation Laws (second amendment) Act, 2016 i.e. the rate of 60% of

tax. There is no dispute regarding the applicability of section 68/69/69A etc, and section 115BBE of the Act on the merits of the additions.

This issue raised by the appellant has been considered in the following judgments.

MaruthiBabuRaoJadav v. ACIT [2021] 430 ITR 504 (Ker.) (WA. No. 984 of 2019)

x	x	x	x
KarthickNatarajan	v. DCIT,	International Taxation	(2023) 154
taxmann.com 136	(Chennai-Trib.)/(2023)	202 ITD 552	(Chennai-Trib.)(11.07.2023)

x	x	x	x
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In view of the above, the provisions of Section 115BBE of the Act as amended by second amendment Act by the Taxation Laws (second amendment) Act, 2016 are applicable w.e.f 1-4-2017 onwards (01.04.2017 for the A.Y 2017-18 fully year of A.Y 2017-18 and onwards) on enhanced rate of tax @ 60%.

In view of the above, this ground of appeal is hereby dismissed.”

27. The assessee challenges the finding of the Id. CIT(A) on those additions which were sustained or not favored to the assessee on the grounds as reiterated here in above before this tribunal. To support the various grounds raised by the assessee, Id. AR of the assessee, has filed detailed written submissions and the same is reproduced below:

1. In search certain hand written kachi parchis were found in Exhibit 3. The AO observed that Page 10, 11 & 39 (PB 71-72) of this Exhibit relates to sale of garters and sariya. The bills and vouchers submitted by the assessee are not matching with the details mentioned in the seized paper. Accordingly, AO made addition of Rs.3,27,370/- u/s 68 of the Act.

2. The Ld. CIT(A) confirmed the addition as per the finding given in Ground No.3 for AY 2015-16.

Submission:-

3. Pg No. 10, 11 & 39 of Exhibit 3 records certain transaction of sale of sariya and gartar under the heading 'thekedar nandu/karigar ka hisab. Both the lower authorities have accepted that it is in respect of sales made. Hence the entire sale amount of Rs.3,27,370/- cannot be added to income. What can be added to income is only the profit on such sale. The Ld. CIT(A) in AY 2015-16 has incorrectly stated that when the purchases in relation to such sale is not taxed u/s 69C, then the sale has to be taxed as such ignoring that when profit from Raja Bricks is already taxed, such profit is the source against the purchase of sariya and gartar sold to various persons. Hence what can be added is the profit on such sale for which reliance is placed on the following decisions:-

CIT Vs. President Industries 258 ITR 654 (Guj.) (HC)

The amount of sales could not represent the income of the assessee who had not disclosed the sales. The sales only represented the price received by the seller of the goods; only the realization of the excess over the cost incurred could form part of the profit included in the consideration for the sales. Since there was no finding to the effect that investment by way of incurring the cost in acquiring the goods, which were sold, had been made by the assessee and that investment was also not disclosed, only the excess over the cost incurred could be treated as profit. Accordingly, only profits embedded in sale proceeds can be taxed.

Abhishek Corporation Vs. DCIT 63 TTJ 651 (Ahd.) (Trib.)

Seized documents indicating that assessee was receiving premium/'on money' on booking of flats belonging to other parties. AO justified in rejecting the books of accounts. However, entire premium charged by assessee cannot be treated as undisclosed income for block period because AO had not proved by bringing material on record that assessee did make any investment to make the alleged unaccounted receipts/sales. Only net profit rate can be applied on unaccounted sales/receipts. AO not justified in making further addition as the undisclosed income offered by assessee covers such amount.

Mohan Sadhani Vs. CIT 304 ITR 52 (MP)

Held that entire sale proceeds cannot be added to income, only NP rate to be adopted.

CIT Vs. Balchand Ajit Kumar 263 ITR 610 (MP)

The facts of this case were that in a search conducted at the business and residential premises of the assessee, it was found that there were credit sales which were not reflected in the books of account. On scrutiny of the books of account of the assessee, the Assessing Officer added a sum of Rs.8,19,255/- towards the sales profit of the assessee. The Commissioner (Appeals) came to the conclusion that the entire credit sales could not have been included in the total income of the

assessee and accordingly followed the method of adding net profit rate of five per cent, on these sales and accordingly Rs.40,960/- was included on that score. The Tribunal held that the Commissioner (Appeals) had recourse to a reasonable method by adopting the net profit rate of five per cent in as much as the entire sale could not have been regarded as the profit of the assessee. The Tribunal, however, did not think it appropriate to reduce the rate which was added by the first appellate authority. On appeal, it is held that the total sale could not be regarded as the profit of the assessee. The net profit rate had to be adopted and once it was adopted it could not be said that there was perversity of approach.

Agrawal Motors Vs. ACIT 68 ITD 407 (Jab)

Addition can be made only of G.P./N.P. on suppressed sales and not entire sale price itself.

ITO Vs. Gurubachan Singh J. Juneja 216 ITR 99 (Ahd.) (Trib.) (TM)

It was held that value of the cash sales can't be added to the total income as there was no material on record that assessee made investment to make unaccounted sales. Gross profit rate should be applied to the unaccounted sales. This decision is approved by Hon'ble Gujarat High Court reported in 302 ITR 63.

2. The Ld. CIT(A) has not distinguished these cases but relied on the decision of Rajasthan High Court which is with reference to the disallowance of bogus purchases. The case of assessee is not of bogus purchases. Similarly Gujarat High Court decision is in respect of fictitious purchase invoices where the High Court disallowed 25% of such purchases. Hence this decision is also distinguishable on facts.

In view of above, addition confirmed by Ld. CIT(A) be restricted by applying appropriate g.p. rate on sale of Rs.3,27,370/-.

Ground No.2

The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.90,500/- u/s 68 of the Act on the basis of Pg 23 of Exhibit 3 ignoring that it is a dumb paper and therefore the presumption that it represents money received against sale of land is misplaced.

AO Pg 11

CIT(A) Pg 15-17

Facts:-

1. From Pg 23 of Exhibit 3 (PB 73) AO observed that it relates to transaction of Rs.90,500/- received against sale of land. The assessee failed to verify the transaction from his regular books of accounts.

Therefore he made an addition of Rs.90,500/- towards unaccounted receipts u/s 68 of the Act.

2. The Ld. CIT(A) observed that paper represent the sales as held by AO. Assessee has not brought on record evidence that this sale is recorded in books of accounts nor brought on record any evidence that expenses related to this sale are not recorded in the books. Accordingly he confirmed the addition.

Submission:-

1. From the persual of paper (PB 73) it can be noted that the paper nowhere indicate that the amount noted therein represent sale of land. The Ld. CIT(A) has accepted that the amount does not represent sale of land but without any basis observed that the amount represent sale. The narration against the amount of Rs.90,500/- is 'jama total, sara mila kar'. No name is mentioned on the paper. This is a dumb noting and therefore the addition confirmed on the basis of such noting is uncalled for.

2. AO has made addition u/s 68 of the Act. This section applies when any sum is found credited in the books of accounts, the source of which is not explained to the satisfaction of the AO. The amount of Rs.90,500/- is noted on a loose paper. It is not credited in the books of accounts. Hence the addition made u/s 68 is not legally sustainable.

3. Without prejudice to above, even if as held by Ld. CIT(A) that the amount represent sale is accepted, then the entire sale cannot be added in income but only profit on such sale can be added to income as explained in Ground No.1 supra. The g.p. rate for the year is 19.10%. Hence the addition if any, should be restricted to Rs.17,285/- being 19.10% of Rs.90,500/-.

Ground No.3

The Ld. CIT(A) has erred on facts and in law in upholding the action of AO in treating the P&L A/c of proprietary concern M/s Raja Bricks prepared by the assessee for obtaining the limit from the bank seized during the search as actual P&L A/c and thereby confirming the addition of Rs.12,55,058/- as undisclosed profit, being difference between the profit as per seized P&L A/c and the declared profit.

*AO Pg 11-16
CIT(A) Pg 18-20*

The facts & submission of the assessee in respect of this ground is same as Ground No.1 of AY 2015-16 and therefore, the same be considered in deciding this ground.

Ground No.4

The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.1.20 crores on the basis of lump sum surrender made by the assessee in the statement recorded u/s 132(4) of the Act in respect of M/s Raja Bricks, a proprietary concern of assessee ignoring that when the AO has separately made addition on the basis of seized documents, no addition on the basis of lump sum surrender made by the assessee can be made.

AO Pg 17-23
CIT(A) Pg 28-44

Facts:-

1. The AO observed that the assessee in his statement u/s 132(4) dt. 23.04.2017 surrendered an amount of Rs.1,20,00,000/- as unaccounted income earned from M/s Raja Bricks for the year under consideration but the same is not disclosed in the return of income. Therefore, relying on the decision of Rajasthan High Court in case of Ravi Mathur and other decisions, he made addition of Rs.1.20 crores.

2. The Ld. CIT(A) at Pg 31 of the order observed that AO has made two additions, one is addition of Rs.12,55,058/- on the basis of the P&L A/c of Raja Bricks found in search and another of Rs.1,20,00,000/- on the basis of the statement and therefore, to avoid duplication he considered the addition of Rs.12,55,058/- as part of the addition of Rs.1.20 crores. This addition is confirmed by Ld. CIT(A) by relying on the decisions of various courts including the Rajasthan High Court.

Submission:-

1. It is submitted that assessee in his statement recorded u/s 132(4) surrendered the income of Rs.1,20,00,000/- by considering the document of income from business, investment made in loans and other loose papers. The AO has taxed the income on the basis of loose papers and investment on year to year basis. No paper or document relating to the income of Rs.1.20 crores as stated in the statement u/s 132(4) was found. Thus when addition is made year wise on the basis of paper & document found, separate addition of Rs.1.20 crores on the basis of statement is uncalled for and unjustified. In these facts & circumstances of the case, the various decisions relied by the AO and CIT(A) are not applicable.

2. Without prejudice to above, even if the amount of Rs.1.20 crores is taxed on account of the unaccounted income earned from M/s Raja Bricks, then the addition of Rs.8,75,085/- confirmed in AY 2015-16 and Rs.15,55,043/- confirmed in AY 2016-17 be reduced from the amount of Rs.1.20 crores as has been done by Ld. CIT(A) in considering the

income of M/s Raja Bricks of Rs.12,55,058/- for the year under consideration as part of Rs.1.20 crores.

Ground No.5

The Ld. CIT(A) has erred on facts and in law in taxing the above additions u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made applicable from 01.04.2017 is not applicable to AY 2017-18.

Facts & Submission:-

The lower authorities have taxed certain unexplained investment/expenditure @ 60% u/s 115BBE. It is submitted that substituted section 115BBE by Taxation Laws (Second Amendment Act), 2016 received the assent of President on 15.12.2016. The section is made applicable w.e.f. 01.04.2017. Hon'ble ITAT, Jabalpur Bench in case of ACIT Vs. Sandesh Kumar Jain ITA 41/JAB/2020 order dt. 31.10.2022 at Para 4.2 of the order while interpreting the amendment made in section 115BBE which received the assent of President on 15.12.2016 held as under:-

4.2 As regards the assessee's second, without prejudice, argument, i.e., qua nonretrospectivity, we find considerable force therein. Section 1(2) of the Amending Act provides that save as otherwise provided therein, it shall come into force „at once“. The same only conveys the intent for, except where a later date is specified, the legislation to take immediate effect, i.e., as soon the assent of the Hon'ble President of India is received, by signing the same. The words „at once“ convey an urgency, so that the same represents the earliest point of time at which the same is to take effect, i.e., 15/12/2016 itself, and which also explains the same being enacted during the course of the fiscal year, tax rates for which stand already clarified at the beginning of the year per the relevant Finance Act (FA, 2016). The said words „at once“ would lose significance if the provisions of the Act are to, as stated by the Ld. CIT(A), be read as effective 01/04/2017, implying AY 2018-19. The same, for substantive amendments, as in the instant case, represents the first day of the assessment year, i.e., AY 2017-18, which explains the assessee's grievance of it being thus effective for fy 2016-17 or, w.e.f. 01/4/2016. Enacting it mid-year and, further, making it applicable „at once“, becomes meaningless if the same is to take effect retrospectively, or is made effective from a later date (01/4/2017), which could in that case be by Finance Act, 2017. True, the amendment, where so read, does give rise to a peculiar situation inasmuch as two tax rates would obtain for the current year, i.e., one from 01/04/2016 to 14/12/2016, and another from 15/12/2016 to 31/03/2017, but, then, that is no reason to read retrospectivity where the applicable date is clear and, further, there is nothing to suggest retrospectivity. Further, extraordinary and

supervening circumstance of the Demonetization Scheme, 2016, brought out by the Government of India in November, 2016, explains the urgency in bringing an amendment mid-year. Further, the tax rate being in respect of incomes which are imputed with reference to a transaction/s, it is possible to administer the same, another aspect of the matter that stands considered by us. That is, a tax rate for transactions made up to 14/12/2016, and another for those thereafter. Subsequent mention of the applicability of the amended provisions of ss. 271AAB and 271AAC with reference to the date on which the Presidential assent to the Act is received, further corroborates this view, which is based on the clear language of the Amending Act, as well as the principle that a substantive amendment is to be generally prospective. We draw support from the decision in Vatika Township Pvt. Ltd. (supra), reiterating the settled law of the rule against retrospectivity. The tax rate applicable to the impugned income would, therefore, be at 30%, i.e., the rate specified in sec. 115BBE as on 30/11/2016, the date of the surrender of income per statement u/s133A (PB-1, pgs.35-44). This, it may be noted, is also consistent with our view that the income is liable to be assessed u/s. 69B (see para 4.1).

The Ld. CIT(A) has relied on the decision of Kerala High Court and ITAT Chennai Bench but in these cases the law as laid down by Jabalpur bench is not discussed. Hence, these decisions cannot be applied as such. Therefore even if certain amount is held taxable u/s 69 of the Act, tax rate applicable u/s 115BBE would be 30% and not 60% if such amount is prior to 15.12.2016.

28. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee where the sales evidence considered to be alleged out of book sales only profit portion be taxed and since the Id. AO has made the addition on various loose paper separately the disclosure so made cover all such discrepancies. As regards the relief granted by the Id. CIT(A) he supported the finding of Id. CIT(A).

29. The Id DR is heard who relied on the findings of the lower authorities as favorable to the revenue. As regards the profit and

loss account found prepared to submit with the bank loan shows higher profit and therefore the addition based on the profit and loss account to be sustained which is based on the incriminating material found and considering the provision of section 292C the addition made is required to be sustained. As regards the addition for undisclosed sales the assessee found in excess stock in search this shows the assessee is habit of making out of books sales and therefore, the investment in stock found and therefore, he supported the addition so made by the Id. CIT(A) on the whole amount of sales. The disclosed amount has rightly been confirmed as the assessee has based on the incriminating document disclosed the amount and therefore, Id. DR supported the order to the extent of the grounds favoured to the revenue.

30. We have heard the rival contentions and perused the material placed on record. Ground no. 1 raised by the assessee is exactly similar on facts as raised in ITA no. 447/JP/2024 vide ground no. 2. Therefore, it is not imperative to repeat facts and findings given by the bench while dealing with ground no. 1 raised by the assessee in this appeal and therefore, the decision taken by the bench while dealing with ground no. 2 in ITA no. 447/JP/2024 shall apply mutatis mutandis to ground no. 1 raised by the assessee in this

appeal. Based on this observation ground no. 1 raised by the assessee is partly allowed.

31. Ground no. 2 raised by the assessee challenges the addition of Rs.90,500/- u/s 68 of the Act on the basis of Pg 23 of Exhibit 3 ignoring that it is a dumb paper and therefore the presumption that it represents money received against sale of land is misplaced. The brief facts to the issue on hand is that at page no. 23 of the exhibit-3 a transaction of Rs. 90,500/- received against the sale of land. The assessee failed to verify the transaction from his regular books of accounts. Therefore, the addition of Rs. 90,500/- was made in the total income of the assessee for unaccounted receipts u/s 68 of the Act against sale of property. When the matter carried before the Id. CIT(A) he has confirmed the addition stating that the assessee did not brought on record evidence that this sale is duly recorded in the books of account of the assessee. Before us the Id. AR of the assessee submitted that the impugned page does not reflect sale of land but it reads as "jama total sara mila kar" thus, the same does not reflect the sale. The Id.AR of the assessee alternatively stated that if the sale of other things is accepted then the GP can be added. As we have confirmed part addition while dealing with ground no. 1, the addition to the extent of the GP declared,

therefore, he also same shall be added to the income of the assessee which will end the justice for the dispute raised. The Id. AO after verifying the GP disclosed by the assessee shall make the addition to that extent. In the result ground no. 2 raised by the assessee is partly allowed.

32. Ground no. 3 raised by the assessee is exactly similar on facts as raised in ITA no. 447/JP/2024 vide ground no. 1. Therefore, it is not imperative to repeat facts and findings given by the bench while dealing with ground no. 3 raised by the assessee in this appeal and therefore, the decision taken by the bench while dealing with ground no. 1 in ITA no. 447/JP/2024 shall apply mutatis mutandis to ground no. 3 raised by the assessee in this appeal. Based on this observation ground no. 3 raised by the assessee is allowed.

33. Ground no. 4 raised by the assessee challenges the finding of the Id. CIT(A) who has confirmed the addition of Rs. 1.20 crores on the basis of lump sum surrender made by the assessee in the statement recorded u/s 132(4) of the Act in respect of M/s Raja Bricks, a proprietary concern of assessee ignoring that when the AO has separately made addition on the basis of seized documents, no addition on the basis of lump sum surrender made

by the assessee can be made. On this aspect of the matter the bench noted that the assessee has disclosed the amount based on the various seized document showing unaccounted sales and even the profit and loss account submitted for the various years shows the different figures then offered in the respective years. Considering that aspect of the matter and while dealing with the appeal of the Id. CIT(A) and the bench has considered the alternative plea of the assessee and has given the benefit of the set of the documents against this disclosed amount and therefore, since the disclosure is coupled with the incriminating documents found the plea of the assessee does not deserve any relief more than what has been granted by giving the set off.

34. Ground no. 5 raised by the assessee being consequential does not require any finding.

35. Ground no. 6 & 7 being general does not require any finding.

36. In the result, the appeal of the assessee in ITA No. 449/JP/2024 is partly allowed.

37. Now we take the appeal of the revenue **ITA No. 514/JP/2024 for A.Y 2017-18.**

38. Revenue has in the present appeal taken effectively three grounds which were reproduced in the initial paras of this order. Succinctly, the fact as culled out from the records on the issue of ground raised by the revenue are that a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") was carried out by the Income Tax Department on the members/concerns of Gupta Group, Alwar on 22/09/2017 of which the Assessee is one of the members. Notice under section 153A of the Act was issued and served upon the Assessee. The Assessee primarily derives its income from Business, House Property Income and Income from Other Sources. In the search proceeding Id. AO vide notice u/s 142(1) dated 03/09/2019 asked to explain the source of the cash loans along with supporting documentary evidences and proper justification for an amount of Rs. 65,02,600/-. The assessee also required to provide Name, PAN and complete postal address of the persons to whom loans were given during the year. In response to the notice, the A/R of the assessee filed written submission on 24/12/2019, contending that "Page no. 37 contains details of temporary advance of Rs. 1,16,68,100/-. These temporary advances were given partly out of advance receipt of Rs. 43 lacs from NEB Plot and partly out of available cash balance

of various concerns with assessee.”(sic). Ld. AO based on the submission noted that assessee has given an amount of Rs. 65,02,600/- to some various persons during the year under consideration. The assessee has filed a general reply for the complete transaction mentioned on the page. But no supporting document was furnished in support of its contention. Even no single details regarding when the plot of NEB that said to be sold, how much money he received from that, where the amount is entered into his books of accounts, the advance given to various persons is mentioned in his books, whether the temporary advance was given in cash or through bank was filed. Therefore, the amount of Rs. 65,02,600/- was considered as unexplained money of the assessee.

39. The Id. AO in the assessment proceeding noted that vide Exhibit AS-11 six original passbook and Exhibit AS-02 containing 3 cheque books of different persons i.e. S/shri Narendra Singh Rajput, Devi Singh, Omprakash, Dinesh Kumar, Hari Nath and Rajesh Kumar, seized from your residence. These exhibits contain original pass books/cheques for 6 different accounts, which have been opened post demonetization. The fact that the original pass books and cheque books were with you itself implies that these

accounts were opened by assessee to deposit his cash. The signed blank cheques clearly imply that the cash deposits are intended to be retrieved on a subsequent date, Exhibit AS-02 (pages 1-44) is a bunch of loose papers containing photocopies of Aadhar/PAN Card etc. of different persons. Against that the assessee filed written submission on 18/09/2019. The reply of the assessee was considered by the Id. AO. He has noticed from the pass books found from the possession of the assessee that total amount of Rs. 6,57,000/- was deposited in the bank account of the persons and thereafter the amounts were withdrawn from the banks after some days. For proper verification information has been called for from Punjab & Sindh Bank Branch u/s 133(6) of the Act in which the said deposits were made. From the information it can be seen that the withdrawals were made by Sh. Tara Chand Gupta as the signature of Shri Tara Chand Gupta was found at the back side of the self or bearer cheque. From which it is clear that the amounts were deposited by the assessee in the different accounts of the persons in different names during demonetization and after that the amount was withdrawn by the assessee, The persons are said to be workers of the assessee. From the facts available on record it can be averred that the assessee has

deposited unaccounted cash of Rs. 6,57,000/- during the demonetization period and addition of the amount is being made in the total income of the assessee.

40. During the course of assessment proceedings on the basis of following documents seized during search it is noticed that various payments were made in cash. The books of accounts of the assessee were audited u/s 44AB. Thus, the cash payments were found in contravention to the provisions of section 40A(3) of the Act:-

Exhibit	Page No.	Name of person	Amount	Actual Payment as per cash book
10	6 to 8	Fakru	150000	150000
10	25 to 27	Ataru	138000	138000
10	31 to 33	Atar Khan	150000	228500
10	130 to 132	Deenu	192000	192000
		Total Amount	6,30,000/-	7,08,500/-

The above-mentioned seized documents are agreements made with the above mentioned persons by the assessee for mud digging. The assessee was asked to show cause as to why the disallowance may not be made in contravention to the provisions of section 40A(3) of the Act.

41. Against the assessment order the assessee preferred an appeal wherein the Id. CIT(A) deleted the addition as discussed in his order. Revenue feeling dissatisfied with that finding preferred the present appeal challenging the finding of the Id. CIT(A). The relevant finding of the Id. CIT(A) on the issues raised by the revenue is reproduced herein below:

“Ground No.1

4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO In the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

As per the appellant there is no dispute as to the fact that the assessee has given property advance of Rs.65,02,600/-. The advance is given out of the income earned from the business as taxed in this year as well as in last two years. Assessee has considered the same while preparing combined cash flow statement. As per this cash flow statement there is shortfall which at the most can be considered as income earned from the business and invested utilised in the advances and has made reference to judgements.

On perusal of the overall facts I find that the advance of Rs. 65,02,600/- was given during the year. Further advance of Rs. 31,65,500/- was also mentioned on the same paper but AO taxed the same in AY 2015-16. While deciding the appeal of AY 2015-16, I have deleted the addition in that year by accepting the argument of the assessee that this advance was given in AY 2017-18. Therefore the total advance to be considered during the year is Rs. 96,68,100/- (65,02,600+31,65,500).

The source of this money is unexplained. The appellant has not shown the verifiable information of the exact source, dates and manner of generating/getting/earning of the said money which has been used to give advances and as such the advances are unexplained. The appellant in the appeal submissions has only briefly referred to the submissions made before the Id. AO that "assessee explained vide written submission dt.24.12.2019 that these are temporary advances which were given partly out of advance receipt of Rs.43 lacs from NEB Plot and partly out of available cash balance of various concerns with assessee", however no submissions were made in this regard during the appeal.

As per CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC), A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC), the Revenue is not to find out the source and the assessee is required to explain the source with supportings. In the present case, in view of the above discussion, the source remains unexplained.

Accordingly, the addition in this regard in principle is upheld. This is subject to further discussion in following paragraph.

In search papers out of books income earned was found, taxed by AO and also confirmed in the appeal order passed by the undersigned. The assessee has also filed cash flow statement wherein the details of income as per loose papers found were treated as source of funds and investment made out of the same were treated as application of the income. This claim of set off is acceptable as taxing income as well as investment will result in double taxation. The Ld. AR relied upon the decision of Rajasthan High Court in case of CIT Vs. Tyaryamal Bal Chand 165 ITR 0453 and Supreme Court decision in case of Anantharam Veerasinghaiah & Co. Vs. Commissioner of Income Tax 123 ITR 0457 which supports the case of the assessee. However this cash flow statement is revised to the extent of finding given by the undersigned in earlier years as well as in this year (including further grounds of appeal). After considering these details the redrafted the cash flow statement is tabulated as under:-

Particulars	Assessment year		
	2015-16	2016-17	2017-18
Opening balance	0	8,17,015	22,81,048
Income from Raja Bricks	8,75,085	15,55,043	1,20,00,000 (incl. 12,55,058)
Profit on Unaccounted Sales as per page 1 to 53 of Exhibit 3	57,930		3,27,370
Profit on out of books Sale			90,500
Cash withdrawals from bank account of employees			6,55,500
Total sources	9,33,015	23,72,058	1,53,54,418
Payment/Utilisation			

Investment in advances	0	0	96,68,100
Unexplained Expenditure as per page 1 to 53 of Ex- 3	66,000	91,010	
Cash Advance	50,000		
Cash deposit in demonetization period			6,58,000
Total utilisation	1,16,000	91,010	1,03,26,100
Net cash balance available	8,17,015	22,81,048	50,28,318

As per this cash flow statement the net deficit works out to Rs. Nil. As there is surplus of Rs. 50,28,318. As the incomes have been taxed, the application need not be taxed separately to avoid double taxation.

In the result, this ground of appeal is partly allowed.

Ground No. 6

9.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The Id. AO noted that Exhibit AS-11 contains six original pass books, Exhibit AS-02 contains 3 cheque books of different persons and Exhibit-2 contains copies of Aadhar/PAN card of different 6 persons. As per the assessment order the appellant assessee deposited the unaccounted cash of Rs.6,57,000/- in the bank account of other persons during the demonetization period and thereafter, amounts were withdrawn from the banks after some days. The AO found that in response to the enquiry conducted from the bank u/s 133(6), it is noted that on the back side of the cheque for withdrawals name of the assessee is mentioned.

This shows that the assessee has deposited the cash in their account and withdrawn subsequently. These are the workers of the assessee. Accordingly, AO made an addition of unaccounted cash at Rs. 6,57,000/- to the total income of the assessee.

In this regard relevant part of the assessment order is as under:-

"During the course of assessment proceedings, the assessee vides notice u/s 142(1) dated 03/09/2019 was asked as under:

"Please refer Exhibit AS-11 containing six original pass books and Exhibit AS-02 containing 3 cheque books of different persons Le. S/Shri Narendra Singh Rajput, Devi Singh, Omprakash, Dinesh Kumar, Hari Nath and Rajesh Kumar, seized from your residence. These exhibits

contain original pass books/ cheques for 6 different accounts, which have been opened post demonetization. The fact that the original pass books and cheque books were with you itself implies that these accounts were opened by you to deposit his unaccounted cash. The signed blank cheques clearly imply that the cash deposits are intended to be retrieved on a subsequent date. Exhibit AS- 02 (pages 1-44) is a bunch, of loose papers containing photocopies of Aadhar / PAN Card etc. of different persons. It shows you may have deposited cash in bank accounts using these ID's. No clarification regarding these cheque books or ID's was given by you either during search or in post search proceedings."

It is further observed in the assessment order as under:-

"For proper verification information has been called for from Punjab & Sindh Bank Branch u/s 133(6) of the Act in which the said deposits were made. The information received on 11/11/2019 which is place on record. Through information the withdrawal slips/cheques were required from the bank. From the information it can be seen that the withdrawals were made by Sh. Tara Chand Gupta as the signature of Sh. Tara Chand Gupta was found at the back side of the self or bearer cheque. From which it is clear that the amounts were deposited by the assessee in the different accounts of the persons in different names during demonetization and after that the amount was withdrawn by the assessee. The persons are said to be workers of the assessee. From the facts available on record it can be averred that the assessee has deposited unaccounted cash of Rs. 6,57,000/- during the demonetization period and addition of the amount is being made in the total income of the assessee"

The Ld. AR of the appellant argued that all these persons are regular labour of the assessee. During the demonetization period all these persons opened the bank account and deposited their savings in the bank account and thereafter subsequently withdrawn. Since these are illiterate persons, the assessee helped these persons in opening the account and operation of the bank account. After these transaction all these passbook remained with the assessee. In these facts the entire deposit in these bank account and subsequent withdrawals from the same does not relates to the assessee. Accordingly addition for the same in the hands of the assessee is uncalled for and the same be deleted. He alternatively argued that if the same is treated as related to the assessee then benefit of subsequent withdrawals be allowed. For this reliance is placed on the various decisions of telescoping as mentioned in earlier grounds.

On perusal of the overall facts and submission, I find that in search original pass book, cheque book were found with the assessee. The bank also in response to the notice u/s 133(6) stated that there is signature of the assessee on back side of the cheque. There is a legal presumption

u/s 132(4A) and 2920 of the Act. The onus is on the appellant As per section 168 dealing with unexplained credit and section 69A dealing with unexplained money, the onus is on the appellant. The appellant has merely made self serving statements.

The totality of facts and the law, clearly proves that entire cash deposit and withdrawals in the bank account needs to be considered in the hands of the assessee. The addition in assessment order in this regard is upheld, this is however subject to discussion in next paragraph.

However the alternate claim of the assessee that claim of subsequent withdrawals from the bank account be allowed appears to be acceptable. The position of the cash deposit and cash withdrawals in these bank accounts are tabulated as under:-

Name of account holder	Total amount deposit from 09.11.2016 to 30.12.2016	Total amount withdrawal from 09.11.2016 to 31.03.2017
HariNath	20000	20000
Rajesh Kumar	20000	20000
Dinesh Kumar	20000	20000
Narendra Singh Rajput	193000	192500
Om Prakash	193000	192000
Devi Singh	212000	211000
Total	6,58,000	6,56,500

I find that both the deposit and withdrawals are to be incorporated in the cash flow statement. While deciding ground No. 1 supra, the cash flow statement has been referred wherein both deposit and withdrawals are considered and the final shortfall was confirmed by me in that ground. Therefore no additional addition in this ground is required as covered by the cash flow statement and the addition in the assessment order in this regard is deleted.

In the result, this ground of appeal is allowed in above subjective terms.

Ground No. 7

10.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

I have decided the similar issue in the case of the appellant for the assessment year 2016-17 in the ground of appeal number 3 where the ground of appeal has been allowed. Material facts of the present appeal being pari-materia with the facts of the appeal in the assessment year 2016-17, the findings of the appeal order in the case of assessment year 2016-17 in the ground of appeal number 3 will apply mutatis mutandis to the present appeal for the assessment year 2017-18 and it is held accordingly.

Accordingly, this ground of appeal is hereby allowed.”

42. Ld. DR in support of the ground so raised by the revenue supported the detailed finding recorded in order of the assessment and thereby support the appeal of the revenue.

43. Per contra, Id. AR of the assessee supported the finding so recorded in the order of the Id. CIT(A) and he also relied upon the written submission so filed supporting the finding of Id. CIT(A) which reads as under :

Department Appeal

Ground No.1

Whether on the facts & circumstances of the case, Ld. CIT(A) is justified in deleting the addition of Rs.65,02,600/- made on account of unexplained expenditure in cash loans on the ground that unaccounted receipt have been taxed earlier and the assessee have funds available for advance of Rs.65,02,600/- made during the year.

AO Pg 2-4

CIT(A) Pg 4-11

Facts & Submission:-

1. The AO observed that Pg 37 of Exhibit 3 records cash loan of Rs.1,16,68,100/- falling in AY 2015-16 to 2018-19. Out of it, Rs.65,02,600/-

relate to the year under consideration and thus he made addition for the same u/s 68 of the Act.

2. The Ld. CIT(A) held that the amount of Rs.31,65,500/- stated as relating to AY 2015-16 in fact relate to AY 2017-18 and thus he considered the total amount advanced at Rs.96,68,100/- (65,02,600+31,65,500) and confirmed the addition for the same. However, he allowed set off of such investment against the undisclosed income assessed during the year and of earlier years as tabulated at Pg 10-11 of the order.

3. It is submitted that both the lower authorities have assessed income of Rs.1.20 crores in respect of undisclosed income of M/s Raja Bricks for the year under consideration which is much more than the investment of Rs.65,02,600/- mentioned in the ground of appeal. Therefore, it is incorrect to state that Ld. CIT(A) has deleted the addition on the ground that unaccounted receipt has been taxed earlier. In fact only an amount of Rs.22,81,048/- has been considered by the Ld. CIT(A) out of the earlier year income which is much less than the unaccounted income of Rs.24,30,128/- (9,75,085+15,55,043) of Raja Bricks assessed in AY 2015-16 & 2016-17. Otherwise also, both income & investment cannot be taxed to avoid double taxation and therefore the ground of department be dismissed.

Ground No.2

Whether on the facts & circumstances of the case, Ld. CIT(A) is justified in deleting the addition of Rs.6,57,000/- made on account of unaccounted cash deposit in labour account during the demonetization period without appreciating the fact that the assessee himself has deposited his unaccounted cash in the bank account of labourers and subsequently withdrawn the amount from their bank account.

AO Pg 14-16

CIT(A) Pg 21-25

Facts & Submission:-

1. The AO observed that assessee has deposited Rs.6,57,000/- of certain persons and thereafter the same was withdrawn from the bank after some days. Accordingly he made addition of Rs.6,57,000/-.

2. The Ld. CIT(A) confirmed the addition but allowed set off of the same out of the undisclosed income taxed as tabulated at Pg 10-11 of the order. In fact Ld. CIT(A) confirmed the addition to the extent of Rs.6,58,000/- as against Rs.6,57,000/- made by the AO.

3. From the above, it can be noted that the ground taken by the department is incorrect in as much as CIT(A) has not deleted the addition. Hence the ground of department be dismissed as infructuous.

Ground No.3

Whether on the facts & circumstances of the case, Ld. CIT(A) is justified in deleting the addition of Rs.7,08,500/- made on account of disallowance made u/s 40A(3) of cash payment without appreciating the fact that assessee has failed to established the fact that these transactions were covered under clause (g) of Rule 6DD of the Income Tax Act.

AO Pg 16-17

CIT(A) Pg 25-28

Facts & Submission:-

1. AO observed that assessee has made payment of Rs.7,08,500/- to certain persons in contravention to section 40A(3) of the Act. The claim of assessee that payment is made at a village which is not served by the bank is not acceptable as it is not clear how far the bank branch is available from the said village. Accordingly he made addition of Rs.7,08,500/- u/s 40A(3) of the Act.

2. The Ld. CIT(A) deleted the addition by relying on his finding in AY 2016-17 where at Pg 11 & 12 of the order it is held that as per Rule 6DD(g) there is no parameter of the distance of the bank branch from the village where the payment has taken place and there is no requirement to show that the payee must not have bank account.

3. The finding of Ld. CIT(A) is relied upon. Similar addition of Rs.5,97,200/- made in AY 2016-17 was deleted by Ld. CIT(A) against which department has not filed any appeal, may be due to low tax effect but since assessee has brought on record evidence that his case falls under Rule 6DD(g) which is correctly appreciated by the Ld. CIT(A), the ground of department be dismissed.”

44. We have heard the rival contentions and perused the material placed on record. Vide ground no. 1 revenue challenges the finding of the Id. CIT(A) deleting the addition of Rs. 65,02,600/-. The bench noted that Id. AO based on the page 37 of Exhibit 3 wherein recording of cash loan of Rs.1,16,68,100/- mentioned out of that sum Rs.65,02,600/- relate to the year under consideration and thus he made addition for the same u/s 68 of the Act. When the addition was challenged before the Id. CIT(A) he held that the amount of Rs.31,65,500/- stated as relating to AY 2015-16 in fact relate to AY 2017-18 and thus he considered the total amount advanced at Rs.96,68,100/- (65,02,600+31,65,500) and confirmed the addition for the same. However, he allowed set off of such investment against the undisclosed income assessed during the year and of earlier years as tabulated at Pg 10-11 of the order. The bench also note of the fact that both the lower authorities have assessed income of Rs.1.20 crores in respect of undisclosed income of M/s Raja Bricks for the year under consideration which is much more than the investment of Rs.65,02,600/- mentioned in the ground of appeal. Therefore, it is incorrect to state that Ld. CIT(A) has deleted the addition on the ground that unaccounted receipt has been taxed earlier. Even otherwise also, both income & investment

cannot be taxed to avoid double taxation. Based on these set of fact we do not find any infirmity in the order of the Id. CIT(A) while dealing with that ground of appeal and therefore the ground no. 1 raised by the revenue stands dismissed.

45. Vide ground no. 2 revenue challenges the finding of the Id. CIT(A) in while deleting the addition of Rs. 6,57,000/- being the amount deposited into the bank account of the worker and thereafter withdrawing the same by the assessee was considered as income of the assessee. While dealing with the ground in appeal Id. CIT(A) noted that the cash flow statement has been referred wherein both deposit and withdrawals are considered and the final shortfall was confirmed by him. Therefore, he hold that no additional/seperate addition in this ground is required as covered by the cash flow statement and the addition made separately was deleted. Thus, we note that in fact the addition was not deleted but sustained but he has sustained the addition based on the cash flow statement he hold a view that when the same is covered by that cash flow statement no separate addition was required. We do not find any infirmity in this finding of the Id. CIT(A) and therefore, ground no. 2 raised by the revenue stands dismissed.

46. Ground no. 3 raised by the revenue deals with the deletion of addition of Rs. 7,08,500/- made by the Id. AO as per provision of section 40A(3) of the Act. The bench noted that Id. CIT(A) deleted the addition by relying on his finding in AY 2016-17 where at Pg 11 & 12 of the order it is held that as per Rule 6DD(g) there is no parameter of the distance of the bank branch from the village where the payment has taken place and there is no requirement to show that the payee must not have bank account and thereby he has deleted that addition. The bench do not find any infirmity in that finding of the Id. CIT(A) in the absence of any submission contrary to that finding being placed on record. Therefore, ground no. 3 raised by the revenue stands dismissed.

In the result the appeal filed by the revenue in ITA no. 415/JP/2024 stands dismissed.

In the result, the three appeal of the assessee are partly allowed and that of the revenue is dismissed.

Order pronounced in the open court on 10/03/2025.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/03/2025

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sh. Tarachand Gupta, Alwar
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA Nos. 447 to 449/JP/2024 & 514/JP/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar