

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.311/RPR/2025  
निर्धारण वर्ष / Assessment Year : 2016-17

Jasbir Singh Oberoi  
Legal heir Late Parvinder Kaur Oberoi  
C/o. Oberoi Tour & Travels,  
Shop No.1, Wali Mohd. Building,  
K.K Road, Moudhapara,  
Raipur-492 001 (C.G.)  
PAN: AAGPO2025P

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA  
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 17.06.2025

घोषणा की तारीख / Date of Pronouncement : 20.06.2025

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM:**

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 31.03.2025 for the assessment year 2016-17 as per the grounds of appeal on record.

2. The brief facts in this case as per the assessment order are as follows:

**1. Facts of the case in brief:-**

The assessee is an 'Individual' and filed her return of income u/s 139 of the I.T. Act for A.Y. 2016-17 on 28/03/2017 declaring total income of Rs.1,48,54,650/-. Subsequently, assessment order u/s 143(3) of the Income-tax Act, 1961 was passed on 26/10/2018 determining total income of Rs.1,48,54,650/-. On receipt of credible information that the assessee has received huge cash payments against sale of immovable properties, notice u/s 148 of Income-tax Act, 1961 (*hereinafter referred as "the Act"*) was issued on 30/06/2021 and the case of the assessee was reopened for reassessment u/s 147 of the Act.

In the meanwhile, several Writ Petitions were filed by certain assesseees before the different Hon'ble High Courts across the country, challenging the validity of the similar notices issued u/s 148 of the Act. Thereafter, matter reached before Hon'ble Supreme Court. The Hon'ble Supreme Court in Civil Appeal No. 3005/2022, vide

order dated 04/05/2022 had directed in para 10 of the order as under:

*" ..... The impugned Section 148 notices issued to the respective assesses which were issued under unamended Section 148 of the I T Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assesses information and material relied upon by the Revenue, so that the assesses can reply to the show-cause notices with two weeks thereafter,"*

In view of the above mentioned directions, the assessee was informed that the above referred notice u/s. 148 of the Act issued to him shall be construed or treated to be the show cause notice in terms of Section 148A(b) of the Act.

The Hon'ble Supreme Court had also directed to provide the information and the material relied upon by the Revenue. The information which suggest that income has escaped assessment and the material which is basis of such information are embedded in reasons recorded (based on the law applicable before 01.04.2021) to re-open the case of the assessee before issuing notice u/s 148 of the I.T. Act.

In compliance to the decision of Hon'ble Supreme Court, the underlying material and documents on which the show cause notice u/s.148A(b) was based were provided to the assessee on 23/05/2022 and the assessee was requested to file his reply on the information provided and onus was shifted on the assessee to rebut the information provided to it. Act. The assessee had submitted his reply in response to notice u/s 148A(b) and raised objection against reopening of the case. The reply of the assessee was duly considered by the Jurisdictional Assessing Officer and made details discussion in order u/s 148A(d) of the Act. Assessee's submission was found not tenable. Accordingly, an order u/s. 148A(d) in consequence to Hon'ble SC Order was passed on 15/07/2022 and the case was re-opened by issuing a notice u/s 148 of Income Tax Act 1961 dated 18/07/2022 and the assessee was requested to file Income Tax Return against the said notice. It is seen that the assessee has filed her return of income in response to notice u/s 148 on 16-01-2023 declaring total income of Rs. 14854650 /-. Meanwhile, the case was received to the Faceless Assessment Unit.

## 2. Details of opportunities given:

Type of notice/ communication	Date of notice/ communication	Date of compliance given	Response of the assessee received/not received	Date of response if received	Response type (Full/part/ adjournment)	Remarks if any.

u/s 142(1)	04-01-2023	19-01-2023	Received	19-01-2023	Adj	
u/s 142(1)	20-01-2023	30-01-2023	Not received	NA	NA	
u/s 142(1)	31-01-2023	07-02-2023	Not received	10-02-2023	NA	
Letter	09-02-2023		Received	14-03-2023	part	
142(1)	03-04-2023	10-04-2023	Received	13-04-2023 15-04-2023	Part	
143(2)	28-04-2023	01-05-2023	Received	06-05-2023	Part	
SCN	13-05-2023	18-05-2023	Received	18-05-2023	Part	

### 3. Variation Proposed

#### 3.1 Complete description of issues involved (issue wise)

The following is noticed from the order u/s 148A(d) of the I.T. Act dated 15/07/2022;

##### 2. Brief details and analysis of information collected/received by A.O. :-

This office has credible information in possession that survey u/s 133A of the I.T Act was carried out on 30.05.2017 in the case of Babylon Group. The group is engaged in the Hotel Sector. During survey proceedings, a Hard Disk was impounded from the premises of M/s Hotel Babylon International Pvt Ltd, Raipur that its group company M/s Hotel Babylon Continental Pvt Ltd has received and made huge cash payments in connection with its investment in Babylon Tower and sale of immovable properties during F.Ys 2013-14 to 2016-17. On further examination of the data extracted from the Hard Disk, it is found that M/s Hotel Babylon Continental Pvt Ltd has made huge cash payment during F.Y 2014-15 and F.Y 2015-16 against immovable properties purchased from various persons. The assessee Parvinder Kaur Oberoi is one of the seller of immovable property and received huge cash payment amounting to Rs. 4,38,00,000/- during F.Y 2015-16.

On perusal of ledger account details extracted from the Hard Disk as found during the course of survey action on the Babylon Group, it is seen that the assessee has received payment which includes payments by Cheques as well as by cash is shown as under:-

##### ATTACHMENT

On the basis of information received, this office has verified the return of income filed by the assessee and further, on perusal of Assessment order u/s 143(3) completed on 26.10.2018, it is seen that the said issue of Long Term Capital Gain was considered and LTCG was recalculated at Rs.1,32,23,133/-. On perusal of the sale deed dated 10.08.2015, it is seen that assessee has sold land at Khasra no. 337/5 and Khasra no.338/2 at Village- Puresa, Ward no.45 (Rani Durgabati Ward), Raipur for consideration of Rs.4,12,00,000/-.The details of payment made by cheque in the sale deed is as under:-

Sl No	Date	Name of Bank/Institution	Amount in Rs.
1	28.10.2014	Punjab National Bank	1,00,00,000/-

2	07.07.2015	Punjab National Bank	50,00,000/-
3	08.08.2015	Punjab National Bank	7,68,000/-
4	31.12.2015	Punjab National Bank	2,50,00,000/-
5	TDS Payments		4,12,000/-
	Total		Rs.4,12,00,000/-

Further, on perusal of assessment record, it is seen that the cheque payment received by the assessee (as per sale deed) is duly reflected and credited in Bank Book (books of account) whereas the cash received as per ledger is not reflected in his books of account (cash book) of the assessee.

In the above ledger details, it is seen that the payments were received from 28.10.2014 to 01.01.2016 (F.Y 2014-15 & F.Y 2015-16) by cheques and cash in different dates totaling to Rs.8,95,00,000/- (Dr.) and payment made to Gulshan (Land purchase Gulshan) of Rs. 8,70,00,000/- (Cr.) and Paramjeet Singh Oberoi to Rs. 25,00,000/- (Cr.) whereas it is clear that sale consideration is Rs. 8,70,00,000/- . Thus, there is difference amount of Rs. 4,58,00,000/- (8,70,00,000/- - 4,12,00,000/-) between sale consideration amount as per ledger and amount in sale deed, in which cash payment of Rs. 4,38,00,000/- pertains to F.Y 2015-16 has escaped income relevant to A.Y 2016-17.

### 3.2 Synopsis of all submissions of the assessee relating to the issue and indicating the date of submission

In response to the above notices as tabulated above, the assessee submitted her reply on 10-02-2023, 14-03-2023, 13-04-2023 and 15-04-2023. The submission of the assessee dated 10-02-2023 is here under;

1. Assessee is in Business in Firm Name of Drive in Restaurant, earning Income from House Property of Rs.28875, Income from Long Term Capital Gain from Sale of Property at Puren and Income from Interest from Saving Bank A/c of Rs107051, Interest from Fixed Deposit, Intt from Unique Enterprises of Rs.225000 under the Head Income from Other Sources. For detailed income statement I have enclosed copy of computation of income for your kind perusal.

2. Computation of Total Income is enclosed for your kind perusal.

3. Details of all bank accounts maintained during the year under consideration in below format

Bank Account No.	Branch & IFSC	Bank Name
02981000000273	PSIB0000298	PUNJAB AND SIND BANK
31781700229	SBIN0000461	STATE BANK OF INDIA
4793700001273	YESB0000047	YES BANK LTD

4. Copy of bank statements of above Accounts is enclosed for kind perusal.

5. Cash deposit is out of cash withdrawal from bank account during the year.

6. Investments made in property during the year under consideration - details of which are as Follows:

S. No	Description of the property	
i)		Property purchased jointly with Husband Shri Jasbeer Singh Oberoi (copy enclosed)
ii)	Date of purchase	8-7-16
iii)	Cost of purchase	Rs. 14655000 (assessee's share )
iv)	TDS deducted at the time of purchase of property	TDS deducted

v)	Copy of sale deed	enclosed for your kind perusal
vi)	Source of funds for investment in the property	Out of sale proceeds of sale of Immovable property during the year for Rs. 4,12,00,000/- on which capital gain shown and taxes paid on capital gain
vii)	Market Value adopted by the Stamp Duty Authority	Purchase deed comprises of joint ownership and property is purchased in SDV
viii)	Mode of payment	Through banking channels

7. Property sold during the year details as follows:

S. No.	Description of the property	
i)	Description of the property	Land at Purenna ward no.45 Khasra no. 337/5 338/2
ii)	Date of sale	11-8-15
iii)	Sale consideration	Rs.41200000
iv)	Date of purchase	4-12-1987
v)	Cost of purchase	Rs.50000
vi)	TDS deducted at the time of purchase of property	Yes, TDS deducted at the time of payment as mentioned in Sale Deed enclosed for your kind perusal.
vii)	Copy of sale deed and purchase deed enclosed for your kind perusal.	Enclosed
viii)	Detail of cost of improvement	not applicable
ix)	Calculation of Capital Gain on sale of property is given in Computation enclosed for your kind perusal.	Enclosed
x)	Market Value adopted by the Stamp Duty Authority.	Sale at SDV
xi)	Mode of Payment	Through Banking Channels

8. No Investment made in Shares, Debentures during the Year. Investment made in Bond of Rural Electrification Corporation Limited of Rs.50,00,000/- for deduction u/s54EC during the year. (Copy of Bond 54EC Receipt is enclosed for your kind perusal).

Further, assessee has replied on 15-04-2023, the submission of the assessee is reproduced below;

- Copy of bank ledger explaining entries in the bank respective bank account is enclosed for your kind perusal. (Attachment 1 page number 12-15)
- Copy of Purchase deed dated 8-7-16 jointly with Shri Jasbir Singh Oberoi ( claimed deduction u/s54 in computation of Rs. 1,46,55,000) is enclosed for your kind perusal. (Attachment 2)

5. Cost of acquisition with indexation is Rs.3,96,367/- (details is as follows) (Attachment 3 and 4)

a) Cost of land purchased on 4-12-87 (FY87-88)	-	55,000/-
Capital gain Index value for FY 87-88	-	150
Capital gain Index value for FY 2015-16	-	1081
So Indexed cost = 55000/ 150*1081 comes to	-	3,96,367/-
(Attachment-4, for 55000 cost registry copy)		

b) Further expenses of **Rs.29,25,500/-** claimed (details is as follows)

-**Rs.25,75,500/-** paid for stamp duty on 11-1-16 from P&S Bank account number 273 (Attachment 3- page 1)

-**Rs.3,29,770/-** paid in cash towards panjiyan shulk for above registry to state government (this amount is reflected in page 14 of registry deed dated 10-8-15 enclosed for your kind perusal) (Attachment 3- page 14)

-**Rs.20,230/-** paid in cash towards other registry expenses

6. For the details of deduction claimed u/s 54 of the act of Rs.1,96,55,000/- Details is as follows: (Attachment 2)

- Out of Rs.1,96,55,000/- Rs. 1,46,55,000/- is invested in house property jointly with Shri Jasbir Singh Oberoi, Total registry value is Rs.2,80,80,000/- (copy of registry is enclosed vide point number 4 above) (Attachment 2)
- Balance 50,00,000/- deposited in capital gains account scheme (copy of account statement is enclosed for your kind perusal.)

### 3.3 Summary of information/evidence collected which proposed to be used against it.

During the survey action u/s 133A of the Act in the business premises of M/s Hotel Babylon international Pvt. Ltd. and its group of companies/concerns, issues pertaining to huge unaccounted investment and rotation of unaccounted money of the group were found. During the survey and post survey proceedings, many incriminating documents were also impounded. The statement of key persons and employees were recorded on oath. During the survey proceedings in the business premises of M/s Hoter Babylon Inn Pvt. Ltd., copies of registries were found from the accounts section. On perusal of the same, it was found that immovable properties were purchased in the name of M/s Hotel Babylon Continental Pvt. Ltd. The details of which are as under:

S.No.	Seller	Purchaser	Transaction Amount (in Rs.)	Date
1	Shri Gurvinderjeet Oberoi	M/s Hotel Babylon Continental Pvt. Ltd.	4,50,86,250	18/09/2015
2	Shri Damanjeet Singh Oberoi	do	3,90,00,000	10/08/2015
3	Shri Paramjeet Singh Oberoi	do	3,89,00,000	18/09/2015
4	Smt. Parvinder Kaur Oberoi	do	4,12,00,000	18/09/2015
5	Shri Jasbir Singh Oberoi	do	6,50,00,000	12/09/2015
TOTAL			22,91,86,250/-	

Further, during the survey proceedings, a hard disk was impounded from the business premise of Hotel Babylon International Pvt. Ltd. at VIP Road, Raipur which

shows that the group has received and made huge cash payments in connection with the investment in Babylon Tower and sale of immovable properties during F.Ys 2013-14 to 2016-17.

The hard disk and other electronic devices were impounded from the premise of the Babylon group concern during the survey action and there was no conflict on the issue of ownership of the impounded materials. During the survey various issues pertaining to undisclosed investments, unaccounted expenses and out of book receipts by the group were unearthed and the transactions contained in the hard disk do relate to such issues. Therefore, the transactions found out in the hard disk cannot be treated as dumb or outdated. The document found from the hard disk is in fact a speaking document for the fact that it was maintained by the group in the system of the group companies and it clearly shows various amounts received in cash or paid in cash, the names and other details of persons paying or receiving such amounts in cash along with other details such as date and phone numbers.

**3.4 Variation proposed on the basis of inference drawn (specify the basis of inference and quantify the variation proposed, if possible).**

Considering all the facts of the case, variations are proposed as under-

(A) As mentioned above, the credible information was received that during the survey in the case of Babylon Group, it was found that the assessee Mrs. Parvinder Kaur Oberoi has sold one immovable property to them and received cash of Rs.4,58,00,000/- in addition to consideration of Rs.4,12,00,000/- received through banking channel as sale consideration. During the faceless assessment proceeding, relevant queries were sent to the assessee. The assessee has submitted her response and admitted that a land [at Purenra, Ward no.45, Khasra no.337/5 338/2] was sold by her on 11/08/2015. However, she has stated that sale consideration was Rs.4,12,00,000/- only.

Assessee's above written submission and other attached documents have been carefully examined wherein the assessee has denied to have received any consideration in cash. But, the findings of the survey are based on the incriminating documents found and impounded during Survey proceeding which has evidentiary value.

During the survey proceedings, a hard disk was impounded from the business premise of Hotel Babylon International Pvt. Ltd. at VIP Road, Raipur in which there is record that the group has received and made huge cash payments in connection with the investment in Babylon Tower and sale of immovable properties during F.Ys 2013-14 to 2016-17.

The hard disk and other electronic devices were impounded from the premise of the Babylon group concern during the survey action and there was no conflict on the issue of ownership of the impounded materials. During the survey various issues pertaining to undisclosed investments, unaccounted expenses and out of book receipts by the group were unearthed and the transactions contained in the hard disk do relate to such issues. Therefore, the transactions found out in the hard disk cannot be treated as dumb or outdated. The document found from the hard disk is in fact a speaking document for the fact that it was maintained by the group in the system of the group companies and it clearly shows various amounts received in cash or paid in cash, the names and other details of persons paying or receiving such amounts in cash along with other details such as date and phone numbers. Hence, these documents partake the nature of incriminating documents.

On perusal of the data extracted from the impounded hard disk, it was also found that the group has made huge cash payments during F.Y.2014-15 and 2015-16 and 2016-17 to various parties (including the assessee) against the purchase of immovable property. The details of cash payment to assessee as retrieve from the impounded Hard Disk is as under-

NAME	PAN	FY 2015-16	AMOUNT Rs.
Parvinder Kaur Oberoi	AAGPO2045P	21-04-2015	5000000
		25-04-2015	2500000
		22-07-2015	5000000
		23-07-2015	3000000
		25-07-2015	15000000
		27-07-2015	5000000
		06-08-2015	5800000
		08-08-2015	2000000

		10-08-2015	2000000
	TOTAL		45300000

The copy of the ledger of the assessee in the books of Hotel Continental (Purchaser) is also reproduced as under:

**BABYLON CONTINENTAL  
PARVINDER KAUR OBEROI**  
Ledger Account

1-Apr-2013 to 16-Dec-2016

						Page 1
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
28-10-2014	Cr PNB BANK	Payment	367	1,00,00,000.00		
	Dr Closing Balance				1,00,00,000.00	
				<u>1,00,00,000.00</u>	<u>1,00,00,000.00</u>	
1-4-2015	Cr Opening Balance				1,00,00,000.00	
21-4-2015	Cr Cash	Payment	40	50,00,000.00		
25-4-2015	Cr Cash	Payment	44	50,00,000.00		
7-7-2015	Cr PNB BANK	Payment	181	50,00,000.00		
22-7-2015	Cr Cash	Payment	228	50,00,000.00		
23-7-2015	Cr Cash	Payment	237	30,00,000.00		
25-7-2015	Cr Cash	Payment	244	1,50,00,000.00		
27-7-2015	Cr Cash	Payment	250	50,00,000.00		
6-8-2015	Cr Cash	Payment	271	58,00,000.00		
10-8-2015	Cr PNB BANK	Payment	277	7,88,000.00		
	Cr Cash	Payment	282	40,00,000.00		
	Cr TDS PAYABLE	Journal	287	4,12,000.00		
	Dr PARAMJEET SINGH OBEROI	Journal	288		25,00,000.00	
	Dr LAND PURCHASE GULASHN	Journal	289		8,70,00,000.00	
	Cr PARAMJEET SINGH OBEROI	Journal	290	5,00,000.00		
1-1-2016	Cr PNB BANK	Payment	512	2,50,00,000.00		
				<u>8,95,00,000.00</u>	<u>8,95,00,000.00</u>	

In the above ledger details, it is seen that the payments were received from 28/10/2014 to 10/08/2015 F.Y. 2014-15 and F.Y 2015-16) by cheques and cash in different dates totaling to Rs.8,95,00,000/- (Dr.) and payment made to Gulshan (Land purchase Gulshan) of Rs. 8,70,00,000/- (Cr.) and Paramjit Singh Oberoi to Rs.25,00,000/- (Cr.) whereas it is clear that sale consideration is Rs. 8,70,00,000/-. Hence, it is documentary evidence that the assessee has received total Rs.8,70,00,000/- as sale consideration from M/s HOTEL BABYLON CONTINENTAL PRIVATE LIMITED. Rs.4,12,00,000/- was received in bank and balance Rs.4,58,00,000/- was received in cash. But, while calculating the capital gain on sale of this property consideration u/s 50C is taken by the assessee at Rs.4,12,00,000/- only. Hence, it established that the assessee has not disclosed the true capital gain earned on sale of the property. Therefore, computation of capital gain on sale of this

property is to be recalculated taking total consideration u/s 50C at Rs.8,70,00,000/-.

Further, it observed that the assessee has claimed deduction u/s 54 of the Act of Rs.1,96,55,000/-. The assessee has stated that out of Rs.1,96,55,000/-, Rs.1,46,55,000/- is invested in house property jointly with Shri Jasbir Singh Oberoi and balance Rs.50,00,000/- was deposited in capital gains account scheme. The assessee has also claimed deduction u/s 54EC of Rs. 50,00,000/-. The deduction of Rs 50,00,000/- in Capital Gains Account Scheme and deduction u/s 54EC are found unsubstantiated due to following reasons-

The assessee has not explained how the provision of section 54 and 54EC of the Act is applicable in her case. The assessee has failed to establish whether deposit was made in accordance with section 54(2) and 54EC of the I.T.Act. The assessee has also not provided the documentary evidence (i.e Bond certificate) in this regard. Without any corroborative documentary evidence and explanation, deduction u/s 54EC cannot be allowed.

In view of above discussion, Long Term capital gain on sale of Land [Ward no.45, Khasra no.337/5 338/2, Ward-45, Village-Purena (Rani Durgawati ward), Dis- Raipur (Chattisgarh)] is recalculated as under-

Total sale consideration u/s 50C-	Rs.8,70,00,000/-
Less: Indexed cost of land- Rs.3,96,367/-	
Transfer Expense- Rs.29,25,500/-	Rs.33,21,867/-
	Rs.8,36,78,133/-
Less: Deduction u/s 54 -	Rs.1,46,55,000/-
<b>Taxable LTCG on sale of aforesaid land-</b>	<b>Rs.6,90,23,133/-</b>

The assessee in his original return of income had declared taxable LTCG of Rs. 1,32,23,133/- on sale of the aforementioned land. But, taxable LTCG of sale of the said land is now recalculated to Rs.6,90,23,133/-. Hence, variation of Rs.5,58,00,000/- (Rs. 6,90,23,133/- minus Rs.1,32,23,133/-) is to be made in total income on this account.

**[Proposed variation- Rs. 5,58,00,000/-]**

In view of the above, final opportunity is being provided to assessee vide this show cause notice to show cause as to why assessment should not be completed making addition of Rs. 5,58,00,000/- in total income under the head Long Term Capital Gain.

***It is also proposed to initiate penalty u/s 271(1)(c) of the Income-tax Act, 1961 in related to above proposed addition of Rs. 5,58,00,000/-.***

Accordingly, a show cause notice was issued to the assessee requesting to explain as to why assessment should not be completed on the above proposed variation.

### **3.5 Synopsis of the reply of the assessee to SCN and additional SCN(if any).**

In response to the show cause notice the assessee has submitted her reply on 15.05.2023, which is reproduced below;

With due respect, it is submitted that, the assessee sold a land at Purenna having Khasra No. 337/5 and 338/2 on 11.08.2015 at Rs.4,12,00,000/- to Hotel Babylon Continental P ltd. In the ROI of relevant AY 2016-17, the assessee duly shown capital gain on Sale of long term capital asset and apart from Rs.4,12,00,000/- the assessee did not receive any amount in cash as alleged by your good self in the reasons recorded for reopening of the assessment u/s 147.

As alleged in the Show cause notice that, I have received cash over and above 4,12,00,000/- from M/s Hotel Babylon Continental P ltd. it is hereby stated that, **I have not received cash** from Hotel Babylon Continental P ltd In this respect it is here by stated that the **assessee is not concerned with what tally data entry has been done by M/s Hotel Babylon Continental P ltd. or what statement given by the Atul Kumar Shrivastava**, the assessee is not concerned with the statement given by Atul Kumar Shrivastava.

Further, the proceedings were initiated only on the basis of statement of Atul Kumar Shrivastava without any corroborative evidences. The **assessee is not aware of the reasons of such entries found in the hard disk during survey of Babylon group**. The assessee has no relation with the statement recorded or entries found in the hard disk.

In this view of the matter, it is requested to consider and kindly do not draw any adverse inference and obliged. Therefore, I prayed to not consider Rs.4,38,00,000/- as unexplained cash.

As alleged in the show cause notice that, I have not submitted the Capital gain account scheme statement and not submitted the investment under section 54EC in bond, it is respectfully submitted that, **I have submitted Capital Gain Account Scheme statement and also submitted the 54EC bond receipt with reply dated 15-4-23** vide acknowledgement number 117287801150423, which is again submitted for your kind perusal.

Further, it is requested to explain from where the amount came of Rs.7,33,80,500/- as mentioned in the show cause notice. As it is not relevant with the assessee.

As alleged by your good self in the show cause notice dt.13-5-23, that I received amount of Rs.4,58,00,000/- in cash, which is baseless and without any corroborative evidences. I have submitted from the very beginning that I did **not** receive any amount in cash which is true and after considering cash receipt your calculation of Long term capital gain is not correct, I have shown/declared the correct capital gain amount in the return of income filed.

Computation shown in the show cause notice in page number 12, in which taxable long term capital gain on sale of Rs.6,90,23,133/- is not correct and it is requested not to draw any adverse inference and obliged.

### **3.6 Summary of information and evidence collected after SCN (if any).**

The assessee in her submission has submitted bank statement of Punjab and Sind Bank A/c No. 0298100013178, wherein the bank has certified that "this is capital

gain account” and it is evident that there is a credit of Rs. 50,00,000/- on 28-07-2016. The assessee has also submitted Acknowledgement slip of Rural Electrification Corporation Ltd and bank statement reflecting the transaction on 11-02-2016. Hence, no adverse view is taken on the issue i.e deduction u/s 54 (capital gain account) and deduction u/s 54EC of the I.T. Act.

**3.7 Point-wise rebuttal of reply of the assessee including analysis of any case law relied upon.**

The reply filed by the assessee is perused carefully, but the same is not acceptable on the following reasons;

(i) The hard disk and other electronic devices were impounded from the premise of the Babylon group concern during the survey action and there was no conflict on the issue of ownership of the impounded materials. During the survey various issues pertaining to undisclosed investments, unaccounted expenses and out of book receipts by the group were unearthed and the transactions contained in the hard disk do relate to such issues. Therefore, the transactions found out in the hard disk cannot be treated as dumb or outdated. The document found from the hard disk is in fact a speaking document for the fact that it was maintained by the group in the system of the group companies and it clearly shows various amounts received in cash or paid in cash, the names and other details of persons paying or receiving such amounts in cash along with other details such as date and phone numbers. Hence, these documents partake the nature of incriminating documents.

(ii) It is clear evident from the impounded material i.e. ledger, that the payments were received from 28/10/2014 to 01/01/2016 (i.e F.Y. 2014-15 and F.Y 2015-16) by cheques and cash in different dates totaling to Rs.8,95,00,000/- (Dr.) and payment made to Gulshan (Land purchase Gulshan) of Rs. 8,70,00,000/- (Cr.) and Paramjit Singh Oberoi to Rs.25,00,000/- (Cr.) whereas it is clear that sale consideration is Rs. 8,70,00,000/-. Hence, it is documentary evidence that the assessee has received total Rs.8,70,00,000/- as sale consideration from M/s Hotel Babylon Continental Private Limited. Rs.4,12,00,000/- was received in bank and balance Rs.4,58,00,000/- was received in cash.

(iii) In the show cause notice it is inadvertently written Rs. 7,33,80,500/- in place of 5,58,00,000/-.

**4. Conclusion drawn.**

Considering the whole gamut of the case, it is ample clear that the assessee has received Rs. 8,70,00,000/- on sale of the Land and hence, the Long Term capital gain on sale of property is recalculated as under-

Total sale consideration u/s 50C		Rs.8,70,00,000/-
Less: Indexed cost of land	Rs.3,96,367/-	
Less: Transfer Expense	Rs.29,25,500/-	Rs. 33,21,867/-
Less: Deduction u/s 54	Rs.1,96,55,000/-	
Less: Deduction u/s 54EC	Rs. 50,00,000/-	Rs.2,46,55,000/-
<b>Taxable LTCG on sale of aforesaid land</b>		<b>Rs.5,90,23,133/-</b>

The assessee in his original return of income had declared taxable LTCG of Rs. 1,32,23,133/- on sale of the aforementioned land. But, taxable LTCG of sale of the said land is now recalculated to Rs.5,90,23,133/-. Hence, Rs.4,58,00,000/- (Rs. 5,90,23,133/- minus Rs.1,32,23,133/-) is added to the total income of the assessee under Long Term Capital Gain.

**[variation- Rs. 4,58,00,000/-]**

**Penalty proceeding u/s 271(1)(c) of the IT Act is being initiated separately for concealment of particulars of income.**

**5. Final computation of taxable income:**

Sl. No.	Description	Amount (in Rs.)
1	Income as per return of income filed u/s 139 of the I.T. Act	1,48,54,650
2.	Income as per return of income filed in response to notice u/s 148 of the I.T. Act	1,48,54,650
3	Variation	4,58,00,000

4.	Total income/loss determined	6,06,54,650
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6. Assessed u/s 147 r.w.s. 143(3) read with section 144B of the Income Tax Act, 1961. Penalty proceedings under section 271(1)(c) of the I.T. Act, 1961 have been initiated through notice issued separately. Computation of income and demand notice u/s 156 of the Act is attached.

3. That being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(Appeals)/NFAC. It is noted that as per Paras 4 to 7 of the impugned order, the Ld.CIT(Appeals)/NFAC vide an ex-parte order had dismissed the appeal of the assessee due to non-compliance by the assessee. For the sake of clarity, Paras 4 to 7 of the Ld.CIT(Appeals)/NFAC order is culled out as follows:

“4. During the course of appeal proceedings, the following notices/letters for hearing were issued to the appellant, but till date the appellant has neither filed any response nor filed any submissions in support of grounds of appeal. The details of the notices issued are as under:

S. No.	Date of Notice Sent	Compliance Date	Remarks
1.	01.08.2023		Issued Enablement of Communication Window. No response from the appellant.
2.	20.09.2024	07.10.2024	No response from the appellant
3.	17.10.2024	01.11.2024	No response from the appellant
4.	29.11.2024	16.12.2024	No response from the appellant
5.	12.02.2025	27.02.2025	No response from the appellant

4.1 Thus in this case, the appellant has not effectively pursued the appellate proceedings and failed to respond to

various notices issued by this office. It is important to delve into the judicial pronouncements on this issue which are elaborated below:

4.1.1 In the case of CIT vs. B.N. Bhattacharya reported at 118 ITR 461, it was held by the Hon'ble Supreme Court that

"..... appeal does not mean merely filing of appeal but effectively pursuing it."

4.1.2 The decision of the Hon'ble High Court of Mumbai in the case of M/s. Chemipol v/s. Union of India, Law Ministry, Aayakar Bhawan, Mumbai and The Commissioner of Central Excise, Mumbai (Central Excise Appeal No.62 of 2009) clearly states, that every court judicial body or authority, which has a duty to decide a matter between two parties, inherently possesses the power to dismiss the case in default.

4.1.3 For the sake of reference, the relevant extract of the judicial pronouncement rendered by the Hon'ble High Court of Mumbai quoting decision of Hon'ble Supreme Court in the case of Nandramdas Dwarkadas AIR 1958 MP 260, is reproduced below:

"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses."

4.1.4 The principle that every court that is to decide on a matter of dispute, inherently possesses the power to dismiss the case for default, has been upheld by the Hon'ble Supreme Court in case of Dr. P. Nalla Thampy Vs. Shankar (1984 (Supp) SCC 63 and the case of New India Assurance vs. Srinivasan (2000) 3 SCC 242. In the latter case, the Apex Court has held as under:-

"That every court or judicial body or authority, which has a duty to decide a list between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant, therefore, the court will be well within its jurisdiction to dismiss the complaint for

non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant."

4.1.5 The Hon'ble Bombay High Court has also laid down the proposition that where the appellant in spite of notice is persistently absent and the Tribunal on facts of the case is of the view that the appellant is not interested in prosecuting the appeal, it can in exercise its inherent power to dismiss the appeal for non-prosecution.

4.1.6 The Hon'ble ITAT Delhi (ITR No.2006/Del/2011 dtd 19.12.2001) in the case of Whirlpool of India Ltd v. DCIT had dismissed appeal for non-attendance at hearings, inferring that assessee was not interested in prosecuting of appeal. Thereafter in another decision in the case of Chadha Finlease Ltd. V. ACIT (ITA No.3013/De1/2011 date of order 20.12.2011) the Hon'ble ITAT had dismissed the appeal for non-attendance at hearings.

4.1.7 In a decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. On 02.09.2011 (ITA no.798 of 2009), the Hon'ble High Court of Delhi had held that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to give premium to the assessee for his negligence.

5. The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the order. The notices have been duly served upon the assessee via e-mail. Regrettably no response whatsoever was forthcoming on the appointed date. Thus, nothing has been placed on record to substantiate as to why the addition made by the AO should not be sustained.

6. In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The assessee has further jeopardized its case by not responding despite several opportunities that were provided. I am constrained to agree

with the approach adopted by the AO in making the addition. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.

7. Thus, in view of the facts and circumstances of the case, the order passed u/s.147 r.w.s. 144B of the Act dated 23.05.2023 by the AO is upheld.”

4. That considering the factual spectrum that an ex-parte order has been passed by the Ld. CIT(Appeals)/NFAC due to non-compliance by the assessee, in such scenario, this bench has provided one final opportunity to the assessee considering that the benefit of doubt may be existing in favour of the tax payer assessee and for that due to reasons beyond control of the assessee, the said assessee may not have been able to represent and comply with the hearing notices before the Ld. CIT(Appeals)/NFAC. Therefore, in this regard, as per the order of the ITAT, “Division Bench”, Raipur in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur, IT(SS)A Nos.1 to 6, 8 & 9/RPR/2025, dated 20.03.2025** wherein the Tribunal had dealt with similar issue on the same parameters of ex-parte order passed by the Ld. CIT(Appeals)/NFAC and remanded the matter back to the file of the Ld. CIT(Appeals)/NFAC, accordingly, we set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication on similar terms as recorded by us in the aforesaid decision. However, the facts in this case further suggests that the assessee was involved in huge unaccounted

investment and rotation of unaccounted money involving M/s.Hotel Babylon International Pvt. Ltd. and its group of companies/concerns. Therefore, it is mandatory on the part of the Ld. CIT(Appeals)/NFAC to determine and examine the facts in detailed manner whether any sham transactions have been facilitated to defraud the revenue by the assessee and thereby getting illegitimate gains. That if fraud is detected that shall be within purview of tax evasion and in such scenario, fraud vitiates everything including natural justice. The person approaching the court has to come with clean hands and if hands of the assessee itself are tainted the principles of natural justice will not come to his/her rescue.

5. The application of principle of fraud was even considered by the **Hon'ble Supreme Court** in the case of **Badami (deceased) by her LRs v. Bhali in Civil Appeal No.1723/2008, dated 22/05/2012** wherein the Hon'ble Supreme Court has held as follows:-

"20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others AIR 1994 SC 853 this court commenced the verdict with the following words:-

"Fraud-avoids all judicial acts, ecclesiastical or temporal"

It had been held that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court.

6. In another decision of the Hon'ble Supreme Court in the case of **Smt. Shrist Dhawan v. M/s. Shaw Brothers AIR 1992 SC 1555**, it has been held that fraud and collusion vitiates even the most solemn proceedings in any civilized system of jurisprudence including natural justice. Further, the **Hon'ble Supreme Court** in the case of **Mc Dowell & Company Ltd. Vs. CTO [1985] 154 ITR 148 (SC)** has held that "Tax planning may be legitimate provided it is within the framework of law, Colourable devices cannot be part of tax planning....".

7. Therefore, in our considered view, in the present matter it is the responsibility of the revenue authorities to investigate the matter in detailed manner as per law whether there is tax planning or tax evasion as per the transactions entered into by the assessee. If tax evasion is determined by the revenue in such circumstances additions are to be sustained in the hands of the assessee.

8. As per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20<sup>th</sup> day of June, 2025.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 20<sup>th</sup> June, 2025.

SB, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.