IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No. 2117/Del/2022	**with CO No. 155/Del/2022**	**A.Yr. 2012-13**
ITA No. 2118/Del/2022	**with CO No. 156/Del/2022**	**A.Yr. 2013-14**
ITA No. 2119/Del/2022	**with CO No. 157/Del/2022**	**A.Yr. 2014-15**
ITA No. 2120/Del/2022	**with CO No. 158/Del/2022**	**A.Yr. 2015-16**
ITA No. 2441/Del/2022	**with CO No. 166/Del/2022**	**A.Yr. 2017-18**

DCIT Central Circle-30, New Delhi	Vs	**Rajan Sharma,** **E-170, W-5, Lane Western Avenue** **Sainik Farms, New Delhi-110062.** **PAN: ALEPS 6337 H**
APPELLANT		**RESPONDENT/ CROSS OBJECTOR**

Assessee represented by	**Shri Ved Jain, Adv.; &** **Shri Ayush Garg, CA**
Department represented by	**Shri Rajesh Chandra, CIT(DR)**
Date of hearing	**12.08.2025**
Date of pronouncement	**12.08.2025**

O R D E R

PER SATBEER SINGH GODARA, J.M:

The instant batch of Revenue's five appeals and assessee's respective cross objections involves a single assessee herein, namely, Rajan Sharma. All other relevant details thereof stand tabulated as under:

Sl. No./ITA no./assessment year	Order appealed against	AO's order /proceedings under Section
1. ITA No. 2117/Del/2022 & & CO No. 155/Del/2022 (A.Y. 2012-13)	CIT(A)-30, New Delhi's order dt. 23.06.2022 in case no. 10351/2018-19	ACIT, Central Circle-30- order dt. 30.12.2018- u/s 143(3)/ 153A of the I. T. Act.
2. ITA No. 2118/Del/2022 & CO No. 156/Del/2022 (A.Y. 2013-14)	CIT(A)-30, New Delhi's order dt. 30.06.2022 in case no. 10021/2019-20	ACIT, Central Circle-30- order dt. 24.06.2019- u/s 153A of the Act.
3. ITA No. 2119/Del/2022 & CO No. 157/Del/2022 (A.Y. 2014-15)	CIT(A)-30, New Delhi's order dt. 30.06.2022 in case no. 10012/2019-20	ACIT, Central Circle-30- order dt. 07.06.2019- u/s 153A of the Act.
4. ITA No. 2120/Del/2022 & CO No. 158/Del/2022 (A.Y. 2015-16)	CIT(A)-30, New Delhi's order dt. 28.06.2022 in case no. 10013/2019-20	ACIT, Central Circle-30- order dt. 07.06.2019- u/s 153A of the Act.
5. ITA No. 2441/Del/2022 (A.Y. 2017-18)	CIT(A)-30, New Delhi's order dt. 20.07.2022 in case no. 10015/2019-20	ACIT, Central Circle-30- order dt. 07.06.2019- u/s 143(3) of the Act.

Heard both the parties at length. Case files perused.

2. The Revenue's "lead" appeal ITA No. 2117/del/2022 raises the following substantive grounds:

"1. Whether on the facts and circumstances of the case and in the laws, the Ld. CIT(A) erred in treating the unexplained expenditure of Rs. 60,00,038/-, which is from undisclosed income, as his business receipt/expense and has decided profit @ 12% of these transactions. The decision of the Ed. CIT(A) to restrict the addition of Rs. 7,20,004/- and to delete balance of the addition of Rs. 52,80,033/- is without base or reasoning.

2. Whether on the facts and circumstances of the case and in the laws, the Ld. CIT(A) erred in deleting the legitimate addition of Rs. 1,00,00,000/-

made by the AO, facts of which was corroborated with the incriminating documents/material found in co the hard disc during the course of search proceedings. The content of the sale agreement found in this dise and the sale agreement submitted by the assessee was on similar line. The information contained in sale agreement found in hard disc is corroborated with the sale agreement produced by the assessee. Hence, there are enough corroborative evidence as required as per the judgment of Hon'ble ITAT, Delhi Bench in the case of Shri Bharat Singh vs ACIT (ITA Nos. 2001 and 3256/Del/2017).

3. Whether on the facts and the circumstances of the case, the Ld. CIT(A) has erred in deleting the legitimate addition of Rs. 1,00,00,000/- made by the AO, facts of which was corroborated with the incriminating documents / material found in the hard disc during the course of search proceedings. While deciding the case of the assessee, the Ld. CIT(A) has placed reliance on the judgment of Hon'ble ITAT, Delhi in the case of Shri Bharat Singh vs ACIT (ITA Nos. 2001 and 3235/Del/2017) wherein the facts of the case of Shri Bhagat Singh is different from the facts of the case of the assessee as in this case the assessee had issued a cheque no. 765472 dated 25.08.2011 and paid cash to the seller and the fact that cheque issued belongs to the assessee is verifiable with the cheques issued by the assessee as per entries available in his bank account no. 024010024118 with Dena Bank.

4. Whether on the facts and circumstances of the case and in the laws, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,88,32,100/- and deciding the issue in favour of the assessee despite the facts that in the remand report the AO has specifically mentioned that the additional evidences may not be admitted as the assessee was given enough opportunity to substantiate identity, creditworthiness of the parties and genuineness of the transaction. While giving relief to the assessee, the Ld. CIT(A) has not discussed in the appellate order how the identity, creditworthiness of the parties and genuineness of the transactions were established.

5. Whether on the facts and circumstances of the case and in the laws, the Ld. CIT(A) has erred in giving relief to the assessee on the issue relying on the decision of the Hon'ble Delhi High Court in the case of CIT vs Kabul

Chawla [2016] 380 ITR 573/[2015] 234 Taxman 300/61 taxmann.com 412 despite the facts that the Revenue has filed SLP in the case of APAR Industries against Bombay High Court's Order in ITA No. 1669 of 2013 dated 08.05.2015, which has been admitted along with 115 cases on the issue of restriction of addition only to incriminating material found during search, has been admitted vide Diary No. 37848/2015.

6. Whether the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or during the course of hearing of the appeal.

3. The assessee's cross objections CO No. 155/el/2022 canvasses the following substantive grounds:

1. On the facts and circumstances of the case, the order passed by the leamed Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the order passed by the learned CIT(A) under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.

3. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in sustaining addition to the extent of Rs. 7.20.004/- out of total addition of Rs.60,00,038/- made by Ld. AO.

(ii) That the above said addition is not tenable as the profit percentage i.e. 12% determined by the Ld. CIT(A) is on the higher side and therefore not sustainable.

4. On the facts and circumstances of the case, the proceedings initiated under Section 153A against the appellant and the assessment framed under Section 153A are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming addition in order passed by Ld. AO u/s 153A of the Act, without any incriminating material having been found during the course of search.

6. That the appellant craves leave to add, amend or alter any of the grounds of cross objection."

4. Learned counsel fairly submits that he is not pressing for the assessee's additional ground challenging validity of the impugned assessment on the issue of section 153D approval. Rejected accordingly.

5. We now advert to the basic relevant facts. This assessee namely Shri Rajan Sharma is assessed as an individual who is stated to be engaged in real estate development and building construction business. And that the learned departmental authorities had carried out the search in question in his case on 27th July and 23rd August 2016 leading to initiation of section 153A proceedings against him which finally culminated in the Assessing Officer's assessment framed on 30.12.2018 making various additions etc. which stand partly reversed in the CIT(A)'s lower appellate discussion.

This is what leaves both the parties aggrieved herein who have filed their respective appeals and cross-objections; as the case may be in these five assessment years. It is in this factual background we proceed to deal with the

Revenue's "lead" appeal herein ITA No. 2117/Del/2022 wherein its first and foremost substantive ground seeks to reverse the CIT(A)'s findings restricting the Assessing Officer's action making unexplained expenditure addition of Rs. 60,00,038/- in assessment year to 12% thereof; coming to Rs. 7,20,004/- in question; reading as under:

> *"13.4. The issue to be adjudicated in this regard is whether the transactions to the tune of Rs.60,00,038/ can be added as undisclosed income in the hands of the appellant or not. From the assessment order, it is noticed that it is not the allegation of the AO that the expenses/transactions mentioned on the seized material are of personal nature of the appellant. Further, on perusal of the seized material it is noticed that these transactions represent the purchase of building material for construction activities on various sites for which the appellant has not put forth any evidence on record to prove whether the same are recorded in the books of accounts. It has been noted that the seized pages have recordings of transactions which are in the nature of construction activities relating to properties. On certain seized the address of construction sites appears to have been mentioned. These pages also contained cash payment receipt against the expenditure made by the appellant on construction and purchase of material. Therefore, it becomes clear that these pages pertain to the building construction business of the appellant which have not been disclosed to the Department.*
>
> *13.5 Now, the issue is to whom these transactions pertains to? The appellant's contention is that these transactions pertain to the partnership concern M/s Kartikey Builders. It is a fact on record that the appellant is engaged in business activity of building construction through his partnership concern M/s Kartikey Builders. However, the submission of the appellant that the said transactions pertain to M/s Kartikey Builders is not acceptable, since no material/evidence has been brought on record so as to prove that the said expenses were incurred by or on behalf of M/s Kartikey Builders or have been recorded in its books of accounts. Further, these materials were seized from the premises of the appellant and on several pages his name are mentioned also as per the provisions of Section 132(4A)*

of the Act, the AO was right in holding that the seized material, and the transactions recorded threein belonged to the appellant. Accordingly, I hold that the said transactions belong to the appellant in his own capacity and it would be prudent to sustain addition to the extent of additional profit that the appellant would have earned out of these transactions.

13.6 As far as the profit % is concerned, it is noticed from the submission of the appellant that the partnership concern of the appellant M/s. Kartikey Builders which is also engaged in the same business of construction activity have declared income under presumptive scheme of taxation u/s.44AD of the Act. From the seized material and the transactions recorded thereon, it appears that the appellant is constructing the property, the expenditure of which is made in cash and also payments are being received in cash. The appellant must have earned profit on the construction activities carried out by him from the clients which shall be brought to tax. From the seized pages, it is also seen that the appellant received payment after expenditure incurred by him and there are payments recorded to be outstanding / yet to be received. I consider it fit to hold 12% of the cash expenditure recorded on these pages as profit of the appellant on cost plus basis (contractor's margin. Total transactions relating to expenditure recorded in the seized material referred by the AO in the impugned year is Rs.60,00,038/- as per the discussion in preceding para. In view of the same, the addition made by the AO is restricted to the profit of 12% of transactions of Rs.600,00,038/- appearing from the seized material. Accordingly, addition of Rs.7,20,004/- is sustained and the balance addition of Rs.52,80,033/-is hereby deleted.

6. Both the learned representatives reiterate their respective stands. The Revenue's endeavour is to revive the impugned addition of alleged unexplained expenditure of Rs. 60,00,038/- in entirety whereas the assessee pleads that he ought to delete the remaining addition amount of Rs. 7,20,004/- as well.

7. We find no merit in either parties' vehement submissions herein. A perusal of the case file indicates that the learned CIT(A)'s detailed discussion has categorically arrived at a conclusion that the impugned expenditure was indeed incurred by the assessee in its regular business activity of building construction etc. wherein he had also received the corresponding cash payments from its customers as well. This is what has made the learned CIT(A) to estimate only the profit element in the impugned unexplained expenditure @ 12% which hardly warrants our interference; be it in the Revenue's or in assessee's grounds. We, thus reject both these parties' respective submissions as well as their substantive grounds in very terms.

8. Next comes the Revenue's second substantive ground that the CIT(A) has erred in law and on facts in deleting unaccounted cash payment addition of Rs. 1 crore made in the assessee's hands whilst executing the corresponding sale agreement going by the alleged seized documents/ disc found during the course of search. The CIT(A)'s relevant detailed discussion to this fact reads as under:

> *"14.5 On perusal of the facts of the case, it is noticed that AO has made addition of Rs.1 Crore treating the same as cash paid for purchase of property relying upon the contents of the unsigned deed recovered from the hard disk of Sh. Naresh Gupta. The AO is of the view that the content of the said deed matches with the content of the actual deeds entered for the purchase of property. The view of the AO that the content of the unsigned deed matches with the original deeds is based on the date of cash payment*

and cheque number mentioned in the unsigned deed. The AO is of the belief that the date of cash payment as per the unsigned agreement is 25.08.2011 which is near to the date of original agreement i.e. 26.07.2011. The observation of the AO is found to be factually incorrect. In this regard, it is noticed from the extract of unsigned deed placed on assessment order page no.9 that as against cash of Rs.1 Crore no date of payment has been mentioned. The date of 25.08.2011 quoted by the AO in the assessment order pertains to the cheque no.765472 of Rs. 50,00,000/-. Further, as per AO's own observation at para 7.4 of the assessment order even the said cheque was never presented for payment/encashment. Further, on perusal of the original sale deeds entered in two parts copy of which is placed at paper book page no.112 to 133, it is noticed that the both the actual sale deeds were entered on 26.07.2011. Further, all the payments made for the purchase of property were made through RTGS channel from period 30.05.2011 to 25.07.2011 in following manner:-

RTGS	*Amount*	*Date*	*Drawn on*
11192009851	*40,00,000/-*	*11.07.2011*	*Dena Bank, Chattarpur, Delhi*
11206005963	*43,00,000/-*	*25.07.2011*	*Dena Bank, Chattarpur, Delhi*
11150002697	*50,00,000/-*	*30.05.2011*	*Dena Bank, Chattarpur, Delhi*
765474	*1,00,00,000/-*	*24.06.2011*	*Dena Bank, Chattarpur, Delhi*
11207006502	*33,00,000/-*	*25.07.2011*	*Dena Bank, Chattarpur, Delhi*

14.6 From the date of agreement of the actual sale deeds and the date of payments mentioned therein, it is noticed that the purchase of the properties by the appellant and his partner Sh. Chattar Singh was concluded in the month of July, 2011, however, the date of cheque mentioned in the unsigned sale deed relied upon by the AO is 25.08.2011) In normal circumstances, generally the payments (purchase considerations) are usually made before the signing of final agreement. However, in the present case, even if we go by the theory of the AO presuming the date of cash payment to be 25.08.2011, the same fails, since the said date falls after the date of original agreement to sell i.e. 26.07.2011, which is quite unlikely to happen. Further, none of the payments mentioned in the two original sale deeds submitted by the appellant matches with the payments mentioned in the unsigned sale deed relied upon by the AO. Accordingly, the observations of the AO with

respect to the matching payment terms cannot be accepted as there are considerable differences in the amounts and the other payment terms of the unsigned deed and the original sale deeds/agreements.

14.7 Further, the other differences in the unsigned sale deed and the original deeds as pointed out by the appellant cannot be ignored. In this regard, it is noticed that there is difference in the name of buyers which has also been acknowledged by the AO in the assessment order, no date of agreement mentioned in the unsigned sale deed, difference in the content of opening and subsequent paragraphs of the deeds. It can also not be ignored that the sale deed relied upon by the AO is unsigned and the content of the same has not even acknowledged by the deed writer himself. Further, the stand of the AO with respect to the alleged cash payment/contents of the unsigned deed has not been confirmed/acknowledged by the seller of the property. In other words there is no testimony of any person on record acknowledging the veracity of the contents of the deed recovered from the hard disk of Sh. Naresh Gupta. In this regard, it is relevant to refer to the judgment of Hon'ble ITAT, Delhi Bench in the case of Sh. Bharat Singh Vs. ACIT (ITA Nos. 2001 & 3256/Del/2017) in the similar situation:

> *a. "It is undisputed that the draft agreement to sell is not signed either by the purchaser or the seller. The author of the draft has denied any knowledge of alleged payment recorded in the draft. No other evidence, like a statement of the buyer or any valuation report regarding the sale value of the property are available on record. In our opinion, unless there are enough corroborative evidence to show that the payments as noted in the draft agreement to sell was actually received by the assessee, no addition can be made in the hands of the assessee merely on the basis of unsigned draft agreement to sale. The finding of the Ld. CIT(A) that part of the document is found to be true and thus the balance should also be treated as true is not correct and instant case the entire document found is a draft prepared by the deed writer, which is not signed by any of the party mentioned in the said draft. Such an unsigned document cannot be made basis of presumption that the assessee received cash on sale of the property. The assessee has been subjected to search but no other documentary evidence of receipt of cash by the assessee has been found in the course of the search. We also note that no attempt has been made by the Assessing Officer to make an enquiry from the buyer or to*

ascertain the prevalent market value of the property sold by the assessee.

5.14 In view of the aforesaid discussion, we are of the opinion that no addition can be sustained only on the basis of the unsigned draft agreement to sell found from the premises of the third party and that too without any corroborative evidences. Accordingly, we set aside the order of the Ld. CIT(A) and the ITA No.2001 & 3256/Del/2017 Assessing Officer on the issue in dispute and direct the Assessing Officer to delete the addition of Rs.83,50,000/- for alleged cash received on sale of 1st floor of the property under reference. The grounds No. 2 and 3 of the appeal are, accordingly, allowed."

In view of the above facts and the decision of Hon'ble ITAT in case of Shri Bharat Singh as quoted above, I am of the opinion that the addition made by the AO on the basis of documents seized from the premises of Shri Naresh Gupta is not sustainable. Accordingly, this ground of appeal is allowed."

9. Suffice to say, learned CIT(DR) could hardly dispute that the Revenue's entire case is based upon some alleged agreement executed by the assessee which is neither found to be a signed one nor there is any corresponding incriminating material against him which could lead us to conclude that the Assessing Officer had rightly added the impugned payments totaling to Rs. 1 crore in the relevant financial year. Faced with this situation we find no merit in the revenue's instant second substantive grievance which is hereby rejected in very terms.

10. The Revenue's third substantive ground seeks to revive the Assessing Officer's action adding an amount of Rs. 388,32,100/- in the assessee's hands representing the alleged unsecured loans given to M/s Unique Maintenance

Services Pvt. Ltd. The CIT(A)'s detailed discussion deciding the instant issue in the assessee's favour reads as under:

> *"15. Ground Nos.4 and 5: In these grounds appellant has challenged additions of Rs.2,88,32,100/- and Rs.1,00,00,000/- on account of unsecured loan given to M/s Unique Maintenance Services Pvt. Ltd. in the year under consideration. The AO in the assessment order has observed that the appellant has given loan of Rs.2,88,32,100/- to M/s Unique Maintenance Services Pvt. Ltd. which has been sourced out of immediate credits received by the appellant in his bank account from Ramnik Sharma, Dazzle and Kartar Singh and the appellant has not filed any relevant documentary evidence to support the source of credits received in his bank account. The AO has further observed that the appellant has given unsecured loan of Rs.1,00,00,000/-to M/s Unique Maintenance Services Pvt. Ltd. and the payment in this regard was made by M/s Sunlight Securities Pvt. Ltd. on behalf of the appellant, however, the appellant has paid to file any corroborative documentary evidence to prove the genuineness of this transaction. Accordingly, in view of these observations. the AO added both the amounts in the hands of the appellant as unexplained cash credits under section 68 of the IT Act.*
>
> *15.1 The appellant in his written submissions has submitted that the amount of loan given by him from his Dena Bank account having account no. 024010024118 to M/s Unique Maintenance Pvt. Ltd. was Rs.2,88,00,000/-. The appellant further pointed out that the AO has wrongly mentioned in the assessment order that the amount advanced to M/s Unique Maintenance Pvt. Ltd was sourced out of credit amount of Rs. 1,35,00,000/- from Sh. Kartar Singh along with other credits from Sh. Ramnik Sharma and Dazzle. In this regard, the appellant has clarified that the amount of Rs.1,35,00,000/- credited to the bank account of the assessee on 30.08.2011 was received from Kartikey Builders instead of Kartar Singh. The appellant submitted that the parties from whom credits were received prior to advancing loan to the M/s Unique Maintenance Pvt. Ltd are as under:-*

Date	*Party name*	*Amount*
04.01.2011	*Ramnik Sharma*	*49,00,000/-*
19.07.2011	*Dazzle*	*60,00,000/-*

30.08.2011	*Kartar Singh*	*10,00,000/-*
30.08.2011	*Kartikey Builders*	*1,35,00,000/-*
01.09.2011	*Kartar Singh*	*30,00,000/-*

15.2 Further, in order to substantiate the identity, creditworthiness of the above parties and genuineness of the transactions the appellant submitted additional evidences in the form of ITR, confirmation, ledger account and bank statement of the above parties, which was forwarded to AO for comments and verification.

15.3 The AO in this regard has submitted his remand report dated 25.04.2022 wherein he has stated that during the assessment proceedings notices under section 143(2) and 143(1) were issued and served on the assessee and the assessee was granted sufficient time to submit details. He has further mentioned that additions in the assessment order were made after taking into consideration the submissions being made by the appellant during the assessment proceedings. Accordingly, the AO in the remand report stated that the additional evidences filed by the appellant may not be admitted. The appellant has submitted his rejoinder wherein he has submitted that the sufficient cause of not filing additional evidences during the assessment proceedings has been duly explained in the Rule 46A application, however, the AO has not made any specific remark doubting the same. Further, with respect to the merits of the additional evidences also the AO has not made any adverse remark or pointed out any discrepancy in the additional evidences filed by the appellant and accordingly it was prayed to delete the additions made by the AO. The appellant has also submitted that the issue in the case of the appellant is otherwise covered by the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla [2016] 380 ITR 573/[2015] 234 Taxman 300/61 taxmann.com 412 wherein it is held that no addition can be made otherwise than those based on incriminating material found during the course of search in the case of completed assessments.

15.3 In view of the submission of the appellant regarding the applicability of the decision of Hon'ble High Court of Delhi in the above referred case, I find it appropriate to examine the matter in the light of decision of Hon'ble High Court before proceeding on the admissibility of additional evidence or merit of the case.

15.4 In the case of the appellant, it is noticed that the original return was e-filed by the assessee on 25th March, 2014 which was processed u/s. 143(1) on 11.03.2015. The search and seizure operation u/s. 132 of the Act conducted on 27.07.2016 and 23.08.2016 in the case of the assessee along with the other cases of Shri Kartar Singh and his associates. Therefore, as on the date of search, no assessment was pending in the case of the appellant for the A.Y. 2012-13 and time limit to issue notice u/s. 143(2) had already expired. Accordingly, the case of the appellant is a case of completed assessment. On perusal of the assessment order and the observations of the Assessing Officer, it is noted that the instant addition of Rs. 2,88,32,100/- and Rs. 1,00,00,000/- made by the Assessing Officer are not based on any incriminating material found during the course of search of the appellant. Accordingly, the same cannot be sustained, in view of the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla [2016] 380 ITR 573/[2015] 234 Taxman 300/61 taxmann.com 412. Therefore, the addition of Rs. 3,88,32,100/- is hereby deleted. Further with above remarks, the admissibility of the additional evidence and the addition made by the Assessing Officer are not decided on merit.

11. Suffice to say it is clear herein as well impugned addition is not based on any seized material in an "unabated" assessment which has been held as mandatory condition in PCIT v. Abhisar Buildwell (P) Ltd. (2023) 150 taxmann.com 257(SC). This is indeed coupled with the fact that the assessee herein has already proved to have received the corresponding sums involving varying amounts from the other parties whose details were duly sent to the Assessing Officer for his record wherein no adverse finding came from the latter side. Be that as it may, the fact remains that the impugned addition is not based on any incriminating material found or seized during the course of search herein. We, thus find no merit in the Revenue's

vehement contentions seeking to reverse CIT(A)'s finding in question. Rejected accordingly. So is the outcome of the Revenue's instant main appeal ITA 2117/Del/2022.

12. We now come to the assessee's cross objection CO No. 155/Del/2022. Learned counsel acts very fairly in not pressing for his various legal grounds during the course of hearing; more particularly, in light of the fact that some of the impugned additions herein are indeed based on the corresponding seized material. That being the case, the only issue which survives herein is that of CIT(A)'s finding restricting the assessment addition of Rs. 60,00,038/- to Rs. 7,20,004/- (supra) which also stands upheld in the Revenue's appeal in our preceding detailed discussion. We, thus, see no reason to adopt a different approach herein. The assessee's cross objection CO No. 155/Del/2022 as well as all the corresponding substantive grounds raised herein are rejected therefore.

13. The Revenue's next appeal ITA No. 2118/Del/2022 for A.Y. 2013-14 raises the following substantive grounds:

> *"1. Whether on the facts and circumstances of the case and in the laws, the Ld. CIT(A) erred in deleting the addition of Rs 24,29,068/- as L. CIT (A) has redeleting of assessee, which was not supported by concrete evidence.*
>
> *2. Whether on the facts and circumstances of the case and in the laws, the Ld. CIT(A) erred in deleting the addition of Rs. 1,00,000/- made of Rs.*

irrespective of the facts that determination of the price of the made by the DVO is based on scientific method and is acceptable as the provisions of the IT Act.

3. Whether on the facts and circumstances of the case and in the laws, the Ld. CIT(A) erred in deleting the addition of Rs. 5,00,000/- relying on the arguments of the assessee, wherein the assessee is frequently changing his stand before the AO as well as before the Ld. CIT(A) on payment of Rs.5,00,000/- and the same was not supported by any material/evidence.

4. Whether on the facts and circumstances of the case and in the law the Ld. CIT(A) has erred in deleting the addition of Rs. 55,33,315/- despite the following facts

(i) Before the DVO the assessee certified that the construction was completed in FY 2014-15 but as per ITR for AY 2013-14 of M/s Kartikay Builders, gross receipt was nil. There was no substantial business in the firm. Therefore, the AO correctly rejected the amount of investment declared by the appellant and his partner of Rs. 2,21,33,362/- as per the provisions of the Act.

(ii) The investment as claimed by the assessee and its source was already doubtful for these reasons during the course of assessment proceeding queries raised by the AO and the matter referred to the DVO.

(iii) The Ld. CIT(A) himself held that this amount has been invested out of the bank account of the appellant wherein the source of funds has not been doubted by the AO in the assessment order. In this connection, it is stated that the investment made out of the bank account, which is against the provisions of the IT Act. Therefore, its source will always be doubtful either the AO specifically mentioned in the assessment order or not. However, rejection of the investment of the assessee express that the AO was not satisfied with the genuineness of the source of investment. Hence, there is no scope of any justification that no allegation of utilization of the said funds for

any other purpose other than the investment in the construction of the property.

5. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs. 19,00,000/-despite the facts that statements of Shri Om Prakash and Shri Dharambir recorded on 14.07.2017 are corroborated with the documents impounded as Annexure-A5.

6. Whether on the facts and circumstances of the case the Ld. CIT(A) erred in linking the purchase of land with Shri Kartar Singh in place of the assessee without any material/evidence but merely on inference drawn by him. Whereas in the statement, Shri Dharambir acknowledged receipt of cash of Rs. 3,16,668 from a person named Rajan, which was not considered by the Ld. CIT(A). In question no. 7 of his statement, he has further stated that the second party (buyer) to the agreement to sell was the person named Rajan. Undoubtedly, from the facts and circumstances of the case and material available on record, the buyer was Shri Rajan Sharma as he was involved in transactions of various properties during the year under consideration.

7. Whether on the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in deleting the addition of Rs. 2,41,99,920/- considering considering the contention/arguments of the assessee, which have not based on any substance or evidence.

8. Whether on the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in overlooking the statement of Shri Chattar Singh recorded during the course of search on 27.08.2016, wherein Shri Chattar Singh has stated to have purchased "two plots measuring 1000 to 1200 sq. yards in Sainik Farms with Rajan Sharma and sold them in form of Kothi". This statement itself declaration that construction work had been done.

9 Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in treating the computation of cost of construction works by AO as presumption despite the fact that the statement of Baljeet Singh Phogat, proprietor of the Phogat Associates was recorded u/s 131(1A) of the IT Act,

on 10.08.2016 and per statement, market rate of cost of building farmhouse in FY 2012-13 was Rs. 3000 per sq. feet. Further claim of the assessee that Shri Baljeet Singh Phogat had been never confronted to him and also no opportunity of cross examination was granted in this regard are nothing but his afterthought and worth not paying any heed.

10. Whether on the facts and circumstances of the case and in the laws, the Ld. CIT(A) erred in restricting the addition of Rs. 3,37,10,933/- to the share (2/3rd) of capital gains taxable in the hands of the appellant i.e Rs. 23,33,333/- and the remaining addition of Rs. 3,13,77,600/- deleted despite the fact that the computation of sale consideration of the property by the AO based on the incriminating documents (Annexure-A-2) page no. 166. The incriminating documents (A-2 page 166) actually pertains to 90 Sainik Farms but give true picture of sale consideration of the said properties 91-B, Sainik Farms, New Delhi (C-1) and 91-B, Sainik Farms, New Delhk (B-1) as these two situated at the same location. As per the sale agreement i.e A-2 page 166 the two parties agreed to sale the property of 90 Sainik Farms based on the market rate of that property, it is no matter whether the sale of the property has been materialized or not. The addition of Rs. 3,37,10,933/- is correct and sustainable in the eye of the laws, therefore, the decision of the Ld. CIT(A) is required to be quashed.

11. Whether the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or during the course of hearing of the appeal.

14. The assessee has filed its cross objection CO No. 156/Del/2022 canvassing the following issues:

"1. The applicant has filed the above said cross objection No. 156/Del/2022 on 12th October, 2022 against the appeal filed by the department bearing ITA No.2118/Del/2022

2. That while filing the cross objection, the applicant has raised 9 grounds of appeal.

3. However, while filing the appeal the applicant inadvertently has left out the ground of appeal relating to the assessment order being bad in law have been passed without complying with the provisions of Section 153D of the Act which requires the mandatory approval from Addl/Joint Commissioner of Income Tax after due application of mind.

4. That accordingly, the applicant is filing the present application for admission of following additional ground of appeal.

> *10. (i) On the facts and circumstances of the case, assessment order passed under section 153A of the Act is in violation of mandatory provisions of Section 153D of the Act and as such the same is bad in eyes of law.*
>
> *(ii) That the purported approval under section 153D of the Act is mechanical and without application of mind and hence the same is illegal and bad in law."*

5. That it is submitted that the above additional ground goes to the root of the issue and all the facts are on record.

6. That in the said circumstances, it is prayed that the additional grounds may be taken on record."

15. Both the learned representatives are very much ad-idem during the course of hearing that the Revenue's first and foremost substantive grounds as well as assessee's substantive grievance in the above appeal and the cross objection stand on the same footing as in the preceding assessment year 2012-13 wherein we have upheld the CIT(A)'s action restricting the unexplained investment/expenditure addition to the extent of 12% (supra). We thus reject both these substantive

grounds raised by the department a well as the assessee; as the case may be, in very terms.

16. The Revenue's second substantive ground herein seeks to revive the Assessing Officer's action deleting undisclosed investment addition of Rs. 1,00,000/- made by the AO which represents difference between actual purchase price and that determined by the DVO i.e. Rs. 230,00,000/- and 232,00,000/-; respectively assessed @ 50% in the assessee's hands.

17. Suffice to say, it could hardly be disputed that be it u/s 50C or 43CA or Section 56(2)(vii) applicable in cases of capital gains arising from sale/transfer of a capital asset, business income arising from sale or transfer of the specified assets or in any instance of an individual acquiring the corresponding immovable property (ies), as the case may be, already prescribed 5% of the tolerance margin in the corresponding statutory "proviso" which stands enhanced to "10%" thereof vide Finance Act 2020 w.e.f. 1.4.2021. And that this tribunal's learned coordinate bench in Maria Fernandes Charge vs. ITO (2021) 123 taxmann.com 257 (Mum.) has already held the same to be retrospective in nature being curative in nature. We, thus reject the Revenue's second substantive ground in very terms.

18. The Revenue's third substantive ground herein challenges the CIT(A)'s action deleting unexplained/ unaccounted payment of Rs. 5 lakhs made in the

assessee's hands by the Assessing Officer. We note that he had withdrawn cash amount of Rs. 7 lakhs as on 7.11.2012 which could indeed be upheld as source of the above said figure of Rs. 5 lakhs; and therefore, the CIT(A)'s finding deleting the same stand upheld in very terms.

19. The Revenue's 4th substantive ground herein pleads that the CIT(A) has erred in law and on facts in restricting the assessing findings making addition of Rs. 448,81,962/- to Rs. 55,33,333/- only; reading as under:

> "*14. Ground no.13: In this ground the appellant has challenged the addition ofRs.1,12,20,490/- made by the AO on the basis of valuation report of DVO with respect to the construction of property situated at D-94C and D-94B, Village Chattarpur, Tehsil Saket, Chattarpur Enclave, New Delhi and Property D-941, Village Chattarpur, Tehsil Saket, Chattarpur Enclave, New Delhi.*
>
> *14.1 The DVO in his report has assessed the value of construction on the impugned property as under:*

FY	*Declared by assessee*	*Value Assessed by the DVO*
2012-13	*2,21,00,000/-*	*2,24,40,981/-*
2013-14		*2,24,40,981/-*
2014-15	*NIL*	*NIL*
2015-16	*NIL*	*NIL*
2016-17	*NIL*	*NIL*
2017-18	*NIL*	*NIL*
Total	*2,21,00,000*	*4,48,81,962/-*

> *14.2 While supplying the copy of valuation report to the AO the DVO in his letter dated 02.04.2019 has mentioned mentioned that the assessee has certified that the construction was completed during the FY 2014, so there cannot be any expenditure thereafter and accordingly, the value of*

investment in the construction has been worked out considering that construction started during FY 2012-13 and completed during FY 2013-14.

14.3 As against the valuation of the DVO the appellant has submitted following details about the construction cost year wise and contribution made by the co-owners:

FY	*Contribution by*	*Construction expenses incurred*
2013-14	*Sunil Goyal HUF*	*50,00,000/-*
2014-15	*Sunil Goyal HUF*	*64,50,000/-*
2015-16	*Rajan Sharma*	*50,00,000/-*
2016-17	*Rajan Sharma*	*56,83,262/-*
Total		*2,21,33,262/-*

14.4 The appellant submitted before the AO that the construction on the impugned property was carried out by M/s Kartikey Builders who had incurred the above expenditure of Rs.2,21,33,262/ out of the funds received from the appellant and the other co-owner of the property Sunil Goyal HUF and in order to substantiate the same the appellant submitted copy of his and Sunil Goyal HUF's ledger account in the books of M/s Kartikey Builders. The AO however being not satisfied with the submission of the appellant observed that as per ITR of M/s Kartikey Builders for the AY 2013-14 its gross receipt is NIL and there is no substantial business in the firm and in the said background he treated amount of construction cost evaluated by the DVO at Rs.4,48,81,962/- as unexplained investment and has added Rs.1,12,20,490/- being the 50% share of construction cost of Rs.2,24,40,981/-for the AY 2013-14 as unexplained investment of the appellant.

14.5 The appellant in its written submissions has challenged the period of construction as well as the value of construction worked out by the DVOin his report based on which addition is made by the AO in his hands.

As regards the period of construction the appellant has contended that the report of the DVO cannot be relied upon since, construction activity on the impugned property was not started in the FY 2012-13. The appellant

submitted that the assumption of the DVO that construction work started in FY 2012-13 and completed in FY 2013-14 is factually incorrect. The appellant further submitted that the said presumption of the DVO was based on the submission/reply of the assessee before him wherein inadvertently the year of completion of construction was mentioned as 2014 instead of 2017. The appellant contended that the Ld. DVO has presumed the period of construction without making any verification in this regard. Further, in support of the contention that the construction completed in the year 2017 the appellant has also drawn attention towards the statement of dated 18.08.2017 wherein in question no. 5 and no. 6 specific query was raised with respect to the construction being carried out on the impugned property. The appellant has highlighted that in the said statement recorded in the year 2017, it was categorically stated by the appellant that the construction on the said property started in mid of 2013 and still yet not completed. The appellant has further pointed out that the impugned property was purchased on 22.01.2013 only and it is highly impractical to presume that the construction on said property started in the said year of purchase with only two months remaining in the said year and has also challenged the presumption of the DVO with respect to the incurrence of construction expenditure to the tune of Rs.2,24,40,981/- in the said year in such short span of two months.

14.6 Further, as regards the amount of investment in the construction in the corresponding period of construction the appellant submitted the following chart:-

FY	*Contribution by*	*Construction expenses incurred*
2013-14	*Sunil Goyal HUF*	*50,00,000/-*
2014-15	*Sunil Goyal HUF*	*64,50,000/-*
2015-16	*Rajan Sharma*	*50,00,000/-*
2016-17	*Rajan Sharma*	*56,83,262/-*
Total		*2,21,33,262/-*

14.7 The appellant submitted that in the first two years all the expenses for construction was borne by his Partner Sunil Goyal HUF, and in next two years all the expenses for construction was borne by him through Kartikay Builders and same is supported by the copy of ledger account of Rajan Sharma and Sunil Goyal HUF in the books of M/s Kartikay Builder and his

bank statement highlighting payment to M/s Kartikay Builders in FY 2015-16 and FY 2016-17 which were submitted before the AO during the assessment proceedings. Based on these facts the appellant submitted that the period of construction adopted by the DVO is liable to rejected and also the value of construction worked out by the DVO is mere estimation without there being any corroborative material/evidence in the form of any comparable instances to support the same. The appellant also contendedthat the allegation of the AO that the appellant has incurred over and above the value of construction declared by him and his partner, is mere his surmises since there being no evidence found during the course of search in this regard.

14.8 On perusal of the facts of the case, as regards the issue that whether DVO has correctly determined cost of construction of the impugned property in Chattarpur, it is noticed that the appellant has not pointed out any specific error/discrepancy in the valuation of the cost of construction made by DVO in his report. His argument w.r.t. the objections of value determined by the DVO is vague and not clear. He did not have any specific reason to explain why the valuation of DVO shall not be accepted. The judicial precedents relied upon by the appellant are relating to DVO Valuation of property in which registered sale deed was available and the Stamp Valuation by the Stamp Valuation Authority was available as guideline. In this case construction of the property is involved and the investment made by the appellant is clear and visible in the physical from. Therefore, these case laws are not applicable due to different facts of the matter. The valuation made by the DVO at Rs.4,48,81,962/- is based on scientific method and as per prevailing market rates therefore is acceptable and sustainable. However, the AO while making the addition in the hands of the appellant has not considered the amount of investment declared by the appellant and his partner of Rs.2,21,33,362/ on the ground that there is no substantial business in the firm M/s Kartikey Builders through which the said investment is claimed to be made by the appellant and his partner. In this regard, it is noticed that in order to substantiate the investment in the construction of the property the appellant has relied upon copy of his ledger accounts as well as his partners reflecting the flow of funds been given to M/s Kartikey Builders for the purpose of construction on the given plot of lands. The outflow of the funds from the bank statement of appellant and his

partner has not been questioned by the AO in the assessment order. The said investment can only be questioned when the source of same is doubtful. Admittedly, this amount has been invested out of the bank account of the appellant wherein the source of funds has not been doubted by the AO in the assessment order. Further, there is no allegation of utilization of the said funds for any other purpose other than the investment in the construction of the property. Accordingly, in absence of any adverse evidence on record speaking of diversion of said funds for any other purpose, the utilization of the said funds claimed by the appellant and his partner for the purpose of construction of the said property cannot be rejected. Therefore, only differential amount of Rs.2,27,48,700/- (Rs.4,48,81,962 - Rs.2,21,33,362) can be considered as unexplained out of which appellant is liable for taxation of his 50% share i.e. Rs. 1,13,74,350/-. As regards, the issue that what will be period of construction, the submission of the appellant challenging the period of construction will not make any difference since the said contention is only with respect to the cost claimed to be incurred by him and his partner not with respect to the additional cost of construction determined by DVO. The share of appellant in undisclosed cost of construction as per DVO report to the extent of Rs. 1,13,74,350/- shall be taxed in the A.Y. 2013-14 and 2014-15 in equal proportion. Accordingly, the addition made by the AO in the year under consideration of Rs. 1,12,20,490/- is hereby restricted to the extent of Rs. 56,87,175 and the balance addition of Rs. 55,33,315/- is hereby deleted.

20. It is in this factual backdrop that both the department and the assessee seek to accept their respective stands in entirety against and in support of the impugned unexplained investment addition restricted to Rs. 1,12,20,490/- in CIT(A)'s detailed discussion. We find no reason to express our concurrence with either party's stand. This is for the precise reason that the assessee had first of all duly explained the amount of Rs. 221,33,262/- as tabulated in para 14.6 of the CIT(A)'s order hereinabove which has gone unrebutted from the Revenue side. This is

indeed coupled with the fact that the balance amount herein liable to be assessed in the assessee's hands of Rs. 113,74,350/- in assessment years 2013-14 & 2014-15 deserves to be upheld in entirety only as he had failed to explain the source thereof all along in both the lower proceedings. We make it clear that learned CIT(A)'s detailed discussion has already granted substantive relief to the assessee whilst restricting the impugned addition as he had failed to prove the source of funds therein both before the Assessing Officer as well as in the lower appellate proceedings. We thus reject both the parties' respective vehement contentions and uphold the learned CIT(A)'s finding in question. Both the Revenue as well as the assessee fail in their respective grounds therefore.

21. The Revenue's 5th substantive ground is that the CIT(A) has erred in law and on facts in deleting unexplained cash advances addition of Rs. 19 lakhs as added by the Assessing Officer. A perusal of the lower appellate discussion in para 15 to 15.4 specifically indicates that the learned CIT(A) has appreciated the entire evidence on record whilst recording his clinching finding that it was not the assessee but Shri Kartar Singh who had purchased the agricultural land in question. That being the case, we hereby reject the Revenue's instant 5th substantive ground in the returns.

22. The Revenue's 6th substantive ground pleads that the Assessing Officer had rightly added unexplained investments of Rs. 241,99,820/- in the assessee's hands which has been wrongly deleted in the CIT(A)'s order, reading as under:

> *"16.12 On perusal of the facts of the case observations of the AO in the assessment order and the written submissions made by the appellant, it is noticed that there are mainly two issues which needs adjudication in this regard. First issue is whether there was any construction/development done on the properties purchased by appellant and his partner Sh. Chattar Singh. The AO in this regard has mainly relied upon two statements of Sh. Chattar Singh one is under section 132(4) dated 28.07.2016 and other is under section 131(1A) dated 28.08.2017. On perusal of the relevant extracts of the two statements quoted by the AO in the assessment order, it is noticed that in the first statement Sh. Chattar Singh has merely stated that he purchased two properties with Rajan Sharma in Sainik Farms and sold them in Kothi form, however, he could not give the exact description of the properties purchased and sold in absence of property documents in his hands at the time of recording of statement. The second statement of Sh. Chattar Singh i.e. the one recorded under section 131(1A) is more clear on account of description of property purchased and sold by him in partnership with the appellant. He has stated that he alongwith the appellant purchased two properties measuring 672.22 sq. yards each having boundary wall and structure on the same for a consideration of Rs. 1.33 crores each. He further stated both the properties were jointly sold to Ms. Renu Goyal for a consideration of Rs.3.01 crores wherein the total capital gain was Rs.35,00,000/- in which his share was 1/3rd which has been duly recorded in his books of accounts. There is no counter question/query on the said statement of Sh. Chattar Singh. The AO has also relied upon the said statement of Sh. Chattar Singh in the assessment order and has not pointed out any discrepancy/error in the same. The said statement Sh. Chattar Singh nowhere talks about any of construction/development on the property 91-B, Sainik Farms, New Delhi (C-1) and 91-B, Sainik Farms, New Delhi (B-1) after being purchased on 26.07.2011. The statement of Sh. Chattar Singh and the claim of the appellant that no development/construction was done by them further gets substantiated from the description of the properties given*

in the purchase and sale deeds, extracts of which are quoted above. From the said extracts it is noticed that the properties were purchased in a form where there was a boundary wall and a structure was already standing on the same. Accordingly, it can be concluded that the statement of Sh. Chattar Singh which has been primarily relied upon by the AO and the claim/stand of the appellant in his submissions, both acknowledges the same set of facts that two properties were purchased in structure form in village Khanpur, Tehsil Hauz Khas (Sainik Farms) for a total consideration of Rs.2.66 crores and the same was sold in same form to Ms. Renu Goyal for a consideration of Rs.3.01 crores. Further, it is also noticed that the allegation of the AO that undisclosed construction was made by the appellant and his partner is not supported any physical verification/independent enquiryin this regard. The AO has simply presumed that construction would have taken place on the said properties after being purchased by appellant and his partner. The vague presumption of the AO is also reflecting from the calculation of alleged undisclosed investment in the construction made by him where he has simply levied rate of construction on the complete area of land i.e. 1344.44 sq. yards presuming that construction would have taken place on the complete area of land.

16.13 Here another issue to be addressed is whether the construction rate of Rs.3,000/- per sq. feet taken by the AO on the basis of statement of Sh. Baljeet Singh Phogat can be considered or not. In this regard, I am of the view that there is no evidence on record to prove that any construction was done/carried out by the appellant or his partner on the impugned property, accordingly, there is no question of adoption of any rate of construction on the said property. Even otherwise, it is noticed that rate of construction has been casually quoted by the AO in the assessment order without there being any basis of the same. It has not been mentioned how the said rate of construction has been arrived at, whether the same was based on any sale/conveyance deed pertaining to any other property in the same vicinity. The AO has not even quoted the statement of Sh. Baljeet Singh Phogat. The appellant has also claimed that the statement of Sh. Baljeet Singh Phogat is a material collected at his back since the same was never confronted to him and also no opportunity of cross examination was granted in this regard. Accordingly, there is no reason to make addition on account of any additional construction cost in the hands of appellant. The addition made by the AO in this regard of Rs.2,41,99,920/- is hereby deleted."

23. Suffice to say, it has come on record that what all the Assessing Officer has done was to assess the alleged investment in construction incurred at the assessee's behest as unexplained in his hands whereas the CIT(A)'s detailed discussion holds that no such construction has been carried out which could result in any investment incurred by the assessee all along. That being the case and in light of fact that the asset concerned appears to have ben purchased and sold on "as and where", we find no reason to interfere with the learned CIT(A)'s detailed discussion deleting the impugned addition.

24. The Revenue's 7th substantive ground herein seeks to revive the Assessing Officer's action adding undisclosed income on sale of property to the tune of Rs. 337,10,933/- in the assessee's hands which stands restricted to the extent of Rs. 23,33,333/- only in the CIT(A)'s detailed discussion, reading as under:

> *"16.14 The next issue in this regard is the total sale consideration computed by the AO based on the property advance payment receipt pertaining to property no. 90, Sainik Farms seized from the premises of the appellant. In this regard, I am of the view that the AO has not brought any material on record that the property transactions mentioned on the impugned seized material ever taken place on the given rate of Rs.60,000/- per sq, yard. The AO has also not rebutted/doubted the claim of the appellant that the property 90, Sainik Farms as never been sold by him and is still owned by its original owner i.e. Ms. Alka Bareja. Accordingly, in the absence of any actual sale transaction on the rate adopted by the AO, the sanctity/authenticityof the sameis not proved. Even otherwise there are other*

factual errors in adopting the said rate which have been simply ignored by the AO such as the locational and structural differences in the two properties and also the fact that the rate mentioned in the impugned seized material pertains to AY 2016-17, however, the transaction in question pertains to year under consideration i.e. AY 2013-14.

16.15 Further, it is noticed that the allegation of the AO that the appellant has received undisclosed consideration on account of sale of property is not supported by any incriminating material found during the course of search or any other concrete evidence in this regard. In absence of any such material/evidence which could point out that the appellant and his partner has received anything over and above what has been declared by them, it was not justified on the part of the AO to tinker with the declared sale consideration of Rs.3,01,00,000/-. Further, the said amount of sale consideration is emanating from the statement of Sh. Chattar Singh which has been relied upon by the AO himself.

16.16 However, in this regard, it is also noticed that the appellant in his return of income has not disclosed his share of capital gain on the impugned property i.e. 2/3rd of Rs.35,00,000/- which comes to Rs.23,33,333/- The appellant has simply submitted that there was dispute between him and his partner because of which the accounts could not be settled between them and he has not received his complete share of consideration and accordingly the transaction has resulted into loss in his hands. In this regard, I am of the view that once the amount of sale consideration is crystalized and same is received by the sellers, the capital gain arises and same is liable to tax. The recovery of share of sale consideration from co-owner cannot be the ground to defer the taxation of capital gain. Accordingly, the appellant is liable to pay tax on his share of capital gain. In view of these facts the addition made by the AO is restricted to the share(2/3rd) of capital gain taxable in the hands of the appellant i.e. Rs.23,33,333/- and the remaining addition of Rs.3,13,77,600/- is hereby deleted."

25. Learned CIT(DR) could hardly dispute that there is no evidence at all against the assessee indicating him to have either derived any business income or

capital gains; as the case may be, except to the tune of Rs. 23,23,333/- which has already been directed to be assessed under the latter head. It is further clear from a perusal of the case record that the learned Assessing Officer had adopted the sale price of the above said property @ Rs. 60,000/- per sq. yd., which has not been corroborated either during search based on any seized material nor substantiated during post search and scrutiny exercise, whatsoever. We, thus see no reason to disagree with the learned CIT(A)'s findings restricting the impugned addition be it in the Revenue's appeal or in the assessee's cross objections. All these issues are decided against both the department and the assessee in very terms. This Revenue's appeal ITA No. 2118/Del/2022 is rejected.

26. Mr. Jain next invites our attention to the assessee's various legal grounds in his CO No. 156/Del/2022 which stood on identical footing as rejected in A.Y. 2012-13. He further submits that the remaining sole issue is that an amount of Rs. 75,000/- has been wrongly assessed as an unexplained payment. The same is admittedly found to be based on page 46, Annexure A/4 found/ seized during search. Rejected accordingly. The assessee's CO No. 166/Del/2022 fails therefore.

ITA No. 2119/Del/2022 & CO No. 157/Del/2022 (A.Y. 2014-15):

27. Next assessment year herein A.Y. 2014-15 involves revenue's appeal ITA 2119/Del/2022 and assessee's CO No. 157/Del/2022. Suffice to say, the Assessing

Officer's assessment herein, inter alia, had treated the assessee's unsecured loans of Rs. 1,67,50,000/- advanced to M/s Varcas Energy Private Limited as an unexplained investment, he added unexplained expenditure of Rs. 11,22,490/- along with unexplained expenditure made in cash for jewellery purchased to the tune of Rs. 6,48,960/-; respectively. The CIT(A) has admittedly deleted the above first and foremost addition of unexplained loans advanced to M/s Varcas Energy Private Limited vide the following detailed discussion:

> *"10.3 On perusal of the facts of the case, observations of the AO and written submissions made by the appellant, it is noticed that the AO has added the amount of Rs. 1,67,50,000/- on the ground that the financial indicators of the companies/concerns in which the appellant is director or partner do not indicate any substantial business activity and it has been created for the purpose of layering in real estate transactions. In this regard, I am of the view that the amount of Rs.1,67,50,000/- can be treated as unexplained only if the appellant fails to substantiate the source thereof. As regards the source of payment of Rs.1,67,50,000/- the appellant has explained that amount of Rs.1,00,00,000/- has been paid out of funds received from M/s Unique Maintenance Services Pvt. Ltd. which was received on account repayment of loan given in preceding year. In order to substantiate the same the appellant has submitted documentary evidences in the form of ITR, audited financials, bank statement and confirmation of M/s Unique Maintenance Services Pvt. Ltd The facts that funds received by the appellant on account of repayment of loan given by the appellant to the company in the preceding year has not been doubted by the AO in the assessment order. Accordingly, it cannot be said that there was doubt regarding the purpose and the source of funds received by the appellant out of which payment of Rs. 1 crore was being made by him to Mr. Bharta Ambawatta. Further, in this regard, it is noticed that the appellant is a Director/shareholder in M/s Unique Maintenance Pvt. Ltd. and M/s Varcas Energy Pvt. Ltd. and accordingly the identity and the existence of these concerns is not in doubt. Further, the payment of Rs.67,50,000/- made by M/s Kartikey Builders on*

his behalf to the company M/s Varcas Energy Pvt. Ltd. has been claimed to be through M/s Kartikey Builders the partnership concern of the appellant. In this regard the AO in the assessment order has not made any specific allegation against the funds received from the said concern. As far as the observation of the AO that these concerns are not having substantial business is concerned, In this regard, I am of the view that the creditworthiness of any entity/concern cannot be linked with the business being conducted by them in a particular year. The commercial concern may have good business in one year and no business in other year, however, the turnover cannot be a criteria to evaluate the creditworthiness of any concern/person. The creditworthiness means availability of funds from legitimate source. The AO in the assessment order has not doubted the availability of funds in the hands of the appellant through M/s Unique Maintenance Pvt. Ltd. and M/s Kartikey Builders. From the assessment order it is also noticed that there is no allegation of obtaining any accommodation entry from any entry operator or utilization of any undisclosed cash for the purpose of obtaining the above funds and routing it for payment of purchase of property. Further, the AO has also not brought on record any incriminating material found during the course of search or otherwise so as to doubt the genuineness of the funds being given by M/s Kartikey Builders on behalf of the appellant to M/s Varcas Energy Pvt. Ltd. and funds received from M/s Unique Maintenance Pvt. Ltd. on account of repayment of loan. In view to these facts the addition made by the AO of Rs. 1,67,50,000/- in not justified.

10.4 Even otherwise, it is noticed that the AO has not made any reference to any incriminating material found during the course of search while making the additions in the hands of appellant. Accordingly, the issue in the case of the appellant is otherwise covered by the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla [2016] 380 ITR 573/[2015] 234 Taxman 300/61 taxmann.com 412 wherein it is held that no addition can be made otherwise than those based on incriminating material found during the course of search in the case of completed assessments.

10.5 In the case of the appellant, it is noticed from the assessment order that no assessment was pending as on the date of search and the time limit to issue notice under section 143(2) had already expired as on the date of search. Accordingly, the case of the appellant is a case of completed

assessment. The instant addition of Rs.1,67,50,000/- made by the Assessing Officer is admittedly not based on any incriminating material found during the course of search of the appellant. Accordingly, the same cannot be sustained in view of the judgment of Hon'ble Delhi High Court.
Accordingly, the additions of Rs. 1,67,50,000/- is hereby deleted."

28. We have given our thoughtful consisderation to the vehement rival submissions reiterating both the parties' respective stands. We find no merit in the Revenue's instant first and foremost substantive ground. This is for the precise reason that it has come on record that the impugned addition comprised of Rs. 1 crore as received from M/s Unique Maintenance Services Pvt. Ltd., which was an instance of repayment of loan advanced to the latter in the preceding assessment years. The factual position is hardly any different regarding the remaining amount of Rs. 67.50 lakhs which was paid by M/s Kartikay Builders i.e. the assessee's proprietary concern only which is assessed in the very jurisdiction. This is indeed coupled with the fact that the learned assessing authority did not have any any other incriminating evidence found or seized during the course of search as well. Be that as it may we hereby conclude that once the assessee had received the impugned sum as comprising of loan repayment component and from his partnership firm, the CIT(A) has rightly reversed the assessment findings. This Revenue's first and foremost ground fails therefore.

29. The Revenue's next substantive ground herein seeks to revive the Assessing Officer's action adding an amount of Rs. 1,12,20,490/- which stands restricted to Rs. 56,87,175/- only. Both the parties very much agree during the course of hearing that we have already upheld the CIT(A)'s impugned finding in the preceding assessment year 2013-14 on the very issue. Rejected accordingly. This Revenue's appeal ITA 2119/Del/2022 stands declined accordingly.

30. Learned counsel invites our attention to the assessee's cross objection CO No. 157/Del/2022, inter alia, seeking to delete the foregoing addition of Rs. 56,87,175/- which is found to be covered as per the preceding discussion in A.Y. 2013-14 on the very issue. Rejected accordingly.

31. We lastly note that the assessee further raises his second substantive ground that both the learned lower authorities have wrongly added an amount of Rs. 6,48,960/- representing unexplained investment in jewellery whrein we note from a perusal of the CIT(A)'s detailed discussion in para 12 page 69-70 that the same is very much based on his unaccounted purchase bills etc. than the jewellery itself which could be treated as explained going by the CBDT Instruction No. 1916 dated 11.05.1994. Declined accordingly.

32. Learned counsel does not press for the assessee's remaining ground in instant cross objection CO No. 157/Del/2022. Rejected accordingly.

ITA No. 2120/Del/2022 & CO No. 158/Del/2022 (A.Y. 2015-16):

33. The Revenue and the assessee have filed ITA 2120/Del/2022 and CO 158/Del/2022 in the next assessment year 2015-16 herein. The Revenue's foremost substantive ground herein is that the Assessing Officer had rightly added a sum of Rs. 1,40,60,000/- as representing the assessee's unaccounted cash loans repayment made to M/s Kartikay Builders. Etc.

34. A perusal of the CIT(A)'s impugned lower appellate discussion in para 10 page 38 indicates that the assessee had obtained total funds of Rs. 2.62 crores out of which only Rs. 2 crores stood paid back to M/s Kartikay Builders, meaning thereby that it is the differential sum of Rs. 62 lakhs alongwith notional/ deemed interest expenditure payment of Rs. 78.60 lakhs @ 1.5% per month which forms subject matter of addition sought to be revived at the Revenue's behest. We find no merit in the Revenue's instant substantive ground once it is clear that there is no material; whatsoever against the assessee that he had either repaid the above principal amount of Rs. 62 lakhs or interest thereupon; out of books. We, thus see no reason to interfere with the learned CIT(A)'s findings under challenge deleting the impugned addition.

35. Same order to follow in the Revenue's second substantive ground seeking to revive unexplained investment addition of Rs. 2.25 crores which has been

restricted to Rs. 15 lakhs in the CIT(A)'s lower appellate discussion. This is for the precise reason that learned CIT(A)'s detailed discussion at page 43 has extracted the corresponding seized material itself indicating actual payment of Rs. 15 lakhs only. We wish to make it clear that the assessee also seeks to delete the said Rs. 15 lakhs addition as not sustainable. We are of the considered view that be it Revenue's or the assessee's substantive grounds, they do not carry any merit as the learned CIT(A) has strictly gone by the contents of the seized material only. No other ground is pressed in both this cases. We accordingly reject this Revenue's appeal ITA No. 2120/Del/2022 as well as assessee's CO 158/Del/2022 in light of our preceding detailed discussion.

ITA No. 2441/Del/2022 & CO No. 166/Del/2022 (A.Y. 2017-18):

36. Next assessment year herein 2017-18 involves the Revenue's appeal ITA No. 2441/Del/2022 and assessee's cross objection CO No. 166/Del/2022. Suffice to say, it is noticed that the Assessing Officer's assessment, inter alia, had added the alleged unexplained expenditure of Rs. 67,63,839/-, twin unexplained investments of Rs. 13,76,00,000/- and 7,98,00,000/- with unexplained expenditure relating to LIC policy of Rs. 1,72,968; in issue. Learned CIT(A) lower appellate discussion, on the other hand, has, inter alia, restricted the above first head addition @ 12%; deleted the unexplained investment addition of Rs.

21,74,84,000/- in entirety and upheld the last unexplained expenditure addition; respectively.

This is what leaves both the parties aggrieved.

37. We observe in this factual backdrop that the Revenue's first and foremost ground hardly carries any merit going by judicial consistency, once we have already upheld the above 12% addition in the preceding assessment years. The assessee's cross objections also fail in very terms.

38. Coming to the second issue in the Revenue's appeal regarding the alleged unexplained investment amounting to Rs. 21,74,84,000/-, learned CIT(DR) could hardly dispute that the Assessing Officer's assessment herein has already extracted the corresponding seized material at pages 7 & 10 of the assessment order wherein there is no indication as to whether there was any actual payment so as to form subject matter of addition. We thus emphasize in other words that the impugned twin additions totaling to Rs. 21.74 crores are nothings but based on some rough notings and jottings which could not have been added since failing the test of statutory presumption u/s 292C of the Act. We thus reject the Revenue's instant twin substantive grounds as well as its main appeal ITA No. 2441/Del/2022 therefore.

39. Mr. Ved Jain next submits that we ought to delete the remaining addition of Rs. 1,72,968/- made in the assessee's hands. A perusal of the case file indicates that the same is based on Annexure A/4 page 43 indicating the impugned unexplained investment. The same stands upheld in very terms therefore.

40. The assessee's remaining grounds in his cross objection No. 166/Del/2022 are very much repetitive as in the preceding assessment year, which also fail in very terms.

No other ground or argument has been pressed before us.

41. We accordingly reject the Revenue's five appeals ITA Nos. 2117 to 2120 and 2441/Del/2022 as well as assessee's as many cross objections CO Nos. 155 to 158 & 166/Del/2022 in very terms.

A copy of this common order be placed in the respective case files.

Order pronounced in open court on **12.08.2025**.

Sd/-	**Sd/-**
(MANISH AGARWAL)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27.08.2025.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI