

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "B", JAIPUR
BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA Nos. 621 & 622/JPR/2025 (A.Y. 2017-18 & 2018-19)

Deputy Commissioner of Income Tax,
Central Circle-03,
Jaipur

..... Appellant

Vs.

Manoj Kumar Gupta,
168, New Mandi Yard,
Sri Ganganagar,
PAN No.: ABMPK 3233A

..... Respondent

ITA No. 451 & 452/JPR/2025 (A. Ys. 2017-18 & 2018-19)

Manoj Kumar Gupta,
168, New Mandi Yard,
Sri Ganganagar,
PAN No.: ABMPK 3233A

..... Appellant

Vs.

DCIT, Central Circle-03,
Jaipur

..... Respondent

Appellant by : Mr. P. C. Parwal, C.A, Ld. AR
Respondent by : Mrs. Alka Gautam, CIT-DR
Date of hearing : 14/08/2025
Date of pronouncement : 14/08/2025

ORDER**PER GAGAN GOYAL, A.M.:**

These appeals by assessee and revenue are directed against the order of Ld. CIT(A), Jaipur-04 dated 06.02.2025 respectively passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act').

Revenue's Appeal

The revenue has raised the following grounds of appeal vide **ITA No. 621/JPR/2025 (A.Y. 2017-18)** as under:-

1. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in reducing the addition of Rs. 2,62,65,500/- to Rs. 1,75,00,000/- which is based on the WhatsApp messages which establish that the assessee was involved in cash transaction which are not recorded in his books of account.
2. Whether on the fact and circumstances of the case, the Ld. CIT(A) is justified in granting relief of Rs. 1,69,233/- against the addition of Rs. 25,36,396/- made on account of interest income.
3. Appellant craves the right to add, alter or amend any of the grounds of appeal.

The revenue has raised the following grounds of appeal vide **ITA No. 622/JPR/2025 (A.Y. 2018-19)** as under:-

1. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in reducing the addition of Rs. 10,37,69,500/- to Rs. 1,66,00,000/- which is based on the WhatsApp messages which establish that the assessee was involved in cash transaction which are not recorded in his books of account.
2. Whether on the fact and circumstances of the case, the Ld. CIT(A) is justified in granting relief of Rs. 8,71,69,500/- deriving peak balance of the above unaccounted cash transaction?
3. Appellant craves the right to add, alter or amend any of the grounds of appeal.

Assessee's Appeal

The assessee has raised the following grounds of appeal vide **ITA No. 451/JPR/2025 (A.Y. 2017-18)** as under:-

1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 2,76,68,300/- u/s. 68 made on the basis of diaries marked Exhibit 11 and Exhibit 24 by not accepting the contention of assessee that (i) diaries are not found from the possession of assessee but was found in the almirah of the bedroom of his brother Sh. Naresh Gupta (ii) it is a left over diary of some person not related to assessee/his family members/any of his business concerns (iii) diaries contain rough noting of some figures during demonetization period and none of the transactions noted in the diary is found relatable to the assessee (iv) no addition on the basis of such diary could be made u/s. 68/69A of the Act (v) amount noted in the receipt side cannot be added to income ignoring the amount noted on the payment side and (vi) presumption that assessee earned income of Rs. 2,76,68,300/- between 24.11.2016 to 19.12.2016 without any corresponding asset/investment/expenditure found in search is frivolous.
2. The Ld. CIT(A) has erred on facts and in law in confirming the addition to the extent of Rs. 1,74,00,000/- u/s 68 of the Act on the basis of WhatsApp messages by ignoring that (i) addition made u/s. 68 is illegal and bad in law as such WhatsApp messages cannot be equated with the books of accounts (ii) in certain WhatsApp message where KG is mentioned, the same has been interpreted as amount with suppression of five zeros (00000) ignoring the provisions of section 292C of the Act (iii)

in certain WhatsApp messages where amount is mentioned, some amount has been considered as with suppression of five zeros and certain amount has been considered as full amount (iv) these messages do not indicate materialization of the transaction as they are only memorandum messages and (v) presumption that assessee has earned such income without any corresponding asset/investment/expenditure found in search is frivolous.

3. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 23,67,618/- by applying interest rate of 13% p.a. as against 9% p.a. charged on the advances given to Mohit Trading Company and Nand Lal Naresh Kumar by incorrectly holding that these two concerns are covered u/s. 40A(2) of the Act.

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

5. Necessary cost be awarded to the assessee.

The assessee has raised the following grounds of appeal vide **ITA No. 452/JPR/2025 (A.Y. 2018-19)** as under:-

1. The Ld. CIT(A) has erred on facts and in law in confirming the addition to the extent of Rs. 1,66,00,000/- u/s 68 of the Act on the basis of WhatsApp messages by ignoring that (i) addition made u/s 68 is illegal and bad in law as such WhatsApp messages cannot be equated with the books of accounts (ii) in certain WhatsApp message where KG is mentioned, the same has been interpreted as amount with suppression of five zeros (00000) ignoring the provisions of section 292C of the act (iii) in certain WhatsApp messages where amount is mentioned, some amount has been considered as with suppression of five zeros and certain amount has been considered as full amount (iv) these messages do not indicate materialization of the transaction as they are only memorandum messages and (v) presumption that assessee has earned such income without any corresponding asset/investment/expenditure found in search is frivolous.

2. The Ld. CIT (A) has erred on facts and in law in confirming the addition of Rs. 25, 72,131/- by applying interest rate of 13% p.a. as against 6% p.a. and 9% p.a. charged on the advances given to Mohit Trading Company and Garg Trading Company respectively by incorrectly holding that these two concerns are covered u/s. 40A (2) of the Act.

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

2. These are four appeals, two filed by assessee & two filed by revenue against the two separate order of Ld. CIT (A) each DT. 06.02.2025 passed u/s. 250 of the Income Tax Act, 1961 for A.Y. 2017-18 & 2018-19 respectively. Since, common grounds are involved in these appeals we proceed to decide all these appeals by this common order. First we take up the appeal of the assessee in ITA No.451/JPR/2025 & appeal of the revenue in ITA No.621/JPR/2025 for A.Y. 2017-18. The brief facts of the case are that assessee is engaged in the business of wholesale trading and commission agent of grain and share trading. A search was conducted on the assessee on 08.02.2018. During the search proceedings, notebook marked Exhibits 11 & 24 were found at 48, G Block, Gaushala Road, Sri Ganganagar, which is residential premises of the assessee and his brother Naresh Gupta. Exhibit 11 contains notings for the period 24.11.2016 to 15.12.2016 and Exhibit 24 contains notings for the period 02.12.2016 to 19.12.2016. These exhibits were found from the bedroom of Sh. Naresh Gupta. Sh. Naresh Gupta in his statement u/s. 132(4) of the Act DT. 10.02.2018, in reply to Q. No. 3 with reference to these two Exhibits stated that Exhibit 11 is a spiral diary having 12 written pages which is diary of children and he doesn't know anything more about it and Exhibit 24 contain seven written pages for the period 02.12.2016 to 12.12.2016. The assessee in his statement recorded u/s. 132(4) of the Act DT. 10.02.2018 in reply to Q. No. 35 to 38 with reference to these two notebooks stated that they do not relate to him or any of his family members. The notebook is of demonetisation period but neither he nor any of his family member or business concern have made any cash deposit in the bank account during the

demonetisation period. In post search statement u/s. 131 of the Act DT. 07.05.18, the assessee in reply to Q. No. 6 stated that these notebook do not pertain to them but appears to be leftover notebook of some person as no. of traders from different places comes to him and it is a leftover notebook of any such trader which he is not aware of but it is not related to him, his family concern or his business concern. However, the peak amount of these diaries is worked out at Rs. 76, 22,000/- with a reservation that providing such working is not taken that he has accepted such amount as his income.

3. The AO at Pg. 2 & 3 of the assessment order tabulated the date wise summary of the entries in these diaries as under: -

Exhibit 11

Page No.	Date	Opening	Receipts	Payments	Closing
1	Rough noting of denomination of currency notes				
2&3	24.11.2016	11,00,000/-	35,10,000/-	38,84,800/-	7,25,200/-
2(Right side)	Rough noting totalling Rs. 12,00,000/-				
4	26.11.2016	0	1,21,48,000/-	45,25,000/-	76,23,000/-
5(Left side)	27.11.2016	76,22,000/-	0	26,96,500/-	49,25,500/-
5(Right side)	29.11.2016	49,25,500/-	12,50,000/-	16,00,000/-	45,75,500/-
6(Left Side)	30.11.2016	45,75,500/-	5,00,000/-	22,70,000/-	28,05,500/-
6(Right Side)	01.12.2016	28,05,500/-	8,16,900/-	15,76,700/-	20,45,700/-
7(Left Side)	03.12.2016	20,45,700/-	10,00,000/-	29,00,000/-	1,45,700/-
7(Right	15.12.2016	1,46,000/-	-	-	1,46,000/-

Side)					
8	Rough Noting				
9	Some figures totalling Rs. 14,45,000/- and then struck off				
10-12	Rough noting apparently by a child				

Exhibit 24

Page No.	Date	Opening	Receipts	Payments	Closing
1	02.12.2016	68,10,500/-	2,80,500/-	33,74,250/-	37,16,750/-
2(Left Side)	03.12.2016	37,16,750/-	32,15,000/-	19,24,100/-	50,07,650/-
2(Right Side)	04.12.2016	50,07,650/-	46,050/-	1,34,200/-	49,19,500/-
3(Left Side)	05.12.2016	49,19,500/-	7,19,150/-	37,76,800/-	18,61,850/-
3(Right Side)	06.12.2016	18,61,850/-	10,63,000/-	3,50,750/-	25,74,100/-
4(Left Side)	13.12.2016	25,74,100/-	14,08,700/-	23,08,100/-	16,74,700/-
4(Right Side)	14.12.2016	16,74,700/-	2,10,000/-	4,560/-	18,80,140/-
5(Left Side)	15.12.2016 18.12.2016	18,80,140/-	2,01,000/-	19,65,300/-	1,15,840/-
5(Right Side)	19.12.2016	1,15,840/-	2,00,000/-	22,000/-	2,93,840/-
6	Miscellaneous Expenses totalling Rs. 1,41,540/-				
7	Rough calculation of currency denomination totalling Rs. 69,70,000/-				

4. Thereafter the AO held that once the notebook is found from the premises of the assessee, the presumption u/s. 292C of the Act is that it belongs to the assessee and the contents of the documents are true. The notebook contains the details of opening balance, receipts, payments and closing balance. Therefore, the opening balance along with the receipts remains unexplained in the hands of the assessee. The same is worked out at Rs. 2, 03, 24,900/- as per

Exhibit 11 and Rs. 73, 43,400/- as per Exhibit 24 and thus addition of Rs. 2, 76, 68,300/- was made u/s. 68 of the Act.

5. The Ld. CIT(A) at Pg. 39-44 of the order held that since the diary was found from the premises of assessee, the statutory presumption u/s. 132(4A) and u/s. 292C of the Act is that it belongs to the assessee and the contents of the documents are true, more so as it is unbelievable that third person will make the notebook and put the same in appellant's room in the almirah of the bedroom more particularly when it is claimed that on some pages the notings are made by the children. The Ld. CIT (A) also observed that the claim of notebook having found from the almirah of the bedroom of his brother is a mere afterthought and therefore it is held that AO correctly considered the Exhibit in the hands of the assessee but if in further appeal it is held that the same was found from the possession of the bedroom of Naresh Gupta, in that situation the addition confirmed in case of assessee be taxed in the hands of Naresh Gupta. The Ld. CIT (A) further held that addition u/s. 68 of the Act is justified as books of accounts defined u/s. 2(12A) of the Act also includes other books. He further held that even if notebooks are not treated as books of accounts, then income from these Exhibits needs to be taxed u/s. 69A of the Act, being the money in possession of the assessee. Also the claim that the evidences regarding application of income was not found during search is not acceptable as there can be countless possibility regarding application of such income. Accordingly the addition made by the AO is confirmed.

6. We have thoroughly gone through the order of AO & Ld. CIT (A) and given our thoughtful consideration to the arguments of Ld. AR & Ld. DR. We find that both the lower authorities have made/ confirmed the addition by relying on the provision of section 132(4A)/ 292C of the Act. Though presumption made under these two sections are rebuttable presumption but section 292C of the Act, provides that if any document is found from the possession of the searched person, it is presumed that the same belongs to him and the contents are true. It does not make any difference whether the handwriting in these documents are of assessee or not or there is any reference of any of the family members or business concern or relative or employee of the assessee in these documents. Therefore they are not inclined to accept the contention of the Ld. AR of the assessee that these are leftover rough diaries of some person without identifying the name and address of such person. However at the same time we find that the revenue has not disputed the fact that the diary was found from the almirah of the bedroom of brother of assessee Sh. Naresh Gupta. The presumption of section 292C of the Act is that the document found in the possession or control of a person in course of search is true. Thus presumption of section 292C of the Act would apply to Sh. Naresh Gupta and not to the assessee. Even the Ld. CIT(A) at Pg 40, Para 3 of the order has appreciated this legal provisions in stating that if in further appeal, the addition is not upheld in the hands of assessee, the same should be taxed in the hands of the brother of assessee as per the procedure the Act. We further note that on the contention of the assessee regarding addition made u/s. 68 of the Act, the Ld. CIT (A) at Pg 41, in the last para of the order has observed that even if notebooks are not treated as books of accounts and technically the provisions of section 68 is not applicable, even then the amount

needs to be taxed as unexplained money in the possession of the assessee u/s. 69A of the Act.

7. Thus, we find that the Ld. CIT(A) has in principal has accepted that the diaries were found from the possession of Sh. Naresh Kumar Gupta and that technically the provisions of section 68 of the Act is not applicable. Therefore though prima facie it appears that the addition made in the hands of the assessee is not justified but from a close look to the diaries we find that Exhibit 11 is having transaction of 24.11.16, 26.11.16, 27.11.16, 29.11.16, 30.11.16, 01.12.16, 03.12.16 & 15.12.16, and Exhibit 24 is having transaction of 02.12.16 to 06.12.16, 13.12.16 to 15.12.16, 18.12.16 & 19.12.16. Thus in both the notebooks, certain dates are missing and certain dates are overlapping. The notebook contains noting of certain receipts, certain payments, and the balance left with breakup of the denomination of the currency note of the balance left. The currency notes are of Rs.2000/-, Rs.1000/-, Rs.500/-, Rs.100/-, Rs.50/- & Rs.10/-. All the dates are of demonetisation period. The assessee or any of his family members or any of its business concerns have not made any cash deposit in the bank account during demonetisation period. All these facts indicate that whosoever has written this notebook, he has noted the receipts on the one side and the amount given or expenditure incurred and the balance left on the other side. Therefore, the entire receipt cannot be added to income. The maximum net receipt on any one date is Rs. 76, 23,000/-. Though the transactions in the notebook do not contain the name of the assessee or any of his family members or any of his business concerns but since it is found from the residence of the assessee and the transactions are of demonetisation period, it would be appropriate to infer that the person who has written the transaction has done so to exchange the old

currency note with new currency note and thus earned commission in providing such services. Since, assessee has not provided the name of any such person, considering the statement of the assessee during post search proceedings, a reasonable income is required to be assessed in the hands of the assessee with reference to the total of transactions noted in these diaries in as much as the total receipt as such cannot be held to be income, more particularly when no corresponding asset or investment or expenditure was found in search. Therefore, considering the fact that the transactions are during demonetisation period it would be appropriate to assess the income by applying appropriate commission rate on the total transaction of Rs. 2,76,68,300/- to meet the end of the justice. Hence, we direct the AO to apply commission rate of 10% on the amount of Rs. 2, 76, 68,300/- and **thus the addition is confirmed to the extent of Rs. 27, 66,830/- and the balance addition of Rs. 2, 49, 01,470/- is deleted. Thus, this ground of the assessee is partly allowed.**

8. Ground No. 2 of the assessee and Ground No. 1 of the revenue is on the same issue where part relief is allowed by Ld. CIT (A). The Ground raised by the assessee and by the revenue are already reproduced (supra). The brief facts of the grounds are that during the course of post search proceedings, certain printout of chat conversation found in the mobile phone were taken out and marked as Exhibit 45 to Exhibit 58. Statement of the assessee was not recorded on these WhatsApp chats. The AO in its show cause notice DT. 17.01.2019 observed that assessee was talking in code words about receiving and paying cash to other person. There are also reference/images of note numbers of Rs. 10/- notes which are frequently used for the purpose of transfer of cash through

hawala. In most of the messages only the reference to the note no. is mentioned. In some messages the amount of cash in code word i.e. 10 kg is mentioned. The AO further observed that in Exhibit 45, 48 kg, in Exhibit 46, 25 kg and in Exhibit 51, 55 kg is noted which appears to have five zero suppression. The assessee explained that these WhatsApp messages are simply memorandum messages and majority of messages are from one mobile to another mobile no. of the assessee, which is sent while the assessee was on travel. Some message has reference of 'Kg' which is in relation to receipts of commodity either for sample purpose or delivering to relatives or known persons. Some messages contain some figure with the remark 'cash', which do not mean that it is unrecorded transaction. In support of the same assessee referred to Pg. 35 of Exhibit 45 where figures in crores is noted with the word 'cash margin', 'total margin', 'total debit', which represent the account of Suresh Gupta in the books of M/s. Ganpati Multi Commodity B.I. Pvt. Ltd. and therefore, no adverse inference should be drawn simply on the basis of reference of the word 'cash'. The details of such messages were provided. Some messages contain the reference of RTGS, which is verifiable from regular books of accounts. Accordingly it is stated that no cognizance is required to be given to these messages.

9. The AO reproduced some of the messages at Pg. 7 to 10 of assessment order and observed that if the transactions are simply memoranda noting, then why the same is sent along with the picture of Rs. 10/- note. The assessee accepted that the amounts are written with suppression of five zero. In some messages, the word 'cash' is mentioned, in some messages the word 'Kg' is appearing but the same is not substantiated by evidence. In respect of cash

transaction assessee could not furnish the source of such transaction. Accordingly AO tabulated these transactions as Table 1 and Table 2 at Pg 11 to 13 of the assessment order as under:-

Table 1

Exhibit No.	Pg No.	Msg. No.	Kg.	Date	Amount (in Rs.)
51	139	9	55	15.05.2017	55,00,000/-
51	127	72	10	01.05.2017	10,00,000/-
51	121	99	130	26.04.2017	1,30,00,000/-
51	121	103	130	26.04.2017	1,30,00,000/-
51	113	148	50	12.01.2017	15,00,000/-
51	88	279	35	08.02.2017	35,00,000/-
51	51	594	5	12.09.2016	5,00,000/-
45	56	21	25	24.07.2017	25,00,000/-
46	14	819	25	15.03.2017	20,00,000/-
46	108	61	10	21.12.2017	10,00,000/-
46	109	60	25	21.12.2017	25,00,000/-
57	21		10	16.09.2017	10,00,000/-
50	138		25		25,00,000/-
46	3	1338	5	23.06.2016	5,00,000/-

Table 2

Exhibit No.	Pg No.	Msg. No.	Kg	Date	Amount (in Rs.)	Description of Message
45	49	514	25	20.10.2016	25,00,000/-	25 Delhi cash bhi le lega
45	47	1	48	29.09.2017	48,00,000/-	48 cash kahai
45	44	9		18.04.2017	50,00,000/-	Bhai Ji please thoda time nikal kar Delhi cash karwa do 50. Aage ke liye problem create ho rahi hai ab.
45	40	6		17.09.2016	5,00,000/-	Cash 5
45	38	3		17.10.2016	3,50,000/-	Dinesh Ji ko 3.5 cash dene hai kya phone ayaa tha jamin pete
45	38	2		10.12.2017	15,00,000/-	15 cash 15 Mahadev
45	35	4		04.12.2017	50,00,000/-	50 cash ka msg. ayega
45	28	1		10.05.2017	45,000/-	Cash saved 45000
45	28	2		10.01.2017	15,500/-	15500 ka maal bahar se. Says

						cash payment mei.
45	28	4		21.09.2017	17,000/-	Cash at drawer 17000
45	27	6		21.09.2017	3,25,000/-	Cash in hand 3,25,000/-
45	26	13		13.09.2017	5,82,500/-	Cash was 5,82,500/- less for home expense 2,05,000/- =3,77,500/-
45	5	270		05.04.2017	85,00,000/-	Cash 85 karwa do bhaiya
45	48	519	10	20.10.2016	10,00,000/-	10 from Gampati
45	48	520	10	20.10.2016	10,00,000/-	10 From madam
46	17	779		27.03.2017	1,19,00,000/-	119 dil wara hahun
46	20	626		17.04.2017	10,00,000/-	75 S 452014 10 rs For 10
46	35	421		24.05.2017	10,00,000/-	Collect 10 from Mohan Ji
46	108	65		21.12.2017	35,00,000/-	25+10 2 note dunga

						alag alag
46	115	29		26.12.2017	20,00,000/-	20 ki aayi thi 20 karwa di Baaki aane wali hai Aate he ho jayegi
46	115	27	50	26.12.2017	50,00,000/-	Total 50 ayegi 2.24 ki kal parson Kisi ko dekar karwa dunga Iski 50 hi thi
46	116	20		26.12.2017	20,00,000/-	abhi 20 hi hua hai kya
57	27			09.07.2017	1,10,00,000/-	Rajesh ji 50+30+20+10
57	27			09.07.2017	65,00,000/-	Ashok ji 15+50

Accordingly AO made addition of Rs. 80,00,000/- on the basis of Table 1 & Rs. 1,72,65,500/- on the basis of Table 2 for the year under consideration u/s. 68 of the Act and addition of Rs. 4,60,00,000/- on the basis of Table 1 & Rs. 5,77,69,500/- on the basis of Table 2 for A.Y. 2018-19.

10. The Ld. CIT (A) at Pg. 57-82 of the order observed that the judgment relied by the assessee are under criminal law where the standards of evidence are different than under the Income tax law. There is presumption provided u/s. 292C

of the Act. The WhatsApp msg. shows execution of actual transaction. There are two categories of transactions. One category is of transaction where cash is mentioned and another is of transaction where kg is mentioned. The onus is on the appellant to explain each and every message. The Ld. CIT (A) thereafter at Pg. 61-75 of the order tabulated each of the transaction for which addition is made by AO and categorized such transaction as receipt and payment. As per this working, the messages where the word kg is mentioned, the total of receipt is worked out at Rs. 2.75 crores and the total of the payment is worked out at Rs.1 crore. Further the messages where the word cash is mentioned, the total of receipt is worked out at Rs. 2.65 crores and the total of payment is worked out at Rs. 4,20,65,500/-. Thereafter the Ld. CIT(A) considering the transaction noted in Exhibit 11 & 24 worked out the peak amount at Pg. 76-81 of the order and thus confirmed the addition of Rs. 1.74 crores u/s. 69A of the Act as against addition of Rs. 2,52,65,500/- made by the AO. Similarly for A.Y. 2018-19 the Ld. CIT (A) confirmed the addition of Rs. 1.66 crores u/s. 69A of the Act as against addition of Rs. 10,37,69,500/- made by the AO. Against this finding of Ld. CIT (A) both the assessee and revenue are in appeal before us.

11. We have pursued the material available on record & given thoughtful consideration to the argument advanced by both the parties. We note that from the mobile of the assessee more than 1500 WhatsApp chats were retrieved and placed in Exhibit 45 to Exhibit 58. The AO, after considering the explanation of the assessee made addition with reference to those WhatsApp chats where 'Kg' is mentioned or where cash or note no. is mentioned by presuming suppression of five zeros, but we do not find that any material brought on record by the lower authorities for such presumption in as much as nothing is brought on record by Id.

DR that assessee accepted that there is suppression of five zeros with reference to the WhatsApp chat for which addition is made by the AO. The details of these WhatsApp chats is as under: -

Exb. No.	Pg. No.	Msg. No.	PB No.	Date	Description	Mobile No.	Remark
51	139	9	82	15.05.17	For 55 kg	9373525252	Incoming message
51	127	72	83	01.05.17	10 kg	9373525252	Outgoing message
51	121	99	84	26.04.17	130 kg	9373525252	Incoming message at 9.56.49 am
51	121	103	84	26.04.17	130 kg	9373525252	Incoming message at 9.49.46 am
51	113	148	85	12.01.17	Delhi 50 kg	9373525252	Incoming message
51	88	279	86	08.02.17	35 Kg Ravi Ji 64641039	9373525252	Incoming message
51	51	594	87	12.09.16	Msg. for 5 kg Delhi	9373525252	Incoming message
45	56	21	88	24.07.17	2 Rs. note 29Q478681 for 25 kg	9926800042	Incoming message

					Delhi, Nilesh Ji 9999997194		
46	14	819	89	15.03.17	10 ka note 60D046628 20 kg	9414630611	Incoming message
46	108	61	90	21.12.17	72V897164 1 Rs note 9899868643 10Kg	9414630611	Incoming message
46	109	60	91	21.12.17	1 ka 46A215078 25 kg	9414630611	Incoming message
57	21	-	92	16.09.17	For 10 kg. Delhi	-	From Sonu to Umang Trading Pvt. Ltd. with bank detail
50	138	-	93	-	Unjha delivery in 25 kg PP	-	Coriander seeds 25Kg. Net Product of India
46	3	1338	94	23.06.16	29931 mei baaki 5 kg	9414630611	Incoming message

					bhi kaat diye guld		
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12. From the above we note that in most of the WhatsApp messages only 'kg' is mentioned. Only in four WhatsApp messages at Exhibit 45 & 46 both 'kg' and note no. is mentioned. These WhatsApp messages do not show that any transaction is concluded. Further the WhatsApp message of 130 kg on 26.04.17 is a repeat message in as much as the first message is given at 9.49.46 am which is repeated at 9.56.49 am. Again message at Pg. No.138 of Exhibit 50 is only inquiry for delivery of coriander seeds in 25 kg PP bags. Whether transaction materialized or not is not evident from this message. Similarly, WhatsApp message at Pg No. 3, Msg. No. 1338 of Exhibit 46 is between the same mobile no. and do not lead to any conclusion. Hence, on the basis of these WhatsApp messages, the total kg involved is 375 kg. (535 kg - 130kg - 25kg - 5kg). This is accepted by Ld. CIT (A). Even assuming that 'kg' reflects the amount, there is no basis to consider the suppression of five zeros. Therefore, the addition of Rs. 80,00,000/- made by AO in A.Y. 2017-18 and addition of Rs. 4,60,00,000/- made by AO in A.Y. 2018-19 which is partly reduced by CIT(A) is not justified as there is no indication from these messages that transaction is concluded. **Hence, the addition made on the basis of these messages is deleted.**

13. The another category of transaction where 'cash' is mentioned, the AO made addition of Rs.7,50,35,000/- (Rs.1,72,65,500/- for A.Y. 2017-18 & Rs. 5,77,69,500/- for A.Y. 2018-19). We find that these messages do not indicate that the transaction has materialized or whether they are receipt of amount or

payment of amount. The individual messages are tabulated as under:-

Exb. No.	Pg No.	Msg. No.	PB No.	Date	Description of msg.	Remarks
45	49	514	95	20.10.16	25 Delhi cash bhi le lega	This incoming msg. from mobile no. 9414090911 do not indicate that the transaction has materialized
45	47	1	96	19.09.17	48 cash kahi	It is an outgoing msg. from mobile no. 9910521199
45	44	9	97	18.04.17	Bhai Ji please thoda time nikal kar Delhi cash karwa do 50. Aage ke liye problem create ho rahi hai ab.	This incoming msg. from mobile no. 9414630611 do not indicate that the transaction has materialized
45	40	6	98	17.09.16	Cash 5	This outgoing msg. from mobile no. 9829037135 do not indicate as to what is the nature of msg. nor

						indicate that transaction has materialized, when it is read with the subsequent msg. that 'Shiv Ji ko cash nahi chalega'.
45	38	3	99	17.10.16	Dinesh Ji ko 3.5 cash dene hai kya phone ayaa tha jamin pete	This incoming msg. from mobile no.9414090911 is only an inquiry when read with subsequent msg. stating that 'Cash abhi manga hai'.
45	38	2	100	10.12.17	15 cash 15 Mahadev	This is outgoing msg. from mobile no.9982958900. The prior outgoing msg. is that 'ess no. pe call kar keen ko bol do cash le le'. This does not lead to any inference that any transaction has materialized.

45	35	4	100	4.12.17	50 cash ka msg. ayega	This outgoing msg. from mobile no. 9811162471 does not show that any transaction has materialized.
45	28	1	101	10.05.17	Cash saved 45000	This incoming msg. from mobile no. 9991500945 does not lead to any inference that it is any undisclosed receipt.
45	28	2	101	10.01.17	15500/- ka maal bahar se. Says cash payment mei.	This incoming msg. from mobile no.9991500945 does not indicate that transaction has materialized.
45	28	4	101	21.09.17	Cash at drawer 17,000/-	This incoming msg. from mobile no.9991500945 only indicate placement of cash in the drawer.
45	27	6	102	21.09.17	Cash in hand 3,25,000/-	It is incoming msg. from mobile

						no.9991500945. There is other incoming msg. from same mobile no. on same date indicating that the cash at drawer, cash at bank and cash in hand. This does not lead to any inference that it is undisclosed cash; in as much as cash balance as per the books of the assessee is more.
45	26	13	103	13.09.17	Cash was 5,82,500/- less for home expense 2,05,000/- =3,77,500/-	This is incoming msg. from mobile no. 9991500945. The subsequent msg. states that 'Sorry cash in hand was wrong'.
45	5	270	104	05.04.17	Cash 85 karwa do bhaiya	This is incoming msg. from mobile no. 9314089373 and do not indicate that transaction has

						materialized nor does it states inflow or outflow of cash. Further, there is no basis why 85 has been considered as Rs. 85,00,000/-
45	48	519	105	20.10.16	10 from Ganpati	This outgoing msg. from mobile no. 9414090911 does not indicate that transaction has materialized. Further, there is no basis why 10 has been considered as Rs. 10,00,000/-.
45	48	520	105	20.10.16	10 From madam	This is outgoing msg. from mobile no. 9414090911 and it does not indicate that transaction has materialized. There is no basis why 10 has been considered as

						Rs. 10, 00,000/-.
46	17	779	106	27.03.17	119 dilwa raha hun	This is outgoing msg. from mobile no. 9414630611 and does not indicate that transaction has materialized. There is no basis why 119 has been considered as Rs. 1, 19, 00,000/-. Further, the subsequent msg. states 'rtgs ka bol dena' indicates that it was not a cash transaction. .
46	20	626	107	17.04.17	75 S 452014 10 rs For 10	This is incoming msg. from mobile no. 9414630611 and does not indicate that any transaction has materialized. Further, there is no basis why 10 has been considered as Rs. 10,

						00,000/-.
46	35	421	108	24.05.17	Collect 10 from Mohan Ji	This outgoing msg. from mobile no. 9414630611 does not indicate that any transaction has materialized nor does it specify that it is a cash transaction. Further, there is no basis why 10 has been considered as Rs. 10, 00,000/-.
46	108	65	109	21.12.17	25+10 2 note dunga alag alag	This is incoming msg. from mobile no. 9414630611 do not indicate that any transaction has materialized. Further, there is no basis why 35 has been considered as Rs. 35, 00,000/-.
46	115	29	110	26.12.17	20 ki aayi thi 20 karwa di	This is incoming msg. from mobile no.

					Baaki aane wali hai Aate he ho jayegi	9414630611 do not indicate that any transaction has materialized nor does it specify whether the transaction was in cash. Further, there is no basis why 20 has been considered as Rs. 20, 00,000/-.
46	115	27	110	26.12.17	Total 50 ayegi 2.24 ki kal parson Kisi ko dekar karwa dunga Iski 50 hi thi	This incoming msg. from mobile no. 9414630611 does not indicate that any transaction has materialized nor does it specify whether the transaction was in cash. The previous msg. states that 'thoda fast kara do bank ko jana bohot jada urgent hai' and the subsequent msg. states 'ho gai mere

						pass se'. This indicates that transaction did not materialize. Further, there is no basis why 50 has been considered as Rs. 50,00,000/-.
46	116	20	111	26.12.17	abhi 20 hi hua hai kya	This is outgoing msg. from mobile no. 9414630611 and this amount of Rs. 20,00,000/- indicates RTGS transaction which is specified in the msg. prior to this msg..Therefore, it cannot be taken as a cash transaction.
57	27	-	112	09.07.17	Rajesh ji 50+30+20+10	This is incoming msg. from 'Sonu' to 'Rajesh Ji'. It does not indicate that what is the nature of transaction, whether transaction has materialized and

						whether it denotes the amount in Rupee. Further, there is no basis why 110 has been considered as Rs. 1, 10, 00,000/-.
57	27	-	112	09.07.17	Ashok ji 15+50	This is incoming msg. from 'Sonu' to 'Ashok Ji'. It does not indicate that what is the nature of transaction, whether transaction has materialized and whether it denotes the amount in Rupee. Further, there is no basis why 65 has been considered as Rs. 65, 00,000/-.

From the above we find that none of the message concludes any receipt or payment of cash. In no. of messages even cash is not mentioned. These are un concluded messages. The presumption of Sec.292C is that contents of document are true. Thus when the WhatsApp message does not establish that transaction has concluded, no addition can be made. Further, when the message

do not reflect that there is suppression of five zero, addition can't be made by presuming suppression of five zero. No evidence of unrecorded asset/expenditure corresponding to the addition made by the AO or confirmed by Ld. CIT (A) was found in search.

14. We also note that the Ld. CIT (A) presumed certain messages as incoming messages, i.e. receipt of the amount and certain messages as outgoing messages, i.e. payment of amount and on that basis observed that messages where the word kg is mentioned, the total receipt is Rs. 2.75 crores and the total payment is Rs.1 crore and the messages where the word cash is mentioned, the total receipt is Rs. 2.65 crores and total payment is Rs. 4, 20, 65,500/-. Thereafter on Pg. 78-81 of the order, he worked out the peak amount for each of the A.Y. 2017-18 & 2018-19 and thus confirmed addition of Rs. 1.74 crores in A.Y. 2017-18 and Rs. 1.66 crores in A.Y. 2018-19. The entire working of the Ld. CIT (A) is as per his own assumption & presumption without bringing on record any evidence that the WhatsApp chat has concluded into any financial transaction. **Therefore, we do not find any justification in the addition confirmed by the Ld. CIT (A).** Resultantly, we delete the addition made by AO and partly confirmed by Ld. CIT (A) by allowing the ground of the assessee and dismissing the ground of the revenue.

15. Ground No. 3 of the assessee and Ground No. 2 of the revenue is on the same issue where part relief is allowed by Ld. CIT (A). The brief facts of this ground is that The AO at Pg 14 & 15 of the assessment order observed that assessee has charged interest on loans and advance given to various parties other than the family concerns which ranges from 10% p.a. to 18% p.a. but from the

family concerns it has charged interest at lower rate. Considering the rate of interest to be charged at 13% p.a., the AO made addition of Rs. 25,36,751/- in respect of the following concerns:-

Name of party to whom loan/ advance is given	Interest charged	Interest to be charged @ 13% p.a. on average rate of interest charged from other parties	Difference
Shree Hari Agro Industries Ltd., Jaipur	Rs. 17,200/- (@1.2%)	Rs. 1,86,333/-	Rs. 1,69,133/-
Mohit Trading Company, Sri Ganganagar	Rs. 38,30,000/- (@9%)	Rs. 55,32,222/-	Rs. 17,02,222/-
Nand Lal Naresh Kumar, Sri Ganganagar	Rs. 14,97,140/- (@9%)	Rs. 21,62,536/-	Rs. 6,65,396/-
Total			Rs. 25,36,751/-

16. The Ld. CIT(A) at Para 6.2, Pg. 96-100 of the order held that the transaction with Shree Hari Agro Industries Ltd. are business transaction and not the loans given. Thus the rate of interest on the same shall be governed by the rate of interest applicable to market outstanding and not by the rate of interest applicable to loans. There is no finding or basis in the assessment order that the interest charged is less in comparison to the interest charged from the other

parties with respect to the trading outstanding. Thus addition in case of Shree Hari Agro Industries Ltd. is deleted. The Ld. CIT (A) further held that in the assessment order a clear-cut finding has been given that the entities in question are the family concerns of the appellant. In the appeal proceedings the appellant has not made any factual substantive submissions against this finding of the assessment order. Once that is the case and the parties are related parties, the applicability of section 40A(2) of the Act is very much in force and thus the addition made by the AO with respect to the two parties Mohit Trading Company, Sri Ganganagar and Nand Lal Naresh Kumar, Sri Ganganagar is confirmed.

17. We have perused material available on record and considered the arguments advanced by both the parties. From the ledger account of Shri Hari Agro Industries Ltd. we note that the assessee has advanced Rs. 5,00,000/- as margin money and thereafter it purchased custard seeds for Rs. 31.50 lacs on Arat on 16.09.2016 which was sold on Arat on 17.01.2017 for Rs. 36,79,200/-. On this transaction interest of Rs. 17, 200/- was charged. Thus it is not a case of giving loan or advances but a trade transaction. **Hence the Ld. CIT (A) has rightly deleted the addition and thus the ground of the revenue is dismissed.**

18. So far as ground of the assessee is concerned, we find from the ledger account of Mohit Trading Co. **(PB 128)** and Nand Lal Naresh Kumar **(PB 129-130)**, that interest charged by assessee from these concerns is @ 9% p.a. The Ld. CIT(A) has invoked section 40A(2) of the Act in confirming the addition ignoring that AO has not disallowed the expenditure but has made addition for notional interest. There is no section in the Act which empowers the AO to make addition on account of notional income. In search also no evidence/document was found to

indicate that assessee has charged interest from the above parties at rate more than what is recorded in books of accounts. Hence in the absence of any incriminating material found in search, no addition for notional interest can be made. Further how much interest is to be charged is to be decided by the businessman. The AO cannot put himself in the shoes of the businessman to decide as to at what rate he should charge the interest as held by **Hon'ble Supreme Court in case of Hero Cycles (P.) Ltd. Vs. CIT(Central) (2015) 379 ITR 347.**The Ld. CIT(A) has confirmed the addition invoking Sec.40A(2) of the Act ignoring that this section is applicable when interest is paid to a related party which is excessive or unreasonable. In the present case interest is not paid to these parties but rather interest is charged from these parties and therefore Section 40A (2) of the Act is not applicable. **In view of above the addition of Rs. 23, 67,618/- confirmed by Ld. CIT (A) is deleted by allowing the ground of the assessee.**

- 19.** Now we proceed to decide the appeal of the assessee in ITA No.542/JPR/2025 & appeal of the revenue in ITA No.622/JPR/2025 for A.Y. 2018-19. Ground No. 1 of the assessee and ground Nos. 1 & 2 of the revenue which is common ground is there for adjudication. The facts & the arguments raised by both the parties on these grounds is same as is considered by us in para no. 9 to 16 supra. **Hence, the finding given by us above would mutatis mutandis apply to these grounds also. Hence, the appeal of the assessee is allowed and that of the revenue is dismissed.**

20. Ground No. 2 of the assessee, The AO at page 9 and 10 of the assessment order observed that assessee has charged interest on loans and advance given to various parties other than the family concerns which ranges from 10% p.a. to 16.5% p.a. but from the family concerns it has charged interest at lower rate. Considering the rate of interest to be charged at 13% p.a., the AO made addition of Rs. 25,72,131/- in respect of the following concerns:-

Name of party to whom loan/ advance is given	Interest charged	Interest to be charged @ 13% p.a. on average rate of interest charged from other parties	Difference
Mohit Trading Company, Sri Ganganagar	Rs. 21, 97,000/- (@6%)	Rs.47,60,167/-	Rs.25,63,167/-
Garg Trading Company, Sri Ganganagar	Rs.20,170/- (@9%)	Rs.29,134/-	Rs.8,964/-
Total			Rs.25,72,131/-

21. The Ld. CIT (A) confirmed the addition on the basis of its finding given in A.Y. 2017-18. We have perused the material available on record. From the ledger account of Mohit Trading Co. (PB 74) and Garg Trading Co. (PB 75), we find that the interest charged from these concerns is @ 6% p.a. & 9% p.a. respectively. The Ld. CIT (A) has incorrectly invoked section 40A (2) of the Act ignoring that AO has not disallowed the expenditure but has made addition for notional interest. There

is no section in the Act which empowers the AO to make addition on account of notional income. In search also no evidence/document was found to indicate that assessee has charged interest from the above parties at rate more than what is recorded in books of accounts. Hence in the absence of any incriminating material found in search, no addition for notional interest can be made. Further how much interest is to be charged is to be decided by the businessman. The AO cannot put himself in the shoes of the businessman to decide as to at what rate he should charge the interest as held by **Hon'ble Supreme Court in case of Hero Cycles (P.) Ltd. vs. CIT (Central) (2015) 379 ITR 347**. The Ld. CIT (A) has confirmed the addition invoking Section 40A (2) of the Act ignoring that this section is applicable when interest is paid to a related party which is excessive or unreasonable. In the present case interest is not paid to these parties but rather interest is charged from these parties and therefore Sec 40A (2) of the Act is not applicable. **In view of above the addition of Rs. 25, 72,131/- confirmed by Ld. CIT (A) is deleted by allowing the ground of the assessee.**

22. **In the result appeal of the assessee in ITA No. 451/JPR/2025 for A.Y. 2017-18 is partly allowed and that of the revenue in ITA No. 621/JPR/2025 is dismissed and the appeal of the assessee in ITA No. 452/JPR/2025 for A.Y. 2018-19 is allowed and that of revenue in ITA No. 622/JPR/2025 is dismissed.**

Order pronounced in the open court on 14th day of August 2025.

Sd/-
(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 14/08/2025

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	14.08.2025		Sr.PS/PS
2	Draft Placed before author	14.08.2025		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			