



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

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

आयकर अपील सं./ITA Nos. 395 to 401/JP/2025  
निर्धारण वर्ष / Assessment Years : 2013-14 to 2019-20

Om Prakash Gupta 40, Jawahar Nagar Gulab Bagh, Sawaimadhapur	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABNPG3260C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Tarun Mittal, CA &  
Shri Harshit Agarwal, CA,  
राजस्व की ओर से / Revenue by : Shri Rajesh Ojha, CIT-DR &  
Mrs. Anita Rinesh, JCIT-Sr. DR

सुनवाई की तारीख / Date of Hearing : 20/08/2025  
उदघोषणा की तारीख / Date of Pronouncement: 18/09/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present bunch of seven appeals have been filed by the above-named assessee, as the assessee was aggrieved from the orders of Commissioner of Income Tax (Appeal) 04, Jaipur [ for short CIT(A)] for the assessment years 2013-14 to 2019-20 dated 28.02.2025. That order was passed by Id. CIT(A) because the assessee challenged the order of

assessment all dated 17.07.2021, 16.07.2021, 15.07.2021 & 03.08.2021 passed u/s. 153A & 143(3) of the Income Tax Act, 1961 [ for short Act ] by DCIT, Central Circle – 1, Jaipur [ for short AO ].

2. Since the issues involved in these appeals in ITA Nos. 395 to 401/JP/2025 for A.Ys 2013-14 to 2019-20 are inter related, identical on facts and are almost common, except the difference in figure disputed in each year, as is evident from the following chart that has been submitted by the Id. AR of the assessee;

Om Prakash GuptaStatement of common grounds of appeal

A.Y.	ITA Nos.	Unexplained Deposits in the name of Sh. Ram Singh	Unexplained Investment in Benami Property by Sh. Ram Singh	Investment in partnership firm "M/s Om Realty"	Invocation of provisions of section 115BBE	Cash found from the possession of assessee
2013-14	395/JPR/2025	GOA 1 to 5.1			GOA 6	
2014-15	396/JPR/2025	GOA 1 to 5.1			GOA 6	
2015-16	397/JPR/2025	GOA 1 to 3.2		GOA 4 to 4.1	GOA 5	
2016-17	398/JPR/2025	GOA 1 to 5.1			GOA 6	
2017-18	399/JPR/2025	GOA 1 to 3.2			GOA 4	
2018-19	400/JPR/2025	GOA 1 to 3.2			GOA 4	
2019-20	401/JPR/2025	GOA 2 to 4.2			GOA 5	GOA 1

Considering that aspect of the matter, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter in ITA No. 395/JP/2025 for A.Y 2013-14 may be taken as a lead case for discussions for which Id. DR did not raise any objections. So, before moving towards the facts of the lead case we would like to mention that the assessee in this appeal has raised the following grounds;

1. On the facts and in the circumstances of the case and in law, Id. CIT(A) grossly erred in confirming the action of Id. AO in passing order u/s 153A of the Income Tax Act, arbitrarily.

2. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in deciding appeal filed under Income Tax Act, solely on the basis of statements recorded and conclusions drawn under PBPT Act, arbitrarily.

2.1. That, Id. CIT(A) further erred in confirming the action of Id. AO in making addition on the basis of information received from authorities under PBPT Act without independently applying his mind and also ignoring the facts and law that provisions of Income Tax Act and PBPT Act are altogether different, they work on different pedestal and have different objectives to fulfil. Appellant prays that so far income tax proceedings are concerned, source of money is relevant, which is not flowing from assessee, therefore addition on account of deposits in bank account of Sh. ram Singh and purchase of assets in the hands of assessee is not in accordance with law and deserves to be deleted.

3. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming the action of Id. AO in holding the assessee as beneficial owner of lands acquired and bank accounts maintained by Sh. Ram Singh Meena arbitrarily, by ignoring the fact that Shri Ram Singh Meena is separately assessed to tax.

3. On the facts and in the circumstances of the case and in law, CIT(A) grossly erred in confirming the action of Id. AO in making addition of Rs.7,94,79,167/-, u/s 69 of the Income Tax Act, arbitrarily.

3.1 That, Id. CIT(A) further erred in confirming the action of Id. AO in making addition of Rs.7,94,79,167/- being deposits in the bank account of Shri Ram Singh Meena by presuming him as benamidar of assessee. Appellant prays that no deposit whatsoever was made by assessee in bank account of Sh. Ram Singh Meena, therefore addition made in the case of assessee is absolutely arbitrary and deserves to be deleted.

3.2 That, the Id. CIT(A) further erred in confirming the action of Id. AO in ignoring the fact that source of the amount deposited in the bank account of Shri Ram Singh was duly explained as received in the shape of loans from various companies, in whose hands sources have been examined by Id.AO, who himself has completed their assessment u/s 153A for the year under appeal thus the deposits made in the bank account of Shri Ram Singh cannot be treated as unexplained investment per se and by no stretch of imagination can it be treated as unexplained investment made by the assessee and therefore, the same deserves to be outrightly deleted in the case of assessee.

4. On the facts and in the circumstances of the case and in law, Id. CIT(A) grossly erred in confirming the action of Id. AO in making addition of Rs.16,09,07,018/- u/s 69 of the Income Tax Act, arbitrarily.

4.1 That, Id. CIT(A) further erred in confirming the action of Id. AO in making addition of Rs. 16,09,07,018/- by alleging the same as investment in benami properties and thus unexplained investment. Appellant prays that addition has been made solely on the basis of statements of Sh. Ram Singh Meena , which stood retracted (and thus have no evidentiary value), therefore sustained by Id. CIT(A) deserves to be deleted.

4.2. That, Id. CIT(A) further erred in confirming the action of Id. AO in making addition on the basis of statements of Sh. Ram Singh Meena, without providing assessee with opportunity of cross examination, which is against the principle of natural justice.

4.3. That, Id. CIT(A) further erred in confirming the action of Id. AO in holding Sh. Ram Singh Meena as benamidar of assessee, by brushing aside vital evidences furnished during the course of assessment proceedings as well as the fact that registered as well beneficial ownership lies with Sh. Ram Singh Meena only, thus such observations deserves to be excluded and ignored.

5. Without prejudice to Ground of Appeal no. 1 to 4.3, Id. CIT(A) has grossly erred in issuing directions, that assessee should get verified entries in bank statements vis a vis registered sale deeds before Id.AO, which do not pertain to assessee and rather pertain to a third party, i.e. Sh. Ram Singh. Appellant prays that such directions per se are not in accordance with law, being beyond the control of assessee to fulfill.

5.1 That, Id.CIT(A) has further erred in observing that some of the properties were sold by him after search, which is factually incorrect, therefore such observations deserves to be ignored and excluded.

6. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming the action of Id. AO in invoking the provisions of section 115BBE(1) of the income Tax Act, arbitrarily.

7. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

4. Succinctly, the fact as culled out from the records is that a search & seizure operation under section 132(1) of the Act was carried out on 16.01.2019 at the various premises of Om Agarwal Group, Jaipur. Consequent to search action, the case of the assessee was centralized to DCIT, Central Circle – 1, Jaipur vide order dated 30.05.2019 passed by the PCIT.

4.1 Consequent to the search action notice u/s 153A of the Act was issued to the assessee on 21-09-2020 which was duly served. In response to notice issued u/s 153A, the assessee furnished Return of Income on 01.02.2021 declaring total income of Rs. 73,27,660/-. Earlier the assessee had filed his regular return u/s 139 of the Act on 28.10.2013 declaring total

income of Rs 73,27,660 and thereby assessee has not disclosed any additional income in the Return of income filed u/s 153A of the Act.

4.2 Statutory notices as required u/s. 143(2) of Act was issued on 27.02.2021 which was duly served and notice u/s 142(1) of the Act was issued on 10-02-2021 and certain details/explanations were called for. In response to these notices, the assessee submitted requisite details/explanation, which have been examined by the Id. AO.

4.3 The assessee derives income from salary from M/s Professional Automative Private Limited, business or profession, interest from bank and income from other source during the year under consideration.

4.4 While assessment proceeding Id. AO noted there was a reference from the office of the DCIT (Benami Prohibition), Rajasthan, Jaipur that the assessee has deposited amounts in the bank account of Shri Ram Singh Meena and transaction were made in this bank account through a Special Power of Attorney given in the name of Shri Rajesh Kabra who is used as a conduit of the assessee to operate the bank account of Shri Ram Singh Meena who held as a Benamidar of the assessee in terms of Prohibition of Benami Properties Transaction Act 1988.

Accordingly, a show cause notice dated 15.6.2021 was issued to the assessee. The assessee was required to file his reply by 18.6.2021 in

compliance to the show cause notice dated 15.6.2021. The assessee filed his reply which is reproduced in the order of the assessee at para 5.2. Ld. AO perused the reply filed by the assessee but not found acceptable because the assessee has made deposits in the bank accounts from his own as well from group companies and used Shri Ram Singh Meena and Shri Rajesh Kabra (Special Power of Attorney Holder of Shri Ram Singh Meena) as a conduit to make such transactions. The DCIT (Benami Prohibition), Rajasthan, (where detailed investigation has been made in this case) has concluded as under:

The above persons are of little means. They have credit worthiness to make such huge deposits in their bank account

The assessee Shri Om Prakash Gupta made deposits in the bank account of Shri Ram Singh Meena and all the amounts were provided by the assessee or his group persons/concerns only.

This bank account was never used by the above person but were used by Shri Om Prakash Gupta only for his own benefits.

Shri Om Prakash Gupta opened and operated the bank accounts in the name of Shri Ram Singh Meena and carried out transactions in these bank accounts as accepted by him in the statement taken.

Shri Om Prakash Gupta got the books of accounts prepared in the name of St Ram Singh Meena and got the ITRs filed in the name of Shri Ram Singh Meena show that the transactions of lands carried out by him in the name of Shri Ram Sin Meena are genuine transactions

The above person did not file any reply to the Show Cause Notices issued to them despite ample opportunities given from time to time. The preliminary objections raised were disposed off by the DCIT(BPU) by passing a speaking order.

Shri Om Prakash also did not file any reply to the detailed Show Cause Notices issued u/s 24(1) of the PBPT Act to Shri Ram Singh Meena served upon him despite ample opportunities given.

This bank account was never used by Shri Ram Singh Meena but was used by Shri Om Prakash Gupta only for his own benefits.

Shri Rajesh Kabra is a close relative and confident of Shri Om Prakash Gupta. Therefore, Shri Om Prakash Gupta took a power of attorney from Shri Ram Singh Meena in the name of Shri Rajesh Kabra and bank account of Shri Ram Singh Meena was also operated and controlled by Shri Om Prakash Gupta through Shri Rajesh Kabra.

Bank account in the name of Shri Ram Singh Meena was opened in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur and used and operated by Shri Rajesh Kabra for the sole benefit of Shri Om Prakash Gupta.

Net and mobile banking facility was availed on mobile number 9414045253 (belongs to Shri Rachit Agarwal s/o Shri Om Prakash Gupta) and e-mail id "info.omgroup@gmail.com", is the registered e-mail id of the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur. Similarly, mobile number 9414045253 is the registered mobile number of this bank account.

On examination of the material available on record, it has been found that the transactions carried out in the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur branch were not carried out by Shri Ram Singh Meena but were made by Shri Om Prakash Gupta only. Thus, all these transactions are benami transactions and the money kept in this bank account is a benami property of Shri Om Prakash Gupta.

4.5 As regards the contention of the assessee to provide cross examination of Shri Ram Singh Meena as the statement taken on the back of the assessee was not considered. LD. AO noted that all the details such as transaction of the property whatsoever i.e. sale/purchase deeds are available, and the assessee has submitted its reply. Further the assessee also filed copy of bank account of Shri Ram Singh Meena. If Shri

Ram Singh Meena and other details. All these material facts suggest that Shri Ram Singh Meena is Benamidar of the assessee.

4.6 Considering that facts Id. AO noted that as the assessee has deposited/credited an amount of Rs. 7,94,79,167/- in the bank account of Shri Ram Singh Meena through his group company through Banking channel as well in cash during the year under consideration. Hence, he concluded that the amount of Rs. 7,94,79,167/- deposited in the bank account of Shri Ram Singh Meena during the year under consideration remained unexplained in the hands of the assessee. Therefore, the said credit/ deposit in bank account amounting to Rs. 7,94,79,167/- was treated as unexplained investment of the assessee and the same was added to the total income of the assessee u/s 69 of the Act and to be taxed as per the provisions of section 115BBE of the Act.

4.7 Ld. AO as noted herein above that there was a reference received from the office of the DCIT (Benami Prohibition), Rajasthan, Jaipur that the assessee has purchased various properties in the name of Shri Ram Singh Meena through Shri Rajesh Kabra as a Special Power of Attorney holder and payments were made from the bank account of Shri Ram Singh Meena who held as a Benamidar of the assessee in the terms of Prohibition of Benami Properties Transaction Act 1988. Accordingly show cause notice

dated 15.6.2021 was issued to the assessee giving details of the property purchased in the name of Shri Ram Singh Meena. Ld. AO noted that investment were made by the assessee for purchase of various immovable properties in the name of Shri Ram Singh Meena S/o Shri Ram Karan Meena R/o Village & Post-Mainpura, Tehsil & Dist Sawai Madhopur who was held as your Benamidar and assessee was held as Beneficial Owner of these properties vide order u/s 24(4) of PBPT Act 1998 dated 30.4.2019 in terms of the provisions of section 2(12) of PBPT Act 1998. He also noted that Shri Ram Singh Meena is a man of little means and not having creditworthiness for investment of such huge amount. In the return filed for AY 2012-13 to 2018-19 it has also been noticed that meagre income under the head income from other sources and agricultural income have been declared. Further, in the statement taken u/s 131 of the Act Shri Ram Singh Meena categorically admitted that all the transaction were made on the instruction of Shri Om Agarwal and a power of attorney was given by him in this regard and he did not made any investment and not received any consideration from Shri Om Agarwal for executing sale deed in his name. He is not aware of the current position of these lands. Looking to these facts and circumstances assessee was required to show cause as to why the investment made in the name of Shri Ram Singh Meena may not be

treated as undisclosed income in his hand as beneficial owner for the relevant assessment year. The assessee was also directed to file details in respect to the present status of the properties along with documentary evidence. The assessee was required to file his reply by 18.6.2021 in compliance with the show cause notice dated 15.6.2021. The assessee filed his reply in this regard. Ld. AO perused the reply filed by the assessee but not found it acceptable because the assessee made investment in purchase of properties and used Shri Ram Singh Meena and Shri Rajesh Kabra (Special Power Holder of Shri Ram Singh Meena) as a conduit to make transaction. The DCIT (Benami Prohibition), Rajasthan (where detailed investigation has been made in this case) has concluded as under;

The above person is of little means. He does not have credit worthiness to purchase the lands under reference.

Shri Om Prakash Gupta has purchased various tands in Village - Kukas. Khora Meena and Harvar, Tehsil - Amer, District-Jaipur (Rajasthan) in the name of above person and all the sale consideration was paid or provided by Shri Om Prakash Gupta only.

These lands were never used by the above person but were used by Shri Om Prakash Gupta only for his own benefits

These lands belong to persons of Scheduled Tribes. As per the provisions of the Rajasthan Tenancy Act, 1955 any agricultural land belonging to a person of Scheduled Tribe Category can be purchased by a person of Scheduled Tribe Category only Therefore, Shri Om Prakash Gupta purchased these lands in the name of above persons, who belong to the same category.

Shri Om Prakash Gupta opened and operated the bank accounts in the name of Shri Ram Singh Meena and carried out transactions in his bank account

Consideration received from sale of some lands out of the lands purchased in the name of above person were also not received by him (Benamidar) but received and utilized by Shri Om Prakash Gupta only (as the bank accounts of Shri Ram Singh Meena were being operated and used by persons of this group).

Shri Om Prakash Gupta got the books of accounts prepared in the name of Shri Ram Singh Meena and got the ITRs filed in the name of Shri Ram Singh Meena to show that the transactions of lands carried out by him in the name of Shri Ram Singh Meena were genuine transactions.

The above person did not file any reply to the Show Cause Notices issued to them despite ample opportunities from time to time. The preliminary objections raised were disposed off by the DCIT (BPU) by passing a speaking order.

Shri Om Prakash Gupta also did not file any reply to the detailed Show Cause Notices issued u/s 24(1) of the PBPT Act to Shri Ram Singh Meena and served upon him as per the provisions of section 24(2) of the PBPT Act despite ample opportunities given.

The year in which lands were sold on behalf of Shri Ram Singh Meena, income from business and profession has been shown at Rs. Nil and income from capital gain has been shown whereas in the rest of years income from business and profession has been shown in the ITRs filed in the name of Shri Ram Singh Meena.

4.8 The Benami Unit Jaipur based on action taken by them has reported that huge chunk of agricultural lands has been purchased in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta. It shows that huge unaccounted money had been invested by Shri Om Prakash Gupta to purchase these lands in the name of Shri Ram Singh Meena. During post search investigation, sufficient opportunities were provided to assessee to file requisite information and books of accounts for verification of transactions, but assessee failed to provide requisite information. From the

above facts, it is clear that assessee made investment in purchase of properties for the year under consideration, for which source was not explained:-

s. No.	Name and the address of Seller(s) (Svs/Smt./Ms)	Property address	Transaction date	Transaction value (in Rs. )	Registry charges (in Rs. )
1	Ramji Lai Meena S/o Meena resident of Village Jaisinghpura, Tehsil- Sanganer, Distt. Jaipur	Shri Bhaurilal 1/10 part of Khasra nos. 847/2, 880/2459, 884, 885/1, 886/1, 889/1 (having total area of 0.22 hectare) AND 2/3 part of Khasra nos. 843, 844 (having total area of 0.30 hectare) AND 3/8 part of Khasra nos. 833/2361, 848, 849, 846 (having total area of 0.48 hectare) AND 1/2 part of Khasra no. 833 (having total area of 1.20 hectare) AND 62/80 Part of	10.10.2012	24400000	1391860

			Khasra no. 749 (having total area of 0.40 hectare) Village - Kukas, Tehsil- Amer, District- Jaipur.		
2	Ramji Lai Meena S/o Meena resident of Village Jaisinghpura, Tehsil- Sanganer, Distt. Jaipur	Shri Bhaurilal	3067/23100 part of 10.10.2012 Khasra No. 811 (having total area of 2.31 hectare) of Village - Kukas, Tehsil - Amer, Jaipur	6500000	407030
3	Ramji Lai Meena S/o Meena resident of Village Jaisinghpura, Tehsil- Sanganer, Distt. Jaipur	Shri Bhaurilal	Khasra No. 850, 851 10.10.2012 (having total area of 0.53 hectare) AND Khasra no. 669/2349 (having total area of 0.02 hectare) AND Khasra nos. 748/1, 748, 755 (having total area of 0.71 hectare) Village - Kukas, Tehsil -Amer, Jaipur	23500000	1341667
4	Shri Shyopal, Kishan Prasad, Ramphool Sons of Jalma Meena, Bhagwansaha, Birdichand Sons of Nangram Meena, Mukesh Kaluram Son of Badri Meena resident of Village Khorameena, Tehsil Amer, Jaipur,	Lai, Jagdish	Khasra Nos. 1563 & 29.08.2012 1564 (having total area of 0.52 hectare) Village- Khorameena, Tehsil- Amer, Jaipur	8000000	489860
5.	Ramji Lai Meena S/o Bhaurilal Meena resident of Village Jaisinghpura, Tehsil- Sanganer, Distt. Jaipur	Shri	5/16 part of 04.01.2013 Khasra no. 832 (having total area of 0.05 hectare) AND 9/32 part of Khasra nos. 833/2361, 848, 849, 846 (having total area of 0.48 hectare), Village Kukas, Tehsil- Amer, Jaipur	2640000	185312
6	Pokhar S/o Shri Ramchanda	urf	1/8 part of 07.01.2013	100000	12357

	Ramchandra Meena; Rampali D/o Birda Meena resident of Village-Khorameena, Tehsil- Amer, Distt. - Jaipur	Khasra No. 832 (having total area of 0.05 hectare) of village- Kukas, Amer, Jaipur	
7	Mangal Chand S/o Birda urf Birdichand Meena; Chhoti Devi W/o Birda; Santosh Devi, Manbhar Devi Daugther of Birda; kalyan, hanuman, Shyoram Sons of Bhauri Lai; Laxminarayan S/o Kana resident of Resident of Village - Kukas, Tehsil- Amer, Jaipur	1/2 part of 12.10.2012 Khasra Nos. 642- 650, 658, 670- 672, 674-679, 684, 687, 690- 694, 1164-1166, 1170-1171, 673, 689 (having total area of 5.45 hectare) of Village Kukas, Amer	29186000 1865650
8	Ramji Lai Meena S/o Shri Bhourilal Meena resident of Village Jaisinghpura, Tehsil- Sanganer, Distt. Jaipur	1/3 part of 15.10.2012 Khasra nos. 653, 654, 655, 656, 657, 658/2340, 658/2341, 662, 664, 665, 652 (having total area of 1.68 hectare) AND 1/5 part of Khasra nos. 847/3, 853, 885/2, 886/2 (having total area of 4.56 hectare) AND 1/9 part of Khasra nos. 869, 871, 872, 873, 874, 875, 876, 878, 879, 882, 1032, 1033, 1034, 1067, 1068, 1069, 1070, 1071, 1072, 1091, 1094, 1095, 1096, 1097, 867, 868 (having total area of 4.40 hectare) AND 3474/8700 part of Khasra no. 840 (having total area of 0.87 hectare)	40000000 2406753

		of Village - Kukas, Tehsil- Amer, Jaipur		
9	Ramji Lai Meena S/o Shri Bhaurilal Meena resident of Village Jaisinghpura, Tehsil- Sanganer, Distt. Jaipur	1/2 part of Khasra nos. 1762, 1767, 1768/2264, 1806, 1809, 1810, 1814 (having total area of 0.62 AND 1/2 part of Khasra no. 1763 (having total area of 0.04 hectare) 1/2 part of Khasra Nos. 1791, 1792 (having total area of 0.19 hectare) AND 1/2 part of Khasra nos. 1789, 1790, 1793, 1794, 1795, 1796/2266, 1797 (having total area of 0.54 hectare) of Village Khorameena, Tehsil- Amer, District- Jaipur	10.10.2012	10500000 628658
10	Chhoti Devi W/o Late Birda; Santosh Devi, Manbhar Devi daughters of Late Birda; Kalyan, Hanuman, Mangalchand and Shyoram sons of Bhaurya; Kamli Devi & Sangari Devi Daughters of Bhourya; Laxminarayan S/o Shri Kana Meena resident of Village-Kukas, Tehsil- Amer, Distt. -Jaipur	1/2 part of Khasra Nos. 1925-1929 & 1964 (having total area of 1.09 hectare) of village- Khorameena, Tehsil- Amer, Distt. - Jaipur	01.11.2012	6840000 511871
<b>Total</b>				<b>92,41,018/-</b>
				<b>15,16,66,000/-</b>

4.9 Based on above chart, Id. AO noted that the assessee has purchased properties amounting to Rs. 15,16,66,000/- and paid registry charges of Rs 92,41,018 and thereby total investment of Rs 16,09,07,018/- (Rs. 15,16,66,000 plus Rs. 92,41,018) for purchase of these lands in the name of Shri Ram Singh Meena Slo Shri Ram Karan Meena who is held to be Benamidar of the assessee and the assessee is held as a Beneficial Owner of these lands in the term of section 24(4) PBPT Act. 1988 and thereby it was concluded that the investment of Rs. 16,09,07,018/ in purchase of above properties in the name of Shri Ram Singh Meena during the year under consideration remained unexplained in the hands of the assessee. Therefore, investment in these benami properties amounting to Rs. 16,09,07,018/- was treated as unexplained investment of the assessee and the same was added to the total income of the assessee u/s 69 of the Act. Accordingly, the total income of the assessee Computed at Rs. 24,77,13,845 [addition of Rs. 7,94,79,167 on account of credit in alleged benami account plus Rs. 16,09,07,018/- being the amount of investment made by the Benamidar] as against the returned income of Rs. 73,27,660/-.

5. Aggrieved from the order of the Assessing Officer, holding that the credit in the bank account and the investment made by Shri Ram Singh

Meena belongs to the assessee and thereby the assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised by the assessee before him, the relevant finding of the Id. CIT(A) is reiterated here in below:

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

The appellant has submitted that a search action u/s 132 was carried out by the Income Tax Department in the case of Om Transport Group, on 16.1.2019, to which assessee belongs. As stated by Id.AO, during the course of search, various loose papers/documents were found and seized, including certain documents found at the office premises of M/s Om Shree Ram Infra Real Pvt. Ltd., which inter-alia included cheque books, deposition slips etc of bank account No. 5111215909 of Sh. Ram Singh s/o Sh. Ramkaran Singh (who was known to assessee) maintained with Kotak Mahindra Bank, C Scheme, Jaipur. Id.AO held that deposits in this bank account held by Sh. Ram Singh were beneficially owned by the appellant and it was further held that the said bank account was used for purchasing properties in the name of Sh. Ram Singh and said properties were beneficially owned by the appellant.

The appellant has challenged the action of Id. AO in making addition on account of deposits made in the bank account of Sh. Ram Singh Meena and investment made by him in purchase of properties. In brief, the appellant has raised following issues:-

(i) Addition w.r.t. entries of cheques dishonoured/ payment stopped by drawer-

The appellant has contended that while making addition on account of deposits in bank account, Id.AO has added all the credit entries in the bank statements, including the entries of cheques dishonoured/payment stopped by drawer. Such entries are not deposit entries and rather are cancellation of preceding debit entry. Detail of addition made by Id AO vis-à-vis Quantum of such entries of cheques dishonoured/ payment stopped by drawer for both the A.Y. 2013-14 and 2014-15 is as under as submitted by the appellant.

F.Y.	Deposits as per AO	Receipts as per Bank book	Cheques dishonoured / stopped by drawer	Remarks
2012-13	7,94,79,167/-	5,99,17,500/-	1,90,75,000/-	There remains difference of Rs. 4,86,667/-, which seems to be due to one entry erroneously considered twice by Id.AO.
2013-14	6,40,70,011/-	6,26,16,011/-	14,60,000/-	There remains difference of Rs. 6,000/-, reason for which is not clear.

Appellant has pleaded that addition to the tune of Rs. 1,95,61,667/- in A.Y 2013-14 ad Rs. 14,60,000/- made in A.Y. 2014-15 deserves to be deleted outrightly.

(ii) Addition of both credits in bank account and properties purchased out of such bank balance:-

The appellant has contended that that Id.AO on one hand added deposits in bank account and on the other hand, made addition on account of investment in properties which was made out of such bank account only. Your goodself would appreciate that in this manner, Id. AO has added both source as well as application separately, resulting into double taxation of same income Appellant has relied upon the judgements in this regard

(iii) Cross examination of Sh. Ram Singh Meena not provided and Retraction of statements: -

Appellant has contended that the Id AO has relied upon statements of Sh. Ram Singh Meena, recorded behind the back of assessee and that too by some other authority, without even providing the opportunity of cross examination of the same to the assessee. The principles of natural justice are an inalienable part of the Income-tax law as provided under various provisions of the Act, including, audi alteram partem, i.e., no man should be condemned unheard During the course of assessment proceedings, assessee came to know that Sh. Ram Singh Meena has filed a retraction affidavit before the ADIT (Inv Kota, whereby statements given by him during proceedings under PBPT Act (on the basis of which present assessment is based), stood retracted. During assessment proceedings, this fact of retraction of statements given by Sh. Ram Singh was duly communicated before Id.AO and stood uncorroborated. The appellant has contended that addition is mainly based on the statements of many persons recorded under section 131 of

the Income Tax Act, but during the proceedings under PBPTA all of them have retracted the earlier statements. Ld.AO has also referred about of Sh. Rajesh Kabra, to whom Sh. Ram Singh Meena had given Power of Attorney. Appellant came to know that statement of Sh. Rajesh Kabra were recorded by the department. Appellant on request to Sh. Rajesh Kabra got the copy of his statement It is submitted that, Sh. Rajesh Kabra, in his statement has averred that he was operating bank account and managing property transactions of Sh. Ram Singh Meena on his behalf and not on behalf of Sh. O.P. Gupta and that statements of both of them were in contradiction to each other. Addition made by Id.AO solely on the basis of statements of Sh. Ram Singh Meena as recorded by other authorities during proceedings under PBPT Act behind the back of assessee which also stood retracted and without conducting any independent enquiry during assessment proceedings, without giving opportunity cross examination to assessee and without even controverting such retraction deserves to be deleted.

(iv) There is no credit in the name of assessee appellant in bank account of Sh. Ram Singh Meena:-

Appellant has referred to the bank statement of Sh. Ram Singh Meena (APB 96-111) of bank account no.5111215909 maintained with Kotak Mahindra Bank and contended that the total deposits in this account during the Assessment year 2013-14 and 2014-15 were Rs. 5,99,06,500/-and Rs 6,26,16,011/-respectively as against Rs. 7,94,79,167/- and Rs. 6,40,70,011/- as mentioned by Id AO in the assessment order. It is not understood as to from where the amount of deposits have been taken by Id.AO. Apart from this, Id. AO has made addition to the tune of Rs 16,09,07,0148/- on account of Investment made by Sh Ram Singh Meena in properties by alleging him as benamidar and treating the assessee as beneficial owner of such properties. As per copy of bank statement (APB 96-111) of Sh. Ram Singh and his bank book (APB 112-117), wherein not a single transfer is made by assessee and status of assessee in his "Individual capacity is separate and distinct from any of his group concerns. Details of credits made in this bank account are as under:

Assessment Year	2013-14	2014-15
Recd. From Ram Babu Sarraf	-	39,50,000/-
Recd. from M/s Om Shree Ram Infrareal (P) Ltd.	5,85,53,000/-	5,56,09,511/-
Cash	13,53,500/-	30,56,500/-
<b>Total</b>	<b>5,99,06,500/-</b>	<b>6,26,16,011/-</b>

Advances have been made by company to Sh. Ram Singh Meena

All the advances have been made by company to Sh. Ram Singh Meena, through banking channels, are out of its disclosed sources of income, on which due taxes have been paid. It is submitted that a company is duly incorporated under law and is treated as separate legal Juristic person under the eyes of law which is different from its shareholders/directors. The shareholders may have beneficial interest in the assets of the company through their shareholding in the company but they are never deemed to be owner themselves of the assets/properties of the company

Ld. AO has failed to prove with any cogent evidence that any single amount transferred to the bank account of Sh. Ram Singh Meena was paid by the assessee. Some of the properties purchased by Sh. Ram Singh Meena, in respect of which assessed was held as beneficial owner, were sold by Sh. Ram Singh Meena to third parties whereas some of them were held by Sh. Ram Singh Meena as Stock

(v) Sh. Ram Singh Meena has done independent disclosures-

Appellant has contended that there is no doubt with regards to identity of Sh. Ram Singh Meena S/o Shri Ram Karan Meena as he physically appeared before Income Tax Department and deposed his statements in front of the government officials as has been referred by Id AO himself. Immovable properties purchased/sold by Ram Singh Meena are in his individual capacity and he only could explain the purpose and source of purchase of such property and selling thereof. Amount so advanced to Ram Singh Meena is not given by Shri O.P. Gupta and hence he cannot be considered as the beneficial owner. Any amount given by any of the company/ firm, which are related to any family member of Shri O.P. Gupta in any manner is not which is not recorded in the books of accounts and rather every penny of the advance so given is through banking channel and is duly recorded in the respective books of accounts and backed by necessary evidence such as confirmation, bank statement, etc. and are duly acknowledged by Ram Singh Meena

Appellant has contended that none of the properties purchased by Sh. Ram Singh has been transferred in the name of assessee even till date. No query whatsoever was raised from assessee during search proceedings in this regard

#### Decision

(a) Having perused the assessment order, submission of appellant, the cheque book, deposit slip, and other relevant documents related to bank account No. 5111215909 in the name of Shri Ram Singh in Kotak Mahindra Bank were found from the search action on the appellant at the business premises of group.

(b) During the search and seizure action the (i) cheque book of the bank account which was in the name of Sh Ram Singh Meena was found along with the (1) counterfoils, (ii) deposit slips, (u) request made for RTGS were found. Further the documents regarding conversion of land related Sh. Ram Singh were also found during the search action (refer page 224 to 225 of Annexure AS-11 and other documents).

These along with other evidences on record shows that these were owned by the appellant. Presumption provided under section 132(4A) and 292C is also applicable

In the Internet banking facility of this impugned bank account the mobile number of Sh Rachit Aggrwal (son of appellant) had been registered. Further e-mail id "info.omgroup@gmail.com", is the registered e-mail id of the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur. This along with other evidences on record shows that the bank account was being operated by and on behalf of the appellant

During the course of search and seizure action specific queries were raised to Sh. Rachit Aggarwal on the issue in statement recorded on 18.01.2019.

It was noticed during the course of search and seizure action that the group concerns of the appellant had carried out multiple land deals inter-alia with Sh. Ram Singh Meena and in Q.21 of search statement, it was asked how he was related. In reply it was stated that "We have advanced interest-bearing loans to Shri Ram Singh Meena". Further in Q.22 it was asked whether any of the group concern purchased any land from Sh. Ram Singh Meena. In reply it was stated that M/s Amigo Hotels in which Sh. Rachit was partner purchased one land from

Shri Ram Singh Meena. In Q.23, it was highlighted that original bank file of Shri Ram Singh Meena containing Bank transaction slips and other bank documents of Shri Ram Singh Meena was found at appellant group's office premises and seized as annexure AS-6 and it was asked to explain the reasons for why these documents were available at appellant group's office. In reply it was accepted and acknowledged that the documents were kept in the office for safekeeping

Further, in Q 24, it was highlighted that on perusal of KYC documents of Shri Ram Singh Meena, the mobile number of Shri Rachit Aggarwal had been given (in the KYC documents) and the reason for the same was asked. However in reply a non-effective denial was stated that Shri Rachit was not aware of the same. This is important because regular banking transactions were taking place in the bank account in the name of Shri Ram Singh Meena and it is a matter of common knowledge that the SMS updates are sent on the mobile numbers Thus on the one hand the messages of the transactions were being received on the mobile number, on the other hand it was denied that he was not aware of the giving his mobile number in the KYC

Further it was noted during the course of search and seizure action that Shri Ram Singh Meena is a person of low means and funds given by appellant's group companies as loans have been used by him to purchase properties which have been further sold to appellant's group. It was also noted that Shri Rachit controls the bank account in his name because the original bank documents were found in their office and his mobile number had been given in the bank statement KYC of Shri Ram Singh Meena Further was noted in the search and seizure proceedings that prima facie Shri Ram Singh Meena is benamidaar whose name has been used by appellant's group to purchase benami properties. These findings of the search and seizure proceedings were highlighted in question number 25 to Sh Rachit Aggarwal and his explanation was asked. The facts were not denied in the reply and thus stand accepted. Also, the statement in the question that the bank account in name of Sh. Ram Singh Meena was being controlled by Sh Rachit was not denied in the reply. It was stated in the reply inter alia that transactions with him are not benami transactions because they are accounted for and loans are given on interest basis to him.

Why all these critical and confidential banking documents showing transactions of large amounts were in the possession and control of the appellant group and the evidence that the online banking was also being operated by the appellant, and all the emails from the bank were being sent and received by the appellant, and

also the statement of Sh. Ram Singh Meena where incriminating facts are revealed and admitted, are incriminating evidence.

During the appellate proceedings the appellant was requested to submit inter-alia (0) copies of the bank documents relating to Sh. Ram Singh Meena in the seized material, (i) copies of the replies submitted to Investigation Officer (DDIT Investigation) on these documents, etc. However the appellant has not submitted the same.

The Hon'ble Supreme Court in the case of K. Krishnamurthy vs The Deputy Commissioner of Income Tax [Civil Appeal No. 2411 of 2025 (Arising out of Special Leave Petition (C)No.943 of 2023)) in the context of penalty u/s 271AAA of the Act has held as under-

41. Further, this Court is of the opinion that the expression found in the course of search is of a wide amplitude. It does not mean documents found in the assessee's premises alone during the search. At times, search of an assessee leads to a search of another individual and/or further investigation/interrogation of third parties. All these steps and recoveries therein would fall within the expression 'found in the course of search

(emphasis supplied)

As per the ratio of the above judgement of Hon'ble Supreme Court,

- the step of post-search **further interrogation** (of party/ies other the party on whom search took action took place) itself and recovery from the same,
- step of post search **further investigation** (of party/les other the party on whom search took action took place) itself and the recovery from the same,

fall within the expression 'found in the course of search, when an earlier search action led to such further interrogation or such further investigation.

**The expression 'found in the course of search is of a wide amplitude.**

In the statement recorded u/s 131 on 17.01.2019. Shri Ram Singh has inter-alia stated and admitted that

- 1) he had put his signatures on various papers and cheques and he was not aware about the bank name and also the amount mentioned in the cheques;
- 2) he has also put his signatures many times on blank cheques,
- 3) he had never visited any bank for opening any bank account:
- 4) he had put his signature on various papers as per instruction of Shri Om Agarwal (ie. the appellant).
- 5) In reply to Q. No. 33, he had accepted that the photo, identity proof and signatures put on the account opening form (Kotak Mahindra Bank) were of him but he was not aware of the transactions routed in the bank account No. 5111215909 held in Kotak Mahindra Bank in his name.
- 6) he was not aware about the source of deposit in the bank account held in his name in Kotak Mahindra Bank, he was not aware about any withdrawal made in the bank account held in his name:

In reply to Q.No. 33, he had accepted that he was neither aware of the source of deposits other than cash in the bank account held in his name in Kotak Mahindra Bank nor about withdrawal made therefrom

7) In reply to Q. No. 36, he had accepted that he was not aware of the possession of bank pass book and cheque book of the bank account held in his name in Kotak Mahindra Bank and stated that only Shri Om Agarwal (appellant) can tell about this

8) Sh. Ram Singh Meena in reply to Q No. 11 of his statement recorded stated that some lands in Jaipur were purchased in his name but he had not purchased these lands and he had signed on these registry documents as per instructions of Sh. Om Agarwal of Om Transport Company.

9) In reply to Q.No.25, he admitted that he had never seen the original registry documents which were purchased in his name on the instruction of Sh. Om Agarwal (appellant) and he doesn't know about whereabouts of the same and only Sh. Om Agarwal (appellant) may tell about these registry documents

10) Sh. Ram Singh Meena in reply to Q.No. 14 of his statement recorded stated that he had signed several times on cheques and documents as per instructions of Sh. Om Agarwal (appellant) and was not aware of the amount and bank to which same pertains. He had also signed on blank cheques several times.

11) In reply to Q.No.21 & 22, he admitted that he does not maintain any books of account and had not given any documents/particulars to any C.A.

It is also seen that the findings of the search and seizure action on the appellant led to the action by the officer dealing with Prevention of Benami Property Transaction Act (PBPT Act, in short) and the enquiries were also conducted independently by him and the information so gathered by him was made available to the Id. AO. Apparently, the Benami proceedings were initiated on the basis of the findings during the search and seizure action and the findings of the Benami proceedings can be used in the search assessment in Income Tax proceedings

(c) It has been summarized in the assessment order that the assessee has made deposits in the bank accounts from his own as well from group companies and used Shri Ram Singh Meena and Shri Rajesh Kabra (Special Power of Attorney Holder of Shri Ram Singh Meena) as a conduit to make such transactions. The following factual conclusions of The DCIT( Benami Prohibition), Rajasthan (where detailed investigation has been made in this case) as noted in the assessment order are relevant to the present case under Income Tax Act-

- Sh. Ram Singh Meena is a person of little means. He does not have credit worthiness to make such huge deposits in their bank account.
- Bank account in the name of Shri Ram Singh Meena was opened in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur and used and operated by Shn Rajesh Kabra for the sole benefit of Shri Om Prakash Gupta.
- Shn Rajesh Kabra is a close relative and confident of Shri Om Prakash Gupta. Sh Rajesh Kabra is also partner in Om Developers along with Sh. Rachit Agarwal Therefore, Shri Om Prakash Gupta took a power of attorney from Shri Ram Singh Meena in the name of Shri Rajesh Kabra and bank account of Shri Ram Singh Meena was also operated and controlled by Shn Om Prakash Gupta through Shri Rajesh Kabra
- Net and mobile banking facility was availed on mobile number 9414045253 (belongs to Shri Rachit Agarwal s/o Shri Om Prakash Gupta) and e-mail id "info.omgroup@gmail.com", is the registered e-mail id of the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur. Similarly, mobile number 9414045253 is the registered mobile number of this bank account.
- On examination of the material available on record, it has been found that the transactions carried out in the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in Kotak Mahindra Bank,

Sardar Patel Marg, Jaipur branch were not carried out by Shri Ram Singh Meena but were made by Shri Om Prakash Gupta only

- The appellant Shri Om Prakash Gupta made deposits in the bank account of Shri Ram Singh Meena and all the amounts were provided by the assessee or his group persons/concerns only
- This bank account was never used by the above person but were used by Shri Om Prakash Gupta only for his own benefits.
- Shri Om Prakash Gupta opened and operated the bank accounts in the name of Shri Ram Singh Meena and carried out transactions in these bank accounts as accepted by him in the statement taken.
- Shri Om Prakash Gupta got the books of accounts prepared in the name of Shri Ram Singh Meena and got the ITRs filed in the name of Shri Ram Singh Meena to claim that the transactions of lands carried out by him in the name of Shri Ram Singh Meena are genuine transactions
- The above person did not file any reply to the Show Cause Notices issued to them despite ample opportunities given from time to time. The preliminary objections raised were disposed off by the DCIT(BPU) by passing a speaking order.
- The appellant Shri Om Prakash also did not file any reply to the detailed Show Cause Notices issued u/s 24(1) of the PBPT Act to Shri Ram Singh Meena served upon him despite ample opportunities given.

Statement of Sh. Rajesh Kabra was recorded on 16.02.2019. He held the power of attorney of Sh. Ram Singh Meena for the purposes of (1) buying of properties, (ii) signing of cheque and (iii) for the purpose of land conversion proceedings.

In his statement (Q. 26, 27 and 28) Sh. Rajesh Kabra has failed to justify how and where he met with Sh. Ram Singh Meena and just and proper reason of so called friendship with Sh. Ram Singh Meena. He failed to state any reason as to why of Shri Ram Singh Meena trusted him and why Shri Ram Singh Meena appointed him as his power of attorney holder and also failed to state any reason as to why as per him when all other activities regarding land purchase were done by Shri Ram Singh Meena then why he could not come for land registration. This is the situation in the factual background that the appellant claimed to be an old friend

and trusted associate of Shri Ram Singh Meena. He failed to give any reason for these statuses.

Sh. Rajesh Kabra failed to give just and proper reason of issuing power of attorney in his name and reason of such deep trust on him by Sh. Ram Singh Meena. He showed no knowledge of the reasoning and source of funds and transaction details etc. in the statement. He has projected his conduct in the manner of a robotic person working as per instructions of master and not showed his knowledge which a close friend should have had

- In Q. No. 51 & 52, on being asked that had he not asked Sh. Ram Singh Meena that as to where he remained so busy that he did not had any time to sign on the registry documents and he had to give power of attorney to him, he replied that he had not asked from Sh. Ram Singh Meena and only Sh Ram Singh Meena can tell about this.
- In Q. No 55 to 57, when he was asked to how it can be accepted that Sh. Ram Singh Meena had time to see the lands but had not time to sign the registry documents and had he ever asked the same from him and if not, reason thereof. he replied that he never asked this from Sh. Ram Singh Meena and there was no specific reason for this.
- In Q. No 62, on being asked that if Sh. Ram Singh Meena was looking the land on his own, Making the deal on his own giving the post dated cheque on his own then what problem he had to sign the registry documents as purchaser, he replied that only Sh. Ram Singh Meena can tell about this
- In Q. No. 64, on being asked as to why Sh. Ram Singh Meena used to get the nomination opened after registration, he replied that on half occasions he used to provide registry to patwari and on other occasions Sh. Ram Singh Meena himself
- In Q. No. 83 on being asked about the land purchased by Sh. Ram Singh Meena from Ramjila Meena, which was signed by him that how poor man Sh. Ram Singh Meena of mainpura village arranged so much money, he replied that this can be told by Sh. Ram Singh Only
- In Q. No 103, on being asked as to how Sh. Ram Singh Meena trusted so much on him so that he gave him the authority to sign on land purchase

deeds, get nomination opened and to sign the cheques on his behalf, he replied that Sh Ram Singh can say about this

**Sh. Rajesh Kabra has not substantiated his claim of friendship with Sh. Ram Singh Meena and about instruction issued to him by Sh. Ram Singh Meena. Sh. Rajesh Kabra has given general statements without any supporting documents.** In O No 84, Sh. Rajesh Kabra was asked that on the basis of his contradictory statements and evidences available with the department it is to be clear that Sh. Om Agarwal has get the power of attorney of Sh. Ram Singh Meena issued in his favour in lieu of support/help provided to him, Get the bank account opened in Kotak Mahindra Bank, Sardar Patel Marg, get the payment made to sellers from this bank account after transferring money to this account from his companies and get the registry of land made in the name of Sh Ram Singh Meena on which he had signed as purchaser on the basis of power of attorney. In this way the land were purchased on delhi road in a planned manner which is in violation of Prohibition of Benami Property Transaction Act, 1988 and he is also became part of it. In the reply, he stated that he don't know about this.

**Sh. Rajesh Kabra accepted that he was keeping blank cheques of Shri Ram Singh Meena.** In reply to Q. No 91, he stated that as per instructions of Sh. Ram Singh Meena. he had also signed on cheques of Sh Ram Singh Meena which is also mentioned in power of attorney. In Q. No. 102 on being asked that as he has stated that he used to return the unused cheques to Sh. Ram Singh Meena while meeting him at Bus stand, Railway Station or on the way, but during search proceedings, some cheques were found from the office of Sh. Om Agarwal situated at C-Scheme. On being asked about the reason thereof, he stated that they might be left there by mistake and he has no knowledge of it

In reply to Q. 31, Sh. Rajesh Kabra has given statements to the effect that there was several obligation of Sh. Om Agarwal on him and he was under obligation to him and he could anything for him. In reply to Q.29 he also stated that he used to be authorised by appellant's group for purchasing the properties.

During search in case of Sh. Rajesh Kabra, a Fortunner Car with Reg. No.RJ14UF3456 was found standing at his house. In this regard he stated that the said car belongs to Sh Om Agarwal firm Om Real Developers. He was also having the key. On this he gave an unrealistic reply that the same was brought here for parking whereas office of appellant was 2-3 hours away. He also stated that he regularly visits the appellant 3-4 days in a week in his office for personal reasons and the reasoning in this regard is not as per human probabilities.

Sh. Rajesh Kabra stated that he returned the power of attorney of Sh. Sita Ram Meena after he came to know of the search and seizure action on Shri Ram Singh Meena because he wanted to avoid the trouble. This shows that he was aware that he was Involved in activities which would attract trouble. Further, whereas search and seizure action took place on appellant group and not on Shri Ram Singh Meena. He acted swiftly because there was search action on appellant's group. At the same time the power of attorney was returned to an employee of the appellant and not to Shri Ram Singh Meena and he did not even discuss this with Shri Ram Singh Meena and did not inform him. (Ref. Q. 40, 46 & 47). On the one hand the appellant has claimed that he was a very close friend and trusted associate of Shri Ram Singh Meena and on the other hand the appellant did not given information to him. These facts along with other facts of the case, show that the entire story of returning the power of attorney as told by Sh. Kabra is cooked up version

On the basis of statement recorded of Sh. Ram Singh Meena under oath, documents seized from the premises of Sh. Om Agarwal during Income Tax search proceedings. evidences available with the department and statement of Sh. Rajesh Kabra it is to be clear that:-

- Sh. Rajesh Kabra is a relative and trustworthy person of Sh. Om Agarwal (appellant) and he has obliged him with help. Sh. Ram Singh Meena is known to Sh. Om Agrawal since long and there was obligation of Sh. Om Agarwal on him
- Sh. Om Agarwal got the documents signed by Sh. Ram Singh Meena and get the bank account opened the in his name in Kotak Mahindra Bank. The email id and mobile number were given of family member of appellant to keep the control on correspondence and keep the internet banking in his control.
- Sh. Om Agarwal got the power of attorney of Sh. Ram Singh Meena issued/signed in favour of Sh. Kabra for the purpose of registry, bank accounts, nomination etc. Blank cheques, documents, etc. without knowing the content, were signed by Shri Ram Singh Meena on the instructions of the appellant.
- Sh. Om Agarwal group by an agreement with R.K Sisodia group, get some land of that group and some adjoining land purchased in the name of Sh.

Ram Singh Meena on which Sh. Rajesh Kabra has signed as purchaser. For this purpose, Sh. Om Agarwal got the money/cash transferred/deposited in bank account of Sh. Ram Singh Meena, Summary sheet of cheque book and large number of such deposits slips were seized from the office premises of Sh. Om Agarwal during search proceedings

- Sh. Rajesh Kabra made payment to the sellers by signing on the cheques of bank account of Sh. Ram Singh Meena on the basis of power of attorney.
- Sh. Rajesh Kabra made the nomination of land in favour of Sh. Ram Singh Meena using this power of attorney.
- The above mentioned whole proceedings were done in the name of Sh. Ram Singh Meena by using his name

Further the facts of the case have been analysed in great details and further factual findings added in the order passed in the Benami proceedings and such factual findings are relevant to the income tax proceedings as well. The Id. AO also has referred and placed reliance on the factual findings in Benami proceedings. The same are referred to Some of the initial pages of the order under section 24(3) of the Prohibition of Benami Property Transaction Act, 1988 dated 05.03.2019 are as under-

6. On examination of the statement of the bank account no. 5111215909 held in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur in the name of Shri Ram Singh Meena; it was observed that transactions of crores of rupees had been made in this bank account. Details of the transactions made in this bank account held in the name of Shri Ram Singh Meena (from account opening date to 14.09.2018] are tabulated as under:

A/C number	A/C Type	Total of Credit transactions (In Rs.)	Total of debit transactions (in Rs.)
5111215909	Current	26,07,55,435	25,99,41,868

(i) From the above table, it was evident that crores of rupees had been credited and debited in the bank account held in the name of Shri Ram Singh Meena. A consistent pattern was noticed on examination of the transactions executed in this bank account. Before issuing any cheque or making DDs or cash withdrawals from this bank account, immediate credit entry(s) received in this bank account were mostly from the bank account of M/s Om Shree Ram Infrareal Private Limited.

(ii) Details of Cash Deposits in this bank account are as under:

Sr. No.	Date	Amount (in ₹)
1	12.10.2012	400000
2	13.10.2012	750000
3	26.10.2012	100000
4	1.11.2012	3500
5	07.11.2012	100000
6	23.03.2013	500000
7	17.09.2013	486500
8	30.11.2013	45000
9	04.12.2013	25000
10	20.03.2014	2500000
11	15.04.2014	100000
12	14.09.2018	500000
Total		55,10,000

(iii) Date wise details of Cash Withdrawals from this bank account are as under:

Sr. No.	Date	Amount (in ₹)
1	10.10.2012	6000000
2	15.10.2012	400000
3	19.10.2012	2000000
4	01.11.2012	800000
5	09.11.2012	500000
6	22.08.2013	425000
7	28.11.2013	400000
8	12.02.2014	200000
9	08.03.2014	250000
10	11.03.2014	250000
11	14.10.2015	600000
12	19.10.2015	700000
13	13.04.2018	50000
14	30.05.2018	22000
15	10.09.2018	500000
Total		1,30,97,000

(iv) Date wise cash payments mentioned in the registered sale deeds executed in the name of Shri Ram Singh Meena for purchase of these lands are as under:

Sr. No.	Date	Amount (in ₹)
1	29.08.2012	5000000
2	10.10.2012	100000
3	10.10.2012	100000
4	10.10.2012	100000
5	10.10.2012	100000
6	11.10.2012	3600000

7	15.10.2012	100000
8	04.01.2013	11000
9	07.01.2013	100000
10	22.08.2013	2354000
11	22.03.2014	122500
Total		1,16,87,500

(v) Availability of cash in hand with Shri Ram Singh Meena (after considering the cash deposits in this bank account, cash withdrawals from this bank account and cash payments made to the sellers) were calculated as under:

Date	Cash deposit or cash payments for purchase of land(s)	Cash withdrawals	Cash balance	Position of cash balance
29.08.12	5000000		5000000	Negative
10.10.12		6000000	1000000	Positive
10.10.12	100000		900000	Positive
10.10.12	100000		800000	Positive
10.10.12	100000		700000	Positive
10.10.12	100000		600000	Positive
11.10.12	3600000		3000000	Negative
12.10.12	400000		3400000	Negative
13.10.12	750000		4150000	Negative
15.10.12		400000	3750000	Negative
15.10.12	100000		3850000	Negative
19.10.12		2000000	1850000	Negative
26.10.12	100000		1950000	Negative
01.11.12	3500		1953500	Negative
01.11.12		800000	1153500	Negative
07.11.12	100000		1253500	Negative
09.11.12		500000	753500	Negative
04.01.13	11000		764500	Negative
07.01.13	100000		864500	Negative
23.03.13	500000		1364500	Negative
22.08.13		425000	939500	Negative
22.08.13	2354000		3293500	Negative
17.09.13	486500		3780000	Negative
28.11.13		400000	3380000	Negative
30.11.13	45000		3335000	Negative
04.12.13	25000		3310000	Negative
12.02.14		200000	3110000	Negative
08.03.14		250000	3085000	Negative
11.03.14		250000	2810000	Negative
20.03.14	2500000		5310000	Negative
22.03.14	122500		5432500	Negative
15.04.14	100000		5532500	Negative

14.10.15		600000	4932500	Negative
19.10.15		700000	4232500	Negative
13.04.18		50000	4182500	Negative
30.05.18		22000	4160500	Negative
10.09.18		500000	3660500	Negative
14.09.18	500000		4160500	Negative

The above analysis of the cash balance in the hands of Shri Ram Singh Meena showed that most of the times Shri Ram Singh Meena was having negative cash balance in his hands. Therefore, he was not having cash in hand to make payments for purchasing these lands. Thus, it was evident that unaccounted cash had been paid for purchasing these lands in the name of Shri Ram Singh Meena. All the transactions in the bank account in the name of Shri Ram Singh Meena had been done by Shri Om Agarwal (i.e. Om Prakash Gupta), therefore, the unaccounted cash had been Invested by Shri Om Agarwal only in the name of Shri Ram Singh Meena.

(vi) During the course of enquiry carried out by the undersigned with the Kotak Mahindra Bank, Sardar Patel Marg, Jaipur, it was gathered that the bank account no. 5111215909 held in the name of Shri Ram Singh Meena was operated by Shri Rajesh Kabra (who is a close relative of Shri Om Prakash Gupta).

(vii) The mobile number 9414045253 was registered in this bank account which belonged to Shri Rachit Agagrwal. Shri Rachit Agarwal is son of Shri Om Prakash Gupta. Thus, it was evident that this bank account was being operated in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta Group.

(viii) The mobile and net banking facilities were also availed on mobile no. 9414045253. The email id info.omgroup@gmail.com was registered in this bank account which is the e-mail id of the group of Shri Om Prakash Gupta. Thus, it was evident that this bank account was being operated in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta Group.

(ix) On examination of bank statement of aforementioned bank account, it was gathered that there were total credits of ₹ 26,07,55,435 and total debits were at ₹ 25,99,41,868 from account opening date to 14.09.2018. Major credit transactions were from M/s Om Shree Ram Infrareal Private Limited. This M/s Om Shree Ram Infrareal Private Limited is a private limited company incorporated on 13.08.2012 having its registered office at 409-413, 4th Floor, Crops Arcade K-12, Malviya Marg, C-Scheme, Jaipur, Rajasthan 302001. As per data available on MCA website, Shri Ashok Kumar Agarwal, Shri Om Prakash

Gupta, Shri Ashok Kumar Gupta, Shri Ram Kripal Sisodia, Shri Ashish Agarwal and Lavanya Agarwal are directors in this company. Details of the amounts credited in this bank account no. 5111215909 from M/s Om Shree Ram Infrareal Private Limited alongwith utilization of the same are as under:

Date	Amount received (in ₹)	Utilization of this amount
09.10.2012	6000000	Entire amount of ₹ 60 Lakhs was withdrawn in cash on 10.10.2012.
10.10.2012	4000000	DDs amounting to ₹ 40 Lakhs was made on the very same day.
12.10.2012	10000000	Entire amount of ₹ 1 Crore was paid to Shri Ramjilal Meena (i.e. the seller of land) through four RTGS (each of ₹ 25 Lakhs) on 12.10.2012
15.10.2012	6000000	DDs amounting to ₹ 21 Lakhs & 5 Lakhs was made in favour of Sub-Registrar, Amer on 15.10.2012, ₹ 4 Lakhs withdrawn in cash on 15.10.2012 and ₹ 30 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) through RTGS on 15.10.2012.
17.10.2012	2200000	A sum of ₹ 1,87,500 paid to Jagdish Narayan Meena; ₹ 1,87,500 paid to Ramphool Meena; ₹ 2,50,000 paid to Shri Kailash as consideration for purchasing lands from them in the name of Shri Ram Singh Meena. Remaining amount withdrawn in cash on 19.10.2012.
19.10.2012	2400000	A sum of ₹ 20 Lakhs withdrawn in cash on 19.10.2012 and ₹ 20 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) through RTGS.
23.10.2012	1150000	₹ 1,87,500 paid to Shri Shyopal Meena (i.e. the seller of land); ₹ 1,87,500 paid to Shri Kishan Meena (i.e. the seller of land) and ₹ 7,50,000 paid to Shri Birda Meena (i.e. the seller of land) on 23.10.2012.
01.11.2012	800000	₹ 8 Lakhs was withdrawn in cash on 01.11.2012.
03.11.2012	1050000	₹ 10 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land).
09.11.2012	500000	Entire amount of ₹ 5,00,000 was withdrawn in cash.
13.12.2012	7123000	A sum of ₹ 13,49,125 was paid to Shri Mangal Chand (i.e. the seller of land) on 13.12.2012. Remaining amount was paid on 14.12.2012 to various sellers as consideration for purchasing their lands.
14.12.2012	11500000	₹ 13,49,125 paid to Smt. Chhoti Devi (i.e. the seller of land); ₹ 17,98,833 paid to Shri Shyoram Meena (i.e. the seller of land); ₹ 17,98,833 paid to Shri Hanuman Sahai Meena (i.e. the seller of land); ₹ 17,98,833 paid to Shri Kalyan Sahai Meena (i.e. the seller of land) and ₹ 1,07,93,000 paid to Shri Laxman Meena (i.e. the seller of land)

		on 14.12.2012.
14.12.2012	2330000	₹ 13,49,125 paid to Smt. Manbhar Devi (i.e. the seller of land) on 15.12.2012 and ₹ 13,49,125 paid to Smt. Santosh Devi (i.e. the seller of land) on 19.12.2012.
29.12.2012	2500000	₹ 25 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) on 29.12.2012.
22.08.2013	425000	Entire amount of ₹ 4.25 Lakhs was withdrawn in cash on 22.08.2013.
03.09.2013	2920000	Entire amount of ₹ 29.20 Lakhs was paid to Shri Laxman Meena (i.e. the seller of land) on 03.09.2013.
20.09.2013	500000	A sum of ₹ 4,86,667 was paid to Shri Shyoram Meena (i.e. the seller of land) on 23.09.2013.
07.10.2013	850000	₹ 4,86,666 paid to Shri Kalyan Sahai (i.e. the seller of land) on 07.10.2013 and ₹ 3,50,000 paid to Smt. Manbhar Devi (i.e. the seller of land) on 10.10.2013.
23.10.2013	760000	₹ 3.5 Lakhs each paid to Santosh Devi Meena (i.e. the seller of land) and Smt. Choti Devi Meena (i.e. the seller of land) on 25.10.2013.
19.11.2013	13900000	₹ 39 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) on 19.11.2013 and ₹ 1 Crore paid on 19.11.2013 to Shri Ramjilal Meena (i.e. the seller of land).
28.11.2013	4500000	₹ 4 Lakhs withdrawn in cash on 28.11.2013; 7 RTGS payments each of ₹ 2,74,511 was made on 28.11.2013; RTGS payment of ₹ 10,98,045 made on 28.11.2013 and RTGS payment of ₹ 2,74,511 was made on 29.11.2013. Various payments amounting to ₹ 17 Lakhs was made on 30.11.2013 and 02.12.2013.
09.12.2013	7700000	₹ 77 Lakhs was paid to Shri Ramjilal Meena (i.e. the seller of land) on 09.12.2013 through RTGS.
13.12.2013	7700000	₹ 77 Lakhs was paid to Shri Ramjilal Meena (i.e. the seller of land) on 13.12.2013 through RTGS.
26.12.2013	1750000	₹ 26.29 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) on 28.12.2013 and a sum of ₹
28.12.2013	2630000	2 Lakhs paid to Deep Chand Meena (i.e. the seller of land) on 30.12.2013; ₹ 2 Lakhs paid to Shri Jagdish Prasad Meena (i.e. the seller of land) on 31.12.2013; ₹ 2 Lakhs paid to Shri Nand Ram Meena (i.e. the seller of land) on 31.12.2013; ₹ 8 Lakhs paid to Smt. Badami Meena (i.e. the seller of land) on 31.12.2013; ₹ 2 Lakhs paid to Shri Devnarayan Meena (i.e. the seller of land) and ₹ 2 Lakhs withdrawn in cash.
05.03.2014	7000000	₹ 70 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) on 05.03.2014 through RTGS.
07.03.2014	4700000	₹ 47 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) on 07.03.2014 through RTGS.
08.03.2014	3950000	DD amounting to ₹ 23.50 Lakhs made in favour of Shri Bhorya Meena (i.e. the seller of land) on

		08.03.2014; ₹ 2.5 Lakhs withdrawn in cash on 08.03.2014 and ₹ 2.5 lakhs withdrawn in cash on 11.03.2014.
22.04.2014	7000000	₹ 70 Lakhs was paid to Shri Ramjilal Meena (i.e. the seller of land) on 22.04.2014 through RTGS.
23.04.2014	10000000	₹ 51 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) on 23.04.2014 and ₹ 49 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) on 23.04.2014.
25.04.2014	7000000	₹ 70 Lakhs was paid to Shri Ramjilal Meena (i.e. the seller of land) on 25.04.2014 through RTGS.
26.04.2014	7000000	₹ 70 Lakhs was paid to Shri Ramjilal Meena (i.e. the seller of land) on 26.04.2014 through RTGS.
28.04.2014	7000000	₹ 70 Lakhs was paid to Shri Ramjilal Meena (i.e. the seller of land) on 28.04.2014 through RTGS.
16.03.2015	2500000	Entire amount of ₹ 25 Lakhs paid to Amigo Hotels on 16.03.2015.
17.03.2015	2500000	Entire amount of ₹ 25 Lakhs paid to Amigo Hotels on 17.03.2015.
18.03.2015	2500000	Entire amount of ₹ 25 Lakhs paid to Amigo Hotels on 18.03.2015.
19.03.2015	125000	Entire amount of ₹ 1.25 Lakhs paid to Amigo Hotels on 18.03.2015.
24.03.2015	7900000	Entire amount of ₹ 79 Lakhs paid to Shri Ramjilal Meena (i.e. the seller of land) on 24.03.2015.
01.08.2017	600000	Entire amount of ₹ 6 Lakhs was paid to Being Enterprising Financial and Property on 01.08.2017 itself.

- (x) From above analysis, it was evident that whenever certain payments were to be made to the land owners (i.e. sellers of lands) as a consideration for purchasing their land in the name of Shri Ram Singh Meena, amounts were transferred to Shri Ram Singh Meena's bank account held in Kotak Mahindra bank from M/s Om Shree Ram Infrareal Private Limited. Even, source of most of the cash withdrawals was from funds credited in the bank account of Shri Ram Singh Meena from M/s Om Shree Ram Infrareal Private Limited. Some payments had been made from Shri Ram Singh Meena's bank account to M/s Amigo Hotel which is partnership firm in which the persons of Om Agarwal Group are partners. Thus, it was evident that this bank account was being operated in the name of Shri Ram Singh Meena by the group of Shri Om Prakash Gupta.
- (xi) Shri Ramjilal Meena had categorically admitted in his sworn statement recorded u/s 19(1)(b) of the PBPT Act on 16.01.2019 that he had neither purchased nor sold any lands in any year but the lands were purchased in his name by Shri Ram Kripal Sisodia and that the bank account in his name in the Kotak Mahindra Bank, Sardar Patel Marg,

Jaipur and the Punjab National Bank, Raja Park were being operated by Shri Ram Kripal Sisodia only.

(xii) The corresponding evidences in the form of copies of cheques, RTGG application form, cheque issued details etc. related to this bank account opened in the name of Shri Ram Singh Meena were found and seized during the course of search action from the premises of Shri Om Prakash Gupta.

7. A Search & Seizure action u/s 132(1) of the Income-tax Act, 1961 had been carried out at the residential as well as office premises of Om Agarwal Group of cases on 16.01.2019 by the Assistant Director of Income Tax (Investigation), Unit Kota. Therefore, a letter dated 29.01.2019 was written to the ADIT (Inv.), Kota requesting him to provide the copies of seized documents seized from the premises of Shri Ram Kripal Sisodia and Shri Ram Singh Meena's statement recorded u/s 131 of the Income-tax Act, 1961. The ADIT(Inv.), Kota provided copies of the documents seized from the premises of Shri Ram Kripal Sisodia and copy of Shri Ram Singh Meena's statement vide his office letter no. 291 dated 29.01.2019 received in this office on 30.01.2019. This material was thoroughly examined. On examination of these seized documents, it was gathered that following documents pertained to Shri Ram Singh Meena but found and seized from the possession of Shri Ram Kripal Sisodia during search:

(1) Details of the lands located at Village - Kukas and Khora Meena, Tehsil Amer, District Jaipur transferred to Shri Ram Singh Meena and Shriram Om Group by Shri Ram Kripal Sisodia in pursuance of MOU executed by him with Shree Ram Om Group (seized as page no. 5 and 10 of Exhibit - 2, Annexure AS from the residence of Shri R. K. Sisodia). These pages contain the khasra wise details of the properties transferred to Shri Ram Singh Meena and Shree Ram Om Group.

(ii) Summary of accounts containing details of investment made by Shri Ram Kripal Sisodia and S.R.O.G. (Shree Ram Om Group) in respect of immovable properties situated at Village Kukas and Khora Meena, Tehsil Amer, District Jalpur but purchased in the names of Shri Ramdhan Meena, Shri Ram Singh Meena and Shri Ramjilal Meena (seized as page no. 12, Exhibit 2, Annexure AS from the residence of Shri R. K. Sisodia).

(iii) The details of properties purchased by Shri Ram Kripal Sisodia in the names of Shri Ramdhan Meena and Shri Ramjilal Meena and the land transferred in the name of Shri Ram Singh Meena in pursuance of MOU (seized as page no. 25-27, Exhibit 2, Annexure AS from the residence of Shri R. K. Sisodia).

(iv) Copy of **याददाश्त पत्र** dated 20.07.2013 executed between Shri Ram Kripal Sisodia, Shri Om Agarwal (i.e. Shri Om Prakash Gupta), Shri 16 Madan Agarwal, Shri Ashish Agarwal and Shri Dharmendra Agarwal in which it had been written that from date of writing this letter, shareholding of Shri Ram Kripal Sisodia and Shree Ram Om Group (SROG) would be 50:50. This letter was written for development and further sale of lands purchased in the name of Shri Ramjilal Meena, in the name of Shri Ram Dhan Meena and Shri Ram Singh Meena (seized as page nos. 7-9 of Exhibit-4, Annexure AS from the residence of Shri R. K. Sisodia).

(v) The details of properties purchased in the name of Shri Ram Singh Meena from Shri Ram Dhan Meena, Shri Ramjilal Meena [Benamidars of Shri Ram Kripal Sisodia] and directly from the sellers (seized as page nos. 41 and 42 of Exhibit-8, Annexure AS from the residence of Shri R.K. Sisodia). The seized page no. 43 of this exhibit from the residential premises of Shri R. K. Sisodia contained the summary of statement of expenditure incurred for procurement of  $(57+4)= 61$  Bigha land. This entire land purchased in the name of Shri Ramdhan Meena and Shri Ramjilal Meena which was further transferred in the name of Shri Ram Singh Meena or purchased directly from the sellers in the name of Shri Ram Singh Meena through Shri Rara Kripal Sisodia in pursuance of the MOU.

(vi) Page nos. 62-72 of Exhibit 9 of Annexure AS seized from the residence of Shri R. K. Sisodia contained the details of lands as under:

Ram Singh Meena	24.555
Ram Dhan Meena	10.558
Om Shree Ram Infra Real Pvt. Ltd.	8.0270
Saroj Mena (90B Land)	6.1290
Saroj Meena (Non 90B land)	0.3950
	49.691
Land yet to be provided	4.5000
Total saleable land	54.191

[these details were related to MOU executed between Shri Ram Kripal Sisodia and SROG. Page no. 25 of this Exhibit contained the details of the lands purchased in the name of various benamidars such as Shri Ram Singh Meena, Shri Ramdhan Meena and Ramjilal Meena.]

(vii) The details of the lands transferred to Shri Ram Singh Meena, Om Infra and Shri Pushyamitra Singh Dev located at Khorameena and Kukas, Tehsil Amer, District Jaipur (seized as Exhibit 12, Annexure AS from the residence of Shri R. K. Sisodia). These lands were initially purchased in the name of Shri Ramjilal Meena and in the name of Shri Ram Dhan Meena by Shri Ram Kripal Sisodia. This exhibit also contained details of

various expenses incurred and borne by Shri Ram Kripal Sisodia and SROG with regard to the properties located at Village Khora Meena and Kukas.

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8. Further, during the course of search proceedings at the business premises of M/s Om Shree Ram Infrareal Private Limited (located at 409-413, 4th Floor, Crops Arcade K-12, Malviya Marg, C-Scheme, Jaipur, Rajasthan), following incriminating documents pertaining to Shri Ram Singh Meena were found and seized

: (1) Cash deposit slips and cheque deposit slips related to the Kotak Mahindra Bank account held in the name of Shri Ram Singh Meerna.

(i) Photocopies of the cheques issued to Shri Ramjilat Meena and other sellers of the lands from the bank account opened and operated in the name of Shri Ram Singh Meena in Kotak Mahindra Bank.

(iii) Copies of RTGS application forms submitted to the Kotak Mahindra Bank for payments from the bank account opened and operated in the name of Shri Ram Singh Meena.

(iv) Copy of fee deposit slip related to the payments made to the JDA for land use conversion in the name of Shri Ram Singh Meena.

(v) Copies of applications submitted to the bank in the name of Shri Ram Singh Meena for cancellation of DD, making of DD, revoke cheque from stop payment, blank revoke cheque from stop payment and letter for confirmation of signature mismatch related to bank account opened and operated in the name of Shri Ram Singh Meena in Kotak Mahindra Bank.

(vi) Copies of application forms for funds transfer under RTGS/NEFT related to the bank account opened and operated in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur.

(vii) Original Cheque book counterfoil (containing details of date, cheque no., cheque recipient name/issued to and amount of cheque) of the bank account opened and operated in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur.

It is pertinent to mention here that 409-413, 4th Floor, Crops Arcade K-12, Malviya Marg, C-Scheme, Jaipur is the office of the group of Shri Om Prakash Gupta. The seizure of such vital documents related to Shri Ram Singh Meena from this office made it clear that this bank account in Shri Ram Singh Meena's name was opened and operated by Shri Om Prakash Gupta only and used by him only for his own benefits (i.e. purchasing of lands in Shri Ram Singh Meena's name).

9. During the course of search action in the Om Agarwal group of cases, Shri Ram Singh Meena's statement u/s 131 of the Income-tax Act, 1961 was recorded on oath at the camp office held at Panchayat Bhawan, Mainpura, Tehsil & District Swai Madhopur (Rajasthan). Copy of this statement was received from the ADIT(Inv.), Unit Kota. In his statement, Shri Ran Singh Meena categorically admitted that:

a) He was obliged by Shri Om Agarwal (Le. Shri Om Prakash Gupta) as Shri Om Agarwal used to help him as and when required by him and his family.

b) He had not purchased any lands located in Jaipur but the lands were purchased by Shri Om Agarwal (i.e. Shri Om Prakash Gupta) and he had put his signatures on the sale deeds on the instruction of Shri Om Agarwal, owner of Om Transport Company.

c) He was not aware of the lands purchased in his name and the locations of the lands purchased in his name by Shri Om Agarwal.

d) He was not aware of the consideration paid for purchasing any lands located in Jaipur as he had only put his signatures on the sale deeds.

e) He had put his signatures on various papers and cheques but he was not aware of the bank name on which these cheques were drawn. He

was also not aware of the amount mentioned in these cheques. f) He had also put his signatures many times on blanks cheques.

g) He had not seen the lands purchased in his name.

h) He had not taken any loan for purchasing any lands.

i) He did not maintain any books of accounts.

j) He had not seen the original papers of the lands purchased in his name and Shri Om Agarwal only could tell about possession of these documents/sale deeds.

k) He did not know the names of the villages in which these lands were located. He was only aware that these lands were located at Jaipur -Delhi road.

l) He was not aware that these lands were located at Village - Kukas and Khorameena.

- m) He was not aware of opening of mutations in his name regarding the lands purchased in his name.
- n) He was not aware of the procedure of opening mutations.
- o) He was not aware of any application filed for conversion of these lands in JDA. He knew that once he had visited JDA with an employee of Shri Om Agarwal and also put his signature on some papers but he was not aware of the contents of these papers and address of JDA.
- p) He had never visited any bank for opening any bank account.
- q) He had put his signatures on various papers as per instructions of Shri Om Agarwal therefore, Shri Om Agarwal might have opened bank account in his name in any bank.
- r) He had accepted that the photo, identity proof and signatures put on the account opening form (Kotak Mahindra Bank) were of him but he was not aware of the transactions routed in the bank account no. 5111215909 held in Kotak Mahindra Bank in his name.
- s) He was not aware of the source of deposits in the bank account held in his name in Kotak Mahindra Bank..  
.....
- t) He was not aware of any withdrawals made in the bank account hesa in bils name in Kotak Mahindra Bank.
- u) He was not aware of the possession of barik pass book and cheque book of the bank account held in his name in Kotak Mahindra Bank and stated that only Shri Om Agarwal could tell about this.
- v) He used to visit Jaipur by train with regards to these lands as per the telephonic Instructions received from Shri Om Agarwal. Some person of Shri Om Agarwal used to pick him from Railway Station and used to take him at the concerned Sub-Registrar office and after getting his signatures and photographs before the Sub-Registrar for the registration of the sale deeds, that person used to drop him at the Railway Station.
- w) He had not received any consideration from Shri Om Agarwal for executing sale deeds in his name.
- x) He was not aware of the current position of these lands.

However, a retraction letter dated 24.01.2019 alongwith affidavit dated 24.01.2019 was furnished on behalf of Shri Ram Singh Meena before the

ADIT (Inv.), Kota in which it had been claimed that he was totally ignorant about the contents of his statement and he had also challenged the legal sanctity of that statement. It had been claimed that this statement was neither correct nor known to him. In his affidavit dated 24.01.2019, Shri Ram Singh Meena had also claimed that he was an illiterate person and had no legal knowledge.

But, Shri Ram Singh Meena's such claim was totally incorrect as he was a literate person and his statement had been recorded on 17.01.2019 in the office of Gram Panchayat Mainpura and that too in the presence of the Village Development Officer, Mainpura, Tehsil and District - Sawai Madhopur. The Village Development Officer had also signed this statement. At the end of this statement, he read over this entire statement loudly for Shri Ram Singh Meena so that he may listen and understand what had been written in the statement. Shri Ram Singh Meena had admitted at the end of this statement that he had deposed this statement without any pressure and coercion.

10. As, Shri Ram Singh Meena had filed a retraction letter before the ADIT(Inv.), Kota on the basis of sweeping allegations therefore, he was summoned u/s 19(1)(b) of the PBPT Act on 08.02.2019 for his examination on 14.02.2019 but no compliance was made by him. Therefore, his retraction letter was not acceptable being based on misconstrued facts of the case. Had the contents of his retraction been true, he would have appeared personally before the undersigned in compliance of the summons served upon him to explain his case.

11. Meanwhile, a search & seizure action u/s 132(1) of the Income-tax Act, 1961 was also carried out at the residential premises of Shri Rajesh Kabra

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(the person who has executed registered sale deeds in the name of Shri Ram Singh Meena as his Special Power of Attorney, holder) by the Investigation Wing of the Income Tax Department. During this search proceedings, his statement was recorded on oath u/s 132(4) of the Income-tax Act, 1961. In this statement, Shri Rajesh Kabra stated that:

a) He had signed the sale deeds on behalf of Shri Ram Singh Meena on the basis of one Power of Attorney received by him from Shri Ram Singh Meena.

b) He had handed over this original Power of Attorney to Shri Ram Singh Meena 5-7 days ago through Shit Bharat Sharma as a search action and action under the benami act had been initiated against Shri Ram Singh Meena by the Income Tax Department as per him.

- c) He is close relative of Shri Om Agarwal and generally goes to the Om Group's office. He uses the Fortuner car of Om Group too.
- d) He has not seen the lands purchased by him in the capacity of Shri Ram Singh Meena's Power of Attorney holder but were or might had been seen by Shri Ram Singh Meena only.
- e) Sometimes mutations were got opened in the name of Shri Ram Singh Meena by him. Shri Ram Singh Meena had given him power of attorney for opening mutations also.
- f) He is familiar with Shri R.K. Sisodia and his driver Shri Bhupesh Mathur.
- g) He is known to Shri R.K. Sisodia as a few registered sale deeds were executed by Shri R.K. Sisodia in Shri Ram Singh Meena's favour.
- h) Shri R.K. Sisodia was present at the time of registration of some of the sale deeds executed in the name of Shri Ram Singh Meena.
- i) Shri Ramjilal Meena had executed 1 or 2 sale deeds in the name of Shri Ram Singh Meena.
- 1) He had also operated the bank account held in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur in the name of Shri Ram Singh Meena and also signed on the cheques drawn on this bank account.
- k) Shri Ram Singh Meena used to meet him at the railway station or at bus stand when Shri Ram Singh Meena used to come to Jaipur for land dealings and Shri Ram Singh Meena used to inform him about his arrival through mobiles/phone.
- 1) He had not charged any fees/commission/amount from Shri Ram Singh Meena for these land deals.

Shri Rajesh Kabra has given evasive answers to the most of the questions asked to him during the search proceedings by stating 'Shri Ram Singh Meena will know about it' or 'why Shri Ram Singh Meena said this can be explained by him only' etc. But, it was evident that Shri Rajesh Kabra is a close relative and close confidant of Shri Om Agarwal (i.e. Shri Om Prakash Gupta). Shri Om Ajanwel was a common link between Shri Ram Singh Meena and Shri Rajesh Kabra. Both Shri Rajesh Kabra and Shri Ram Singh Meena were under

influence of Shri Om Agarwal, therefore, Shri Om Agarwal got the Power of Attorney registered in the name of Shri Rajesh Kabra from Shri ftam

Singh Meena and got the lands registered in the name of Shri Ram Singh Meena through him. The statement of Shri Rajesh Kabra was contrary also to the statement of Shri Ram Singh Meena recorded u/s 131 of the Income-tax Act, 1961.

12. On examination of ITD system of Income Tax Department, it was gathered that Shri Ram Singh Meena had been allotted PAM no. AMTPM99986 but he had not filed any Income Tax Return for any Assessment Year on this PAN number. This showed that Shri Ram Singh Meena was a person of no means and he had no creditworthiness for purchasing these lands of crores of rupees. Since Shri Ram Singh Meena was not having such unaccounted money, therefore, it may safely be presumed that it had been invested by Shri Om Agarwal (i.e. Shri Om Prakash Gupta) in the name of Shri Ram Singh Meena.

13. Based on above discussed facts, it was evident that these lands were purchased by Shri Om Prakash Gupta (popularly known as Shri Om Agarwal) and M/s Om Shree Ram Infrareal Private Limited in the name of Shri Ram Singh Meena and Shri Ram Singh Meena was only a Benamidar whereas Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited were the Beneficial Owners of these lands.

14. Accordingly, reasons were recorded separately for each property transaction (on the basis of the material gathered through enquiries carried out by the undersigned) considering all the transactions of properties (enlisted in para no. 5 of this order) as benami transactions and Show Cause Notices u/s 24(1) of the PBPT Act were issued to Shri Ram Singh Meena in respect of total 15 benami transactions of lands and one benami bank account.

15. A Show Cause Notice (SCN) u/s 24(1) of the PBPT Act was issued to the 'Benamidar' Shri Ram Singh Meena, vide letter no. DCIT/BPU/IPR/2018-19/1805 dated 28.02.2019 of this office, wherein the land admeasuring 0.00625 hectares [which is 1/8th part of Khasra no. 832 (having total area of 0.5 hectare)] of Village Kukas, Tehsil Amer, District Jaipur, Rajasthan (hereinafter referred to as "the said land") was held as a 'Benami Property': the transaction carried out by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited on 07.01.2013 in the form of making payments to the sellers for purchase of the said land in the name of Shri Ram Singh Meena was held as a 'Benami Transaction'; Shri Ram Singh Meena was held as 'Benamidar' for this benami property and Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited were held as the 'Beneficial Owners' of this benami property. Copies of this Show Cause Notice were also served upon

There are further detailed analysis of facts and findings in the above referred order under the Benami proceedings

A brief of the conclusion findings from the order under Benami proceedings is as under-

- (i) Shri Ram Singh Meena is a person of little means. He does not have credit worthiness to purchase the lands under reference including the said land)
- (ii) Shri Om Prakash Gupta and Mis Om Shree Ram Infrarsal Private Limited have purchased various lands in Villages Kukas and Khora Meena, Tehsil Amer, District Jaipur (Rajasthan) in the name of Shri Ram Singh Meena and all the sale consideration was paid or provided by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited only.
- (iii) These lands (including the said land) were never used by Shri Ram Singh Meena but were used by Shri Om Prakash Gupta and Mis Om Shree Ram Infrareal Private Limited only for their own benefits.
- (iv) These lands (including the said land) belong to persons of Scheduled Tribes. As per the provisions of the Rajasthan Tenancy Act. 1956 any agricultural land belonging to a person of Scheduled Tribe Category can be purchased by a person of Scheduled Tribe Category only.
- (v) Shri Rajesh Kabra is a close relative and confident of Shri Om Prakash special power Gupta. Therefore. Shri Om Prakash Gupta took a attorney from Shri Ram Singh Meena in the name of Shn Rajesh Kabra Shri Rajesh Kabra signed all the sale deeds an Singh Meena as a buyer. Shri Ram Singh Meena was even not aware which properties were being purchased in his name. of behalf of Shri Ram
- (vi) Bank account in the name of Shri Ram Singh Meena was opened in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur which was used and operated by Shn Rajesh Kabra (on the basis of the power of attorney) for the sole benefit of Shri Om Prakash Gupta as discussed in forgoing paragraphs of this order.
- (vii) The lands were purchased for the sole benefits of Shri Om Prakash Gupta and Mis Om Shree Ram Infrareal Private Limited. Shri Ram Singh Meena did not get any benefits from these lands.
- (viii) Income Tax Returns were filed on the PAN of Shri Ram Singh Meena by Shri Om Prakash Gupta for which a new PAN was obtained in the name of Shri Ram Singh Meena in 2012 (ie the year in which agricultural lands were started purchasing in the name of Shri Ram Singh Meena)
- (ix) An MOU was executed by Shri Om Prakash Gupta with Shri Ram Kripal Sisodia for joint development of lands including the lands purchased the name of Shri Ram Singh Meena Shri Ram Kripal Sisodia had purchased

benami lands in the names of Shri Ramjilal Meena, Shri Ramdhan Meena and Smt Sita Devi. Many of these lands were got transferred by Shri-Om Prakash Gupta in the name of his benamidar Shri Ram Singh Meena on the basis of this MOU.

- (x) Internet banking and mobile banking facilities were availed on mobile is the number 9414045253 (belongs to Shri Rachit Agarwal sio Shri Om info.omgroup@gmail.com Prakash The registered e-mail id of the bank account number 5111215009 opened Gupta) e-mail id in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar number 9414045253 in the mobile Patel Marg. Jaipur Similarly. registered mobile number of this bank account.
- (xi) Shri Ram Singh Meena did not furnish any submission on the contents of the Show Cause Notices issued u/s 24(1) of the PBPT Act despite ample opportunities provided to him. An affidavit had been filed on Singh Meena before the ADU(Inv) Unit- Kota 131 of the recorded Rajasthan retracting Income-tax Act, 1961 The Authority under the Benami Act wanted to examine Shri Ram Singh Meena to examine the veracity of the contents of the affidavit Number of opportunities were provided to him by the undersigned to appear personally and to explain his case but he chose not to appear before the undersigned for the same.
- (xii) Shri Om Prakash Gupta did not furnish any submission on the contents of the Show Cause Notices issued to Shri Ram Singh Meena u/s 24(1) of the PBPT Act [and served upon Shri Om Prakash Gupta as per the Act] despite PBPT of 24(2) of the ample section provisions opportunities provided to him.
- (xiii) M/s. Om Shree Ram Infrareal Private Limited did not furnish submission on the contents of the Show Cause Notices issued to Shri Ram Singh Meena u/s 24(1) of the PBPT Act [and served upon M/s Om Shree Ram Infrareal Private Limited as per the provisions of section 24(2) of the PBPT Act] despite ample opportunities provided it.

Appellant is the main person and head of the family of the group. Shri Ram Singh Meena in his statement has stated that the appellant is the owner of the properties which are in his name and that he has done everything like signing of cheques, on instruction of the appellant. Shri Ram Singh Meena did not even had the knowledge of transactions in his name. The bank account in his name was being controlled and operated and used by the appellant. Appellant deputed his own person Shri Kabra and got the power of attorney from Shri Ram Singh Meena in his name and carried out transactions in name of Shri Ram Singh Meena. In view of the above discussion, the bank credits as well as the

immovable properties are found to have been owned in substance and for all practical purposes by the appellant.

(d) Issues of (i) cross examination and (ii) retraction

The appellant has also raised the issue that the cross examination of Shri Ram Singh was not provided. However, the question of cross examination has rightly been dealt with by the learned AO in the assessment order. More importantly, the question of cross examination in the present set of facts does not arise. This is due to the reason that firstly, the addition is not based solely on the statement of Shri Ram Singh but several other circumstantial and other evidences have also been discussed in the assessment order in support of the final conclusion. Secondly, the appellant has submitted that Shri Ram Singh has retracted from his statement. When as per the appellant himself, Shri Ram Singh has already retracted from his statement, i.e., the witness has turned hostile, the question of cross examination does not arise.

In the context of criminal law, the Hon'ble Supreme Court in the case of *State of U.P. v. Ramesh Mishra*, AIR 1996 SC 2766 "it is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favor of the prosecution or the accused but it can be subjected to closer scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defense may be accepted."

In the case of *Anbazhagan v. Superintendent of Police*, AIR 2004 SC 524 (Supreme Court), in the context of criminal law, it was held that if the judge finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole with due caution and care, accept in the light of other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it.

In another case, the court held, if a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation.

In other case of *Raja v. State of Karnataka*, 2016 (9) SCALE 627, the Hon'ble Supreme Court has held as under. "That the evidence of a hostile witness in all eventualities ought not stand effaced altogether and that the same can be accepted to the extent found dependable on a careful scrutiny."

The Hon'ble Supreme court in Krishan Chander v. State of Delhi [AIR 2016 SC 298] held that, "the mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness so as to exclude his evidence from consideration altogether"

It is held by the Hon'ble Supreme Court in the case of Selvamani vs The State Rep. By The Inspector of Police in Criminal Appeal No. 906 of 2023 as under-

8. No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case

9. A3-Judge Blend of this out the case of the of Madhya Pradesh on the joymont of the Coat in the cases of Ellingwan Singh Seifaryana, Rabies Kuer Deye of Oska Syad Akbar State of Kamalaka has held that the evidence of x prosecution wêness cannot be rejected is toto merely because the prom chise to treat him as hostile and cross-examined water thathe evidence of such witnesses cannot be treated as affaced or washed off the rang wtogether but the same can be accepted to the extent their version fund to be dependatile on a careful scrutiny thereof

In the context of even a criminal case, in the case of Goverdhan & Anr. Ve State of Chhattisgarh [CRIMINAL APPEAL NO. 116 OF 2011] [Supreme Court Date of Judgement. January 09, 2025, the Hon'ble Supreme Court has held that that merely because the witnesses turn hostile, their evidence does not necessarily be thrown out entirely and what is supportive of the prosecution certainly be used

The Hon'ble Supreme Court observed thus in a Criminal Appeal preferred against the judgment of the Hon'ble High Court by which it upheld the conviction and sentence imposed upon two persons under Section 302 read with Section 34 of the Indian Penal Code (IPC), and acquitted the third accused. The three-Judge Bench comprising Hon'ble Justice B.R. Gavai, Hon'ble Justice K.V. Viswanathan, and Hon'ble Justice N. Kotiswar Singh elucidated,

"Because of the unnaturalness of the testimonies of these neighbours before the court, which defy human behaviour, the reasonable inference one can draw is that these witnesses have been won over. The fact that all these witnesses had close association with Chintaram on account of

consumption of ganja also clearly Indicates the influence Chintraram, the acquitted father of the present two appellants may have on these witnesses However, it is also to be noted that merely because the witnesses turn hostile does not necessarily mean that their evidence has to be thrown out entirely and what is supportive of the prosecution certainly be used."

The Hon'ble Bench reiterated that non recovery of the weapon of crime is not fatal to the prosecution case and is not sine qua non for conviction, if there are direct reliable witnesses.

The Hon'ble Court explained that reasonable doubt must be free from suppositional speculation which must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. It added that a reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt

"The concept of reasonable de has to be also understood in the Indian contest keeping in mind the social realty and this principle cannot be stretched beyond a reasonable limit to avoid generating a cyrical view of law as soserind by this Court in Shival Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 193 Kaid

Regarding the extent of stretching the concept of 'reasonable doubt, the Hon'ble Court remarked that the concept of reasonable doubt has to be also understood in the Indian context, keeping in mind the social reality and this principle cannot be stretched beyond a reasonable limit.

The Hon'ble Court remarked that the requirement of law in criminal trials is not to prove the case beyond all doubt but beyond reasonable doubt and such doubt cannot be imaginary, fanciful, trivial, or merely a possible doubt but a fair doubt based on reason and common sense and hence, if the allegations against the Appellants are held proved beyond reasonable doubt, conviction cannot be said to be illegal the testimony of the police personnel involved in recovery of articles need not be disbelieved and testimony of police personnel is to be treated similarly as testimony of any other witness", it enunciated.

#### ANALYSIS FROM THE PERSPECTIVE OF INCOME TAX LAW:-

The above judgements of honourable Supreme Court is in the context of criminal cases whereas the income tax proceedings are civil proceedings and in the

income tax proceedings it is not required to prove the case beyond doubt. Further the concepts of 'circumstantial evidence', 'human probability' are applicable with much greater force in the income tax proceedings.

Thus merely because the person who had given statement earlier against the appellant had turned hostile and later on retracted from the earlier statement, does not mean that the original statement was to be discarded.

In the present case, statement u/s 131 of Sh. Ram Singh Meena was recorded on 17.01.2019 in the office of Gram Panchayat - Mainpura and that too in the presence of the Village Development Officer, Mainpura, Tehsil and District Sawai Madhopur. The Village Development Officer had also signed this statement. At the end of this statement he read over this entire statement loudly for Shri Ram Singh Meena so that he may listen and understand what had been written in the statement. Shri Ram Singh Meena had admitted at the end of this statement that he had deposited this statement without any pressure and coercion.

As, Shri Ram Singh Meena is stated to have filed a retraction letter before the ADIT(Inv.), Kota on the basis of sweeping allegations therefore, he was summoned u/s 19(1)(b) of the PSPT Act on 08.02.2019 for his examination on 14.02.2019 but no compliance was made by him. Therefore, his retraction letter was not acceptable being based on misconstrued facts of the case. Had the contents of his retraction been true, he would have appeared personally. Thus retraction letter was apparently signed under influence. The appellant has also not produced him before the authorities and notices issued by Benami officers to appellant were not complied with.

Further one more factor which is in favour of the assessing authorities that in the present case the original statement was under oath. Whereas in the above judgement *Goverdhan & Anc.* (supra) apparently the original statements were given before the police authorities (which are generally without oath and without signature of the person who has given the statement) and the statement in which retraction was done was given before the trial court. Whereas in the Income Tax proceedings the first statement itself is given under oath and is having statutory evidence value. Thus in the present case the original statement carries much more weight and is an evidence and cannot be discarded.

Since the proceedings under the Act are civil in nature, even the circumstantial evidences based on preponderance of probability will constitute incriminating material enough to make an assessment of income and fasten the tax liability as

held by in Sumati Dayal v. CIT (1995) 214 ITR 801 125 CTR 124 80 TAXMAN 89 (SC), In other words Assessing Officer can go beyond the parameters laid down in Civil, Criminal and Evidence Act and look into the surrounding circumstances and even issue summons and examine witnesses and other people who he suspects would have given the loans or entered into agreements in order to find out the reality of the situation as was laid down in Sumati Dayal (supra).

It has been held by the Hon'ble ITAT in the case of ITA 3088 to 3098 & 3107/D/05 Harsh W. Chadha Vs. DDIT as under.-

6.1 The admissibility of documents, evidence or material differs greatly in income tax proceedings and criminal proceedings respectively. In criminal proceedings, the charge is to be proved by the State against the accused, establishing it beyond doubt, whereas as per the settled proposition of law, the income tax liability is ascertained on the basis of the material available on record, the surrounding circumstances, human conduct and preponderance of probabilities.

.....

6.3. Rules of evidence do not govern the income tax proceedings as the proceedings under the Income-tax Act are not judicial proceedings in the sense in which the phrase "judicial proceedings" is ordinarily used. The Assessing Officer is not fettered or bound by technical rules attout evidence contained in the Indian Evidence Act, and he is entitled to actate which may not be accepted as evidence in a court of tow

6.4. The Hon'ble Supreme Court in the case of Chuharmal CIT (1) 172 ITR 250 (SC), in this context held that What is meant by saying that the Evidence Act does not apply to proceedings under the Income-tax Act is that the rigor of the rules of evidence contained in the Evidence Act are not applicable, but that does not mean that when the taxing authorities are desirous of invoking the principles of the Act in proceedings before them they are prevented from doing so. All that is required is that if they want to use any material collected by them which is adverse to the assessee then the assessee must be given a chance to make his submissions thereon The principles of natural justice are violated if an adverse order is made on an assessee on the basis of the material not brought to his notice"

In case of J S Parker v. V.B. Palekar, it was held that "the tax liability under the Income tax Act is of civil nature. To fasten a tax payer with such a liability it is not necessary that the evidence should be in the nature of "beyond doubt as is

required to for a criminal liability. Tax liability can be fastened on the basis of preponderance of probabilities S Parker v. V.B. Palekar (1974) 94 ITR 616 (Bom)]

In the present case, the reasonable inference one can draw is that the witness has been won over. The fact that all the witness and his father has close association with appellant and also the witness is getting the salary from appellant's company Le. financially dependent upon the appellant; also clearly indicates the influence appellant, would have on the witness. (Refer ratio of judgement in Goverdhan & Anr. (supra))

Further on perusal of the statement of Shri Ram Singh Meena u/s 131 whereby he gave statement against the appellant which is relied upon in the assessment order is found to be matching with the circumstantial evidences and further the overall approach in the statement and the nature of replies and the fact that the same is the first statement (most likely uninfluenced) and considering the fact that the same is under oath, etc. the truthfulness of the statement is found and held to be reliable and further that the retraction (if any) (signed privately) (under influence) is discarded

In view of the above discussion, the impugned contentions of the appellant are hereby rejected

(e) The appellant has also raised the issues that (iv) There is no credit in the name of assessee appellant in bank account of Sh. Ram Singh Meena and that (v) Sh. Ram Singh has done his independent disclosures.

Both these contentions of the appellant are pertaining to the "form of the transaction and these contentions do not represent the "substance" and "human probabilities. These contentions of the appellant are in contradiction to the circumstantial evidences, evidence given by Sh, Ram Singh Meena in his statement and other facts as discussed in the assessment order.

The contention that funds were given to Sh. Ram Singh Meena by a company owned and managed and controlled by the appellant and his family members and not directly by the appellant in his own name, does not makes a difference. Even though the concept of separate legal entity operates with respect to a corporate entity however it is a settled law that the corporate veil can be lifted for the purposes of taxation. Be that as it may, it is undisputed that the company from which the funds were received in the bank account in the name of Sh. Ram Singh Meena is managed and controlled by the appellant and his family members. Thus

the funds were transferred to the bank account in the name of Sh. Ram Singh Meena as per the directions of appellant. This fact is also not in dispute as it has been stated by the appellant himself that the funds were given to Sh. Ram Singh Meena due to his personal connection with the appellant. The dispute is only regarding the beneficial ownership and management and control of the bank account in the name of Sh. Ram Singh Meena in which the funds were transferred by the company of the appellant group. Thus the contention of the appellant that the credits in the bank account (Sh. Ram Singh Meena) are not in the name of the appellant but are in the name of the appellant group's company does not make a difference as the appellant is the beneficial owner.

Shri Ram Singh Meena is not having any credit worthiness which is undisputable and credits are shown in the bank account from various entities. It is logical and as per human probabilities that companies like Agarwal Namkeen and Sweets Pvt Ltd etc. which are shown to have given loans to Shri Ram Singh Meena in AY 2015-16. AY 2016-17, is not part of the appellant's group would have agreed or would have given money in the bank account in the name of the Shri Ram Singh Meena only on the basis of some security and assurance and that would have come from the appellant

Further not only the funds to the banking channel but the cash is also been deposited in the bank account whereas Shri Ram Singh Meena is not having any credit worthiness: and the source of such cash deposit is unexplained.

Further the contention of the appellant that Sh Ram Singh has done his independent disclosures is also irrelevant as Sh. Ram Singh Meena even denied of having knowledge of the transactions in his name in his statement recorded under oath that the question of disclosures made by him does not arise and the implication of the same is that the disclosures etc. in the name of Sh. Ram Singh Meena are also done by the appellant

Further the contention of the appellant that some of the properties are being sold by the Sh. Ram Singh Meena is also immaterial due to the reasons that (1) any sale of property after the search and seizure action is a mere cover-up exercise by appellant through Sh Ram Singh Meena in the present set of the facts of the case, (ii) any sale of property to any family member of the appellant or any group company of the appellant rather supports the case of the assessing authority that the property was for the benefit and control of the appellant since the beginning, (iii) in the facts of the case, the sale by Shri Ram Singh Meena is also on behalf of and on instructions of the appellant

Referring to the judgements of Hon'ble Supreme Court in CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC) and in Sumati Dayal v. CIT ((1995) 214 ITR 801 (SC), it is held by the Hon'ble ITAT in Deputy Commissioner of Income Tax Circle 15(1)(2), Mumbai vs Leena Power Tech Engineers Pvt Ltd in ITA No. 1313/Mum/20 as under:

"9. It is also important that when we examine the genuineness of the transactions entered into by the assessee, we must also bear in mind Hon'ble Supreme Court's observation, in the case of CIT v. Durga Prasad More [(1971) 82 (TR 540 (SC)] to the effect that "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities Similarly, in a later decision in the case of Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)), Hon'ble Supreme Court rejected the theory that it is for allegor to prove that the apparent and not real, and observed that, "This, in our opinion, is a superficial approach to the problem. The matter has to be considered light of human probabilities. Similarly the observation that if it is alleged that these tickets were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available.....In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably We will be superficial in our approach in case we examine the claim of the assessee solely on the basis of documents filed by the assessee and overlook clear the unusual pattern in the documents filed by the assessee and pretend to be oblivious of the ground realities. As Hon'ble Supreme Court has observed, in the case of Durga Prasad More (supra) it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A

little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents". As a final fact finding authority, this Tribunal cannot be superficial in its assessment of the genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted before the Tribunal but also in the light of all the surrounding circumstances, the preponderance of human probabilities and ground realities. There may be a difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact-finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidence. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law". This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in our considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, the preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order documents and examining them, in a pedantic manner, with the blinkers on "

Accordingly the impugned contentions of the appellant are hereby rejected.

(f) In view of the various evidences and findings as discussed dealin assessment order and also mentioned herein above in trefis que eviter tha deposits and withdrawals in the aforesaid bank account opened in the name of Shar Singh are decided by the appellant and appellent is the effective owner of the bank account. It is noticed by the id. AO that heavy deposits has been made in this be account which totals upto Rs. 7.94,79,167) during the year under consideration and source of these deposits remained unexplained. Accordingly, the id. A res igney added this amount in the hands of appellant and I see no reason to interfere with

Similarly, it was rightly noticed by the Id. AO that appellant was owner of investment an the various properties and during the year under consideration total investment comes to Rs 15,16,66,000/- apart from registry charges of Rs. 92,41,018/- and thus if totals up to Rs. 16,09.07,018/-, as mentioned in detail from

page 21 to 20 of the assessment order Accordingly, I am of the view that AO was justified to treat the investment so made in the property as unexplained

It is also important to note that rules and regulations permit purchase of land owned by SC/ST by the person from SC/ST community only, such a scheme devised by appellant is against the public policy and should not be allowed. It is held by the Hon'ble Supreme Court in the case of *Mis Apex Laboratories Pvt. Ltd. vs Deputy Commissioner of Income Tax, Large Tax Payer Unit II* [CIVIL APPEAL NO (2022) (SPECIAL LEAVE PETITION (CIVIL) NO. 23207 OF 2019) as under

30. Thus one arm of law cannot be utilised to defeat the other arm of law doing so would be opposed to public policy and bring the law into ridicule in *Man Venkataraman & Co. (P) Ltd. v. CIT*, a fine imposed on the assessee under the Foreign Exchange Regulation Act, 1947 was sought to be deducted as a business expenditure. This Court held:

"Moreover, it will be against public policy to allow the benefit of one statute, of any expenditure incurred in violation of the provisions of another statute or any penalty imposed under another statute in the instant case, if the deductions claimed are allowed the penal provision of FERA will become meaningless".

(emphasis supplied)

It is held by the Hon'ble Supreme Court in the case of *Biharilal Jaiswal v Commissioner of Income-tax* [1996] 84 Taxman 236 (SC)/[1906] 217 ITR 746 (SC)/[1996] 130 CTR 143 (SC)[16-11 1995) as under-

18 One arm of law cannot be utilised to defeat the other arm of law Doing so would be opposed to public policy and bring the law into ridicule....."

(f) Appellant is the main person and head of the family of the group Shes Ram Singh Meena in his statement filed stated that the appellant is the owner of the properties which are in the name of the appellant and that he has done everything like signing of cheques, on instruction of the appellant in view of the above discussion, the bank credits as an asset as the movable properties are found to have been owned in substance and for all practical purposes by the appellant. The appellant is the owner of the assets as discussed in this order however neither any payment has been shown to have been done by the appellant for acquiring the same nor the payment for the same is shown to be outstanding or payable in the name of the appellant. There is no legal enforceable right of the lending company on the

appellant to recover the loan which has been given in the name of Shin Ram Singh Meena. The lending company which is the group company of the appellant group has not given loan of its own funds but has further taken the funds from outside. Theoretically, if Shri Ram Singh Meena does not pay back the loans, the lending company of appellant group can get rendered as bankrupt and the companies or the banks which are the final or ultimate source of funds will suffer. Sh. Ram Singh Meena in reply to O No. 17 & 18 of his statement dated 17.01.2019 stated that he had not taken any loan other than KCC loan. He had not taken any loan for purchase of land. Further in the bank account opened in the name of Shri Ram Singh Meena credits are from cash deposit also and the source of such cash remains unexplained. Thus the addition made in the assessment order with respect to unexplained or benami bank credits and unexplained or benami immovable properties is hereby upheld. Further, apart from the various arguments, the Id. AR of the appellant has also argued that the Id. AO has made double addition firstly, about the deposit made in the bank account in the name of Shri Ram Singh and secondly, about the investment made in the purchase of property through this bank account and such action of the Id. AO is totally unjustified. These contentions of the appellant have been briefly referred in (ii) above as 'Addition of both credits in bank account and properties purchased out of such bank balance. I have considered this argument of the appellant. It is noticed that on one hand, the Id. AO has made addition of the deposits made in this bank account considering them to be unexplained and on the other hand has also made addition of the investment in the purchase of property so made out from this bank account. Once the deposits in the bank account are taxed under section 69 of the Act the same becomes explained after such taxation and any subsequent property purchased out of such funds is naturally be treated as having been purchased out of explained funds and cannot be treated as unexplained. Thus it is case of double addition. Thus in simple terms either the bank balance or bank credit can be taxed or alternatively the final asset acquired out of such bank balance this however subject to the specific facts of the case. However, at the same time, I do not agree with the argument of the Id. AR that on this ground both of the additions may be deleted. Addition in respect of lesser of two amounts deserves to be deleted while sustaining the addition in respect of higher of the two amounts of addition.

The appellant has not placed on record the registered deeds of the properties which are the subject matter of the issue in the present appeal and if it cannot be verified that the payment from the bank account (which is added in the assessment order as unexplained) has only been used for making payment for the property. Thus the above relief allowed to the appellant to remove the effect of the double taxation is

stricted only to the extent the money from the bank account in the name of Shri Ram Singh Mema and credits in the same have been taxed has been used in making payment of the property. Accordingly, out of the total additions made in the assessment order regarding bank deposit and immovable properties, relief on account of double taxation is allowed only to the extent the payment for acquiring immovable property (which has been added in assessment order as unexplained or benami) has been done out of the bank deposits (which have been taxed in assessment order as unexplained or benami). Thus the relief on account of removal of effect of double taxation is allowed subject to the appellant shall furnish the complete details in the working of removal of double taxation in view of the above discussion before the learned AO for his verification within two weeks from date of this order and the relief shall be allowed by the learned AO in view of the above findings

After removal of the double taxation, in terms of assets, firstly the addition on account of immovable properties is hereby confirmed as unexplained asset being the ultimate destination of the funds and the remaining amount (if any) (depending upon the assessment year) is confirmed regarding the credits in the bank account as unexplained money and unexplained asset

The issue of above discussed double taxation relief is relevant only for the AY 2013-14 AY 2014-15 and AY 2016-17 as in the remaining assessment years (out of assessment years from AY 2013-14 to AY 2019-20) there is no addition in assessment order regarding immovable property.

(g) Further regarding the contentions raised by the appellant briefly referred above in (1) above as 'Addition w.r.t. entries of cheques dishonoured/payment stopped by drawer it is seen that this is not discussed in the assessment order. Accordingly in principle these contention of the appellant is allowed that where the funds/credits are not received the same should not be taxed and is further to be allowed by the Ld AD after due verification

It is considered important to mention that in the present appeal the issues have been decided only from the perspective of the Income Tax Act. Neither the facts have been verified from the perspective of Prohibition of Benami Property Transactions Act nor a legal provision has been analysed or adjudicated from the perspective of the Prohibit of Benami Property Transactions Act. The appellant shall not be entitled to claim relief in the proceedings under Prohibition of Benami Property Transactions Act on the basis of findings in this order.

Accordingly these grounds of appeal are adjudicated in above terms and are treated as partly allowed for statistical purposes.

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

The contention made by the appellant in this ground of appeal has been adjudicated the adjudication of ground number 1 to 4 and accordingly this ground of appeal rendered as a infructuous and is treated as disposed off.

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

The appellant has submitted that this ground of appeal is consequential in nature and separate submission has been made in this regard. In the adjudication of the earlier ground of appeal the addition made in the assessment order has been upheld accordingly the applicability of section 115BBE of the Act is also upheld. Accordingly the ground of appeal is hereby dismissed.

7.1 The ground is general in nature. The grounds are pre-mature as these are against mere initiation of penalty proceedings. Penalty proceedings are independent proceedings and the appellant is required to make his submissions before the appropriate authority during the penalty proceedings. Accordingly, the ground of appeal raised by the appellant on this issue is treated as disposed off.

8.1 The appellant has not added or altered any of the above mentioned grounds of appeal. Accordingly such mention by the appellant in its ground is treated as general in nature, not needing any specific adjudication and is accordingly treated as disposed off.

6. Feeling dissatisfied with the above order of the Id. CIT(A), the assessee preferred the present appeal on the grounds as reiterated herein

above. In support of the grounds raised by the assessee, Id. AR of the assessee, has filed the following written submissions;

Brief facts of the case are that the assessee, an individual, is director and partner in various concerns of Om Transport Group and derives income from Salary from Company in which he is director, income other sources. Besides this, assessee receives interest on capital and remuneration from partnership firms. Returns of Income for the A.Y.2013-14 to 2019-20 were filed as under:

A.Y.	Return of Income
2013-14	73,27,660
2014-15	46,66,860
2015-16	61,13,450
2016-17	70,81,570
2017-18	78,58,660
2018-19	75,86,890
2019-20	80,96,580

Subsequently, a search action u/s 132 was carried out by the Income Tax Department in the case of Om Transport Group, on 16.1.2019, to which assessee belongs. As stated by Id.AO, during the course of search, various loose papers/documents were found and seized, including certain documents found at the office premises of M/s Om Shree Ram Infrareal Pvt. Ltd., which *inter-alia* included cheque books, deposition slips etc. of bank account No. 5111215909 of Sh. Ram Singh s/o Sh. Ramkaran Singh (who was known to assessee) maintained with Kotak Mahindra Bank, C Scheme, Jaipur. Id.AO, on the basis of statements of Sh. Ram Singh Meena as recorded during proceedings under PBPT Act. 1998, (according to which, Sh. Ram Singh Meena was considered as benamidar of the assessee), alleged that deposits in this bank account held by Sh. Ram Singh were made by either by assessee or persons of their group and it was further alleged that the said bank account was used for purchasing properties in the name of Sh. Ram Singh. Detailed submissions alongwith necessary documents were furnished by assessee, however the same were brushed aside arbitrarily and solely on the basis of information so received, following additions were made:

A.Y.	Unexplained Deposits in the name of Benamidar	Unexplained Investment in Benami Property	Unexplained Investment in M/s OM Realty	Undisclosed Income form M/s Trinetra Ganesh Smart Bazar Developer Pvt. Ltd	Unexplained Cash
2013-14	7,94,79,167	16,09,07,018			
2014-15	6,40,70,011	1,14,87,131			
2015-16	9,45,50,000		13,00,000		
2016-17	1,49,00,000	36,04,210		1,27,51,092	
2017-18	10,000			1,45,94,643	
2018-19	48,56,076			77,71,589	
2019-20	33,70,848			36,60,103	13,30,360

So far as addition made on account of undisclosed income from M/s Trinetra Ganesh Smart Bazar (P) Ltd. is concerned, the same were admitted by assessee and therefore no appeal was preferred against the same. Aggrieved of the remaining additions made by Id.AO, assessee preferred appeal before Id.CIT(A), who granted part relief. Present appeals have been filed by assessee against the additions sustained by Id.CIT(A). With this background, groundwise and issuewise submission is made as under:

Issue 1. Additions in the hands of assessee in respect of the deposits found in the bank account of Sh. Ram Singh and Investment made by him in Immovable Property by treating Sh. Ram Singh as Benamidar of assessee: These issues have been challenged in various Assessment years as per following grounds of appeal:

Grounds of Appeal No. 1 to 5.1 A Y 2013-14, A.Y. 2014-15, A.Y. 2016-17

Grounds of Appeal No. 1 to 3.2 for A.Y. 2015-16

Grounds of Appeal No. 1 to 3.2 for A.Y. 2017-18

Grounds of Appeal No. 1 to 3.2 for A.Y. 2018-19

Grounds of Appeal No. 2 to 4.2 for A.Y. 2019-20

In these grounds, assessee has challenged the action of Id.AO in making addition in the hands of assessee in respect of deposits found in the bank

account of Sh. Ram Singh Meena. Also, in A.Y. 2013-14, 2014-15 and 2016-17, AO has simultaneously added deposits as well as investment made by Sh. Ram Singh Meena out of such deposits in the purchase of property in his own name. As all these grounds of appeal are interconnected, the same are canvassed together for the sake of convenience.

Facts pertaining to the case are that during the course of search, residential as well as various business premises of the group were searched. In the process, business premises of M/s Om Shree Ram Infrareal (P) Ltd. situated at 409-413, 4<sup>th</sup> Floor, Crops Arcade, 5-12, Malviya Marg, C-Scheme, Jaipur was also searched. As stated above, during search, certain documents in the shape of cheque books/ counterfoils, deposition slips, RTGS requests etc. related to bank account No. 5111215909 held in the name of Sh. Ram Singh Meena with Kotak Mahindra Bank, C-Scheme were found at the office premises of M/s Om Shree Ram Infrareal (P) Ltd. It would not be out of place to mention here that no enquiry whatsoever was made from assessee or from any of the directors of M/s Om Shree Ram Infrareal (P) Ltd. w.r.t. such documents during the course of search or even post search proceedings or even during statements recorded while lifting prohibitory order. Subsequently, Id.AO received information from DCIT (Benami Prohibition), Rajasthan Jaipur which has been mentioned of para 5.7 & 6.1 of Assessment order as below:

- In the case of assessee, reference was received from office of the DCIT (Benami Prohibition), Rajasthan, Jaipur that the assessee has deposited amounts in the bank account of Shri Ram Singh Meena and transaction were made in this bank account through a Special Power of Attorney given in the name of Shri Rajesh Kabra who is used as a conduit of the assessee to operate the bank account of Shri Ram Singh Meena who is held as a Benamidar of the assessee in terms of Prohibition Properties Transaction Act 1988. (para 5.1 of Assessment order)

- In the case of assessee, reference was received from office of the DCIT (Benami Prohibition), Rajasthan, Jaipur that the assessee has purchased various properties in the name of Shri Ram Singh Meena through Shri Rajesh Kabra as a Special Power of Attorney holder and payments were made from the bank account of Shri Ram Singh Meena who is held as a Benamidar of the assessee in terms of Prohibition of Benami Properties Transaction Act, 1988. (para 6.1 of the Assessment Order)

On the basis of above information, Id.AO issued show cause notice in the case of assessee, seeking explanation as to why not the deposits made in the bank

account of Sh. Ram Singh Meena and investment made in properties in his name be treated as made by assessee as Beneficial owner.

In response to the same, detailed submission was made by assessee, however without considering the same and solely on the basis of information received under PBPT Act, Id. AO held assessee as beneficial owner and made addition of the deposits found in the bank account of Sh. Ram Singh Meena in the hands of assessee and further addition of investments made in purchase of property by Sh. Ram Singh Meena out of such bank account.

On appeal, Id. CIT(A) also confirmed the additions made by Id.AO. With these facts, submission w.r.t. decision given by Id. CIT(A) is discussed as under:

To begin with, it is relevant to state that Id. CIT(A) has concluded by observing that:

*“It is considered important to mention here that in the present appeal the issues have been decided only from the perspective of the Income Tax Act. Neither facts have been verified from the perspective of Prohibition of Benami Property Transactions Act nor any legal provision has been analysed or adjudicated from the perspective of Prohibition of Benami Property Transactions Act. The appellant shall not be entitled for any relief in the proceedings under Prohibition of Benami Property Transactions Act on the basis of findings in this order.”*

Thus, Id. CIT(A) on one hand has concluded that the decision is solely in perspective of Income Tax Act, but a bare perusal of appellate order shows that additions made by Id.AO have been confirmed by placing sole and heavy reliance on information prepared by officials under PBPT Act and statements recorded by those officials only. In fact, there is no iota of evidence which shows any single enquiry being made during assessment by Ld. AO or appellate proceedings by Ld. CIT (A) either directly or through AO to cross verify such facts or even to issue summons/ record statements of Sh. Ram Singh (alleged as Benamidar in PBPT Proceedings and not in Income proceedings). In fact, Id. CIT(A), while discussing the issue from the viewpoint of Income Tax Act, has also decided the appeal on the concept of “human probabilities” and by considering the information/evidences as collected under PBPT Act as circumstantial evidences. In this regard also, from perusal of appellate order, it is evident that there is no discussion whatsoever, which holds as to how the additions made tantamount to Unexplained Investment in terms of section 69 of the Income Tax Act.

At this juncture, provisions of section 69 are reproduced hereunder for ready reference:

*Unexplained investments.*

69. *Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.*

It is thus evident that addition u/s 69 can be made in the hands of assessee only if investment is made by assessee. So far as present case is concerned, in the information as collected under PBPT Act and reproduced in Appellate order itself, it is noted that major credit transactions in the bank account of Sh. Ram Singh were from M/s Om Shree Ram Infrareal Private Ltd. viz. a private limited company, that too through banking channel. It is submitted that so far as Income Tax Act is concerned, status of assessee in his "Individual" capacity is separate and distinct from any of his group concerns. It is also a matter of fact that, Id.AO himself completed assessments of M/s Om Shree Ram Infrareal (P) Ltd. u/s 153A (from whom money was advanced to Sh. Ram Singh) for all the Assessment Years under consideration and all the information including bank statements and bank book (wherein payments to Sh. Ram Singh were appearing) were duly examined by him. As stated above, during the course of assessment proceedings itself, assessee obtained bank book (APB 112-117) as well as bank statement (APB 96-111) from Shri Ram Singh and the same were furnished before Id.AO and it was explained that no deposits were made by the assessee and rather Sh, Ram Singh had borrowed money in his individual capacity from different companies/entities and certainly not from assessee which stood utilised for making investment. In fact, such properties were duly disclosed by him. In the scenario, addition made and confirmed in the hands of assessee, even without rebutting the details furnished by assessee and without establishing as to which specific amounts were transferred by assessee in the bank account of Sh. Ram Singh Meena. Thus, Id.CIT(A) has decided the appeal only on the basis of information received under PBPT Act in the form of order of DCIT, PBPT and statements of Sh. Ram Singh that too recorded during PBPT proceedings and has on the other hand, has observed that decision is given with reference to Income Tax Act only.

Your honours would appreciate that M/s Om Shreeram Infrareal (P) Ltd. is a private limited company and maintains regular books of accounts, which are subject to audit. Further, all the advances have been made by it to Sh. Ram Singh Meena, through banking channels, are out of its disclosed sources of income, on which due taxes have been paid. It is submitted that a company is

duly incorporated under law and is treated as separate legal juristic person under the eyes of law which is different from its shareholders/directors. The shareholders may have proportionate beneficial interest in the assets of the company corresponding to their shareholding in the company but they are never deemed to be owner themselves of the assets/ properties of the company. The principles in this regard were laid down way back in the case of Mrs. Bacha F.Guzdar vs. CIT [SC (1955) 27 ITR 0001]/ Salomon vs. Salomon & Co Ltd [UKHL 1, AC 22 (1897)], wherein it was clearly laid down that there is a corporate veil between the shareholder and the company which cannot be lifted except through the due process of law. Thus, money advanced by company cannot be treated to have been made by shareholder/ director. Further, in any case, the assets / properties acquired by the said company from such amounts are assets of the company acquired in its own right and control and shown as such in its balance sheet. If Id.AO has to prove otherwise, it will be his primary obligation to prove it so and that too with the help of positive and cogent evidences to prove and demonstrate that the said assets / properties are beneficially enjoyed by certain other person(s) and NOT by the company and that the said company is holding it only for the name sake purposes.

In the present case, there is not a single evidence that proves that amount transferred to the bank account of Sh. Ram Singh Meena was paid by the assessee. It has also been alleged that the assessee was beneficial owner of properties purchased by Sh. Ram Singh Meena but again, no effort has been made to prove such allegation. Id. CIT(A) has disregarded this contention of assessee by observing that these are in contradiction to the Circumstantial evidences, evidences given by Sh. Ram Singh Meena and other facts as discussed in assessment order. In this regard, it is submitted that though principle of human probabilities is considered important in Income Tax Act, the same cannot substitute the specific provisions of statute normally there is requirement for particular sum to be covered under a particular section, then condition are to be fulfilled as per that particular section. In other words, if a particular transaction does not fall under section 69 by virtue of very fact that investment in the bank account of Sh. Ram Singh Meena alleged to be unexplained was not made by "assessee", then addition so made in the hands of assessee is totally unjustified. Moreover, as there is no ambiguity in the language of statute in this regard, word "assessee" cannot be presumed to include any other group concern.

It is also pertinent to note here that Id.CIT(A) has observed that presumption provided u/s 132(4A) and 292C is applicable in case of assessee. In this regard, it is submitted that it is an undisputed fact that bank documents pertaining to Sh.

Ram Singh Meena were found from the premises of M/s Om Shreeram Infrareal (P) Ltd. And not from assessee. Moreover, assessment of such company was also being carried on by same Assessing officer, who was empowered to conduct any further enquiries to verify the fact as to whom such documents belonged to. However, both Id.AO and Id. CIT(A) have proceeded on preconceived notion that such documents had bearing on assessments of Sh. O.P. Gupta.

Coming next about the heavy weightage given to the statements of Sh. Ram Singh Meena, it is submitted that a statement which is based upon and is also matching with the contents of the documentary evidences has got more evidentiary value in the eyes of law as compared to a statement given just in air on the basis of memory only, and that too after a long time gap from the date of event. It is also submitted that cross examination of a witness, whose statement is being relied upon by the department and is made the sole basis of holding the transaction benami, is the mandatory requirement to meet the principles of natural justice. In the present case, no enquiries whatsoever were made independently by Id.AO during assessment proceedings before making such huge additions and Id.AO has relied upon statements of Sh. Ram Singh Meena, recorded behind the back of assessee and that too by some other authority, without even providing the opportunity of cross examination of the same to the assessee. Even Id. CIT(A) has also confirmed the action of Id.AO in not allowing cross examination by quoting various decisions, which are mostly rendered in the context of Criminal laws or in different set of facts and thus are not applicable to the facts of the case.

It is further pertinent to note here that Id. CIT(A) at page 54 of appellate order has observed that opportunity of cross examination is not required as addition was not solely on the basis of statements of Sh. Ram Singh. In this regard, it is submitted that as is evident from Assessment as well as appellate order, both the orders fully revolve around statements of Sh. Ram Singh, thus it was really crucial to provide such opportunity in the interest of natural justice. Moreover, Id. CIT(A) himself in the same para, has observed that *“Secondly, the appellant has submitted that Shri Ram Singh has retracted statement. When as per the appellant himself Shri Ram Singh has already retracted from his statements i.e. the witness has turned hostile the question of cross examination does not arise.”*

Your honours would appreciate that though assessee has contended that Sh. Ram Singh Meena has retracted from his statements, however such contention was not accepted by Id.AO/Id.CIT(A) and rather it has been observed that witness has turned hostile, which finding is absolutely baseless. It is submitted that fact of retraction of statements by Sh. Ram Singh Meena is also supported

from the findings as recorded in Benami Proceedings and reproduced by Id.CIT(A) in appellate order at pages 38 onwards. Relevant extracts are at page 49 and read as under:

*“However, a retraction letter dated 24.1.2019 alongwith affidavit dated 24.1.2019 was furnished on behalf of Sh. Ram Singh Meena before the ADIT (Inv.), Kota in which it had been claimed that he was also challenged the legal sanctity of that statement. It had been claimed that this statement was neither correct nor known to him.....”*

Hon'ble Supreme Court in the case of Mehta Parikh & Co. reported in 30 ITR 181 has held that *“an un-controverted affidavit should be accepted as such”*. Similarly, Hon'ble Gujarat High Court in the case of Glass Line Equipment 253 ITR 454 has held that when affidavit was not controverted, it has to be taken as accepted. It is therefore submitted that no credence can be given to statements of Sh. Ram Singh Meena which stood retracted by him.

It is further submitted that if retraction by Sh. Ram Singh Meena has not been accepted by the department for the reason that Sh. Ram Singh Meena neither furnished reply in response to show cause notice issued to him under PBPT Act nor did he appear before ADU (Inv.) Unit- Kota., such non-compliance/appearance is default on the part of Sh. Ram Singh Meena and for the reasons best known to him and no adverse inference can be drawn in the case of assessee for this reason. Thus, once, Id. CIT(A) has not given cognizance to retraction affidavit filed by Sh. Ram Singh, opportunity of cross examination ought to have been provided.

It is submitted that Right to cross examine flows from the principle of natural justice and therefore an evidence/document/statement of third party cannot be relied upon until the opportunity of cross examination is given to the party, against whom such evidence / document / statements are being used.

The principles of natural justice are an inalienable part of the Income-tax law as provided under various provisions of the Act, including, audi alteram partem, i.e., no man should be condemned unheard.

It is settled position of law that the Assessing Officer can gather material or evidence at the back of the assessee but cannot use it unilaterally, without providing opportunity to the person against whom it is prepared to be used. Evidence has to be tested on cross examination. Failure to afford opportunity to the assessee to cross-examine a third party whose evidence is sought to be utilised would make the assessment void as held in the cases of Kishinchand

Chellaram v. CIT [1980] 4 Taxman 29 (SC), Sona Electric Co. v. CIT [1984] 19 Taxman 160 (Delhi), Nathu Ram Prem Chand v. CIT [1963] 49 ITR 561 (All).

In the case of Andaman Timber Industries v. CCE [2015] 62 taxmann.com 3/52 GST 355 (SC), the Apex Court observed that not allowing the assessee to cross-examine the witness whose statement has been relied upon to frame the order is a serious flaw. This makes the order a nullity.

Hon'ble supreme Court in the case of State of Kerala v. Shaduli Grocery Dealer (K.T.) AIR 1977 SC 1627 held that when the assessment was based on information collected from the books of a third party, necessary opportunity must be given for cross examination, if specifically requested for, when such information formed the sheet anchor of evidence to frame the assessment. In this case, the assessment was declared as void, confirming the decision of the Kerala High Court, for not affording opportunity for cross examination of the third party.

It is therefore submitted that additions made by Id. AO by placing reliance on the statements of Sh. Ram Singh Meena without affording assessee with opportunity of cross-examination on of Sh. Ram Singh Meena is against the principle of natural justice, more particularly when statements have been retracted.

Hon'ble Mumbai bench of ITAT in the case of M/s Asian Star Company Ltd in its decision dated 23.05.2023 in ITA No.2778/Mum/2022 has observed as under (Case law compilation pages 15-72):

12. Another fact in the present case is that the reasons to initiate the proceedings are mainly based on the statements of many persons recorded under section 131 of the Income Tax Act, but during the proceedings under PBPTA all of them have retracted the earlier statements. Under such situation, the rebuttal and reinstating the alleged facts in the earlier statements is the responsibility of the Initiating Officer appending comparative evidences, without which the proceedings will fail by its own fate.

Also, reference of statements of Sh. Rajesh Kabra, to whom Sh. Ram Singh Meena had given Power of Attorney has been made in appellate order. Appellant came to know that statement of Sh. Rajesh Kabra were recorded by the department. Appellant on request to Sh. Rajesh Kabra got the copy of his statement. It is submitted that, Sh. Rajesh Kabra, in his statement has averred that he was operating bank account and managing property transactions of Sh. Ram Singh Meena on his behalf and not on behalf of Sh. O.P. Gupta. It is seen that statements of both of them (i.e. Sh. Ram Singh Meena and Sh. Rajesh Kabra) were in contradiction to each other. It is submitted that in such a scenario,

it was imperative on the part of Id. AO to afford opportunity to the assessee of cross examination so as to verify the accuracy of facts narrated by both the parties in their respective statements.

Without prejudice to above and on merits, following submission is made:

To begin with, kind attention of your goodself is invited to bank statements of Sh. Ram Singh Meena (APB 96-111) of bank account no.5111215909 maintained with Kotak Mahindra Bank. From perusal of the bank statements, it is evident that not a single transfer is made by assessee. Details of credits made in this bank account is enclosed as Annexure 1 to submission.

In view of above, it is submitted that so far as assessee is concerned he has not made any advance to Sh. Ram Singh Meena, nor Id.AO has been able to bring any evidence on record, which proves that assessee has given any money to Ram Singh Meena. Also, Id. CIT(A) has confirmed the addition solely relying upon information collected and statements of Sh. Ram Singh Meena recorded behind the back of assessee recorded by another officer under different proceedings carried out under different Act i.e. under PBPT Act for which detailed submission has been made above. It is therefore submitted that addition made in the hands of assessee is absolutely arbitrary and unjust.

Going further, assessee is alleged to be beneficial owner of properties purchased by Sh. Ram Singh Meena and has thus made addition for the same by treating investments so made as undisclosed income of assessee, detail of which is as under:

A.Y.	Unexplained Investment in Benami Property
2013-14	16,09,07,018
2014-15	1,14,87,131
2016-17	36,04,210
Total	17,59,98,359

In this regard, at the outset, it is submitted that, while making addition on account of deposits in bank account, Id.AO added all the credit entries in the bank statements, including the entries of cheques dishonored/payment stopped by drawer. During the course of appellate proceedings, it was submitted by assessee that such entries are not deposit entries and rather are cancellation of

preceding debit entry. Detail of addition made by Id.AO vis-à-vis Quantum of such entries of cheques dishonoured/ payment stopped by drawer for the A.Y. 2013-14, 2014-15 and A.Y. 2016017 is as under:

F.Y.	Deposits as per AO	Deposits as per Bank book	Cheques dishonoured / stopped by drawer	Remarks
2012-13	7,94,79,167/-	5,99,17,500/-	1,90,75,000/-	There remains difference of Rs. 4,86,667/-, which seems to be due to one entry erroneously considered twice by Id.AO.
2013-14	6,40,70,011/-	6,26,16,011/-	14,60,000/-	There remains difference of Rs. 6,000/-, reason for which is not clear.
2016-17	1,49,00,000/-	99,00,000/-	50,00,000/-	Diff of Rs. 50,00,000 is due to cheques dishonoured and stopped

In view of above, it was requested that addition to the tune of Rs.1,95,61,667/- in A.Y. 2013-14, Rs.14,60,000/- made in A.Y. 2014-15 and Rs. 50,00,000/- made in A.Y. 2016-17 ought to have been deleted out-rightly. Though, Id. CIT(A) was fully satisfied with the contention of assessee as has been noted in appellate order at page 64 (relevant extracts reproduced below):

*“(g) Further regarding the contentions raised by the appellant briefly referred above in (i) above as “Addition w.r.t. entries of cheques dishonoured/payment stopped by drawer”, it is seen that it is not discussed in the assessment order. Accordingly, in principle the contention of the appellant is allowed that where the funds/credits are not received the same should not be taxed and is further to be allowed by the Ld.AO after due verification.”*

From perusal of above, it is evident that even though Id. CIT(A) agreed with the contention of assessee, directions have been issued to AO to allow the same after verification.

Your honours would appreciate that Id. CIT(A) has exceeded his jurisdiction by directing the AO to delete the addition after due verification, when all the documents were already available before Id. CIT(A). Moreover, it is a matter of fact that power of Commissioner of Income Tax (Appeals) to restore the matter to

the file of AO was withdrawn by Finance Act 2001 as a measure to reduce litigation.

Relevant extracts of memorandum explaining the provisions of finance act 2001 are reproduced hereunder for the sake of convenience:

*“MEASURES TO REDUCE LITIGATION*

*Powers of the Commissioner (Appeals) not to include powers to set aside the assessment*

*Under the existing provision contained in sub-section (1) of section 251 of the Income-tax Act, in an appeal filed before a Commissioner (Appeals) against an order of assessment, the Commissioner (Appeals) may confirm, reduce, enhance or annul the assessment, or he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment in accordance with the directions given by him, after making such further enquiry as may be necessary.*

*With a view to help bringing about an early finalisation to the assessment and to avoid prolonging the process of litigation, it is proposed to amend section 251 so as to provide that, in an appeal filed before the Commissioner (Appeals) against an order of assessment, the Commissioner (Appeals) may not set aside the assessment or refer the case back to the Assessing Officer for making fresh assessment.”*

*The proposed amendment will take effect from 1st June, 2001. It will be applicable to appellate orders passed by Commissioner*

*(Appeals) on or after 1.6.2001.*

*[Clause 77]*

In this regard, reliance is placed on:

[2023] 147 taxmann.com 50 (Mumbai - Trib.)

Sapphire Land Development (P.) Ltd. v. Deputy Commissioner of Income-tax

Section 74, read with section 251, of the Income-tax Act, 1961 - Losses under head capital gains (Powers of Commissioner (Appeals)) - Assessment year 2010-11 - Whether Commissioner (Appeals) under section 251 can confirm, reduce, enhance or annul assessment but he cannot remand matter back to file of Assessing Officer, for reverifying acclaim, however, he may ask for a report from Assessing Officer to act - Held, yes - Whether where Commissioner (Appeals) directed Assessing Officer to reverify assessee's claim of long-term

capital loss, same would tantamount to remand of matter back to file of Assessing Officer which was not permissible in eyes of law and not sustainable - Held, yes [Para14] [In favour of assessee]

Hon'ble Jaipur bench of ITAT in the case of Devidas Sajnani vs DCIT (Int. Taxation) ITA No.10/JP/2022, wherein it has been observed by Id.CIT(A) that:

*“14. Ground no. 3 raised by the assessee against the action of the Id. CIT(A) in confirming the addition of Rs. 10,93,000/- made by the Id. AO being the amount of sales consideration on sale of shares of M/s. Ispat Industries. On this issue bench noted that the Id. CIT(A) vide para 14.1 categorically accepted the fact that sell of shares of ISPAT Industries made on 05.11.2007 is duly reflected in the purchase and sale of shares and resultant capital gain has already been reflected in the Short Term Capital Gain computed and confirmed in the same appeal. Even though he has directed the Id. AO to verify this aspect again and then directed to delete. He on the same para on the one hand accepted that profit is already taxed and therefore, the sales proceed cannot be added and on the other hand direct the Id. AO to verify and confirm that this aspect. The Id. CIT(A) on being satisfied should have directed the Id. AO to delete the said addition instead the same was directed to verify and then to decide is not correct approach and the provision of section 251 of the Act does not empower the Id. CIT(A) to set aside the issue on the file of the Id. AO again. Based on the clear finding of the Id. CIT(A) that the assessee has sold the shares and profit has already been taxed there is no need to set aside this issue to the file of the Id. AO. Based on these aspect of the case we direct the Id. AO to delete the said amount and in the result the ground no. 3 raised by the assessee is allowed.”*

In view of above, it is submitted that in the present case also, Id.CIT(A) was fully satisfied with the submission made and evidences adduced by the assessee w.r.t. entries of cheque dishonoring/ payment stopped by drawer being considered as deposits, thus there was no need to issue directions to Id.AO again to verify the same. Also, even Finance Act 2024 has very limitedly restored power of Id.CIT(A) to restore the case to the file of AO but again that is specifically in the cases where assessment order was passed ex parte u/s 144, which is not the case here.

It is therefore requested that additions made by Id.AO for A.Y. 2013-14, 2014-15 and 2016-17, by considering the cheque dishonoured/ entries where payment stopped by drawer as deposits as stated above, deserves to be deleted in toto.

Similarly, it was contended before Id. CIT(A) that Id.AO, on one hand has added deposits in bank account and on the other hand, made addition on account of

investment in properties which was made out of such bank account only, which has resulted in taxation of both source as well as application, which tantamounts to double taxation. In this regard, also Id. CIT(A) though has clearly noted that *“Once the deposits in the bank account are taxed under section 69 of the Income Tax Act the same becomes explained after such taxation as having been purchased out of explained funds and cannot be treated as unexplained. Thus it is a case of double taxation. Thus in simple terms either the bank balance or bank credit are to be taxed or alternatively the final asset acquired out of such bank balance- this is however subject to the specific facts of the case. However, at the same time, I do not agree with the argument of the Id.AR that on this ground both of the additions may be deleted. Addition in respect of lesser of the two amounts deserves to be deleted while sustaining the addition in respect of higher of the two amounts of addition.”*

However, going further, Id.CIT(A) has stated that since assessee has not placed registered sale deeds of properties on record which is the subject matter of the issue in the present appeal and it cannot be verified that the payment from the bank account (added in assessment order) has only been used for making payments for property. Thus, eventually Id.CIT(A) has noted that *“Thus the relief on account of removal of effect of double addition is allowed subject to – the appellant shall furnish the complete details in the working of removal of double taxation in view of the above discussion before Id.AO for his verification within two weeks from date if this order and relief shall be allowed by Id.AO in view of above findings.*

In this regard, it is submitted that directions issued by Id.CIT(A) that assessee should get verified entries in bank statements vis a vis registered sale deeds before Id.AO are absolutely casual and arbitrary as such documents do not pertain to assessee and rather pertain to a third party, i.e. Sh. Ram Singh and it is beyond the control of assessee to fulfill such directions. Also, as stated above, CIT(A) is not entitled to set aside the case for verification and is rather empowered to examine the documents and call for remand report from AO, if any factual verification is required. On this ground also, directions issued by Id.CIT(A) are not in accordance with law.

Accordingly, directions given by Id.CIT(A) to Id.AO to delete the additions after verification of the same is not in accordance with law and it is therefore prayed that additions made on account of investment of property, to the extent of payment made out of deposits for which addition has already been made, deserves to be deleted in toto.

Your honours would appreciate that both the issues on which directions have been issued by Id. CIT(A) have resulted into both source as well as application separately, resulting into double taxation of same income.

Hon'ble Supreme Court in the case of Mahaveer Kumar Jain vs CIT in Civil Appeal No.4166 of 2006 (case law compilation pages 1-14) has held as under:

It is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice. A taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted.

With regards to observations of Id.CIT(A) at page 59 of the appellate order, that *"Shri Ram Singh Meena is not having any creditworthiness which is undisputable and credits shown in the bank account from various entities. It is logical and as per human probabilities that companies like Agarwal Namkeen and Sweets Pvt. Ltd. etc. which are shown to have given loans to Shri Ram Singh Meena in A Y 2015-16, A Y 2016-17, is not part of the appellant's group would have agreed or would have given money in the bank account in the name of the Shri Ram Singh Meena only on the basis of some security and assurance and that would have come from the appellant."* It is submitted that no document/evidence has been referred by Id.CIT(A) for making such remarks. It is very clear that Id.CIT(A) was bent upon in confirming addition and therefore, without even proving any connection of assessee with such third party, has simply presumed that such third party would have lent money to Sh. Ram Sigh Meena on security by appellant. Your honours would appreciate that if there was any doubt regarding such party being connected with assessee, direct enquiries could have been made from them, however instead of doing that, additions have been sustained by vaguely presuming something which does not exist.

With regards to observations of Id.CIT(A) that Sh. Ram Singh Meena in his statements has stated that the appellant is the owner of the properties which are in his name, it is submitted that statements of Sh. Ram Singh has shown his unawareness about the transactions, however has nowhere stated that assessee is owner of such properties, thus such statements have been misinterpreted. Moreover, such allegation of Id.CIT(A) that assessee is owner of assets is not backed by any single evidence. While doing so. Id. CIT(A) has even brushed aside the fact that Sh. Ram Singh has been regularly filing Returns of Income, copies of which are at (APB 135-150) and in ITR filed for A.Y 2018-19 on

27.10.2018 (i.e. prior to search) he has in fact declared transaction of sale of one of the properties as mentioned above, which proves his ownership beyond doubt. It is pertinent to note here that Id,CIT(A) has completely disregarded such vital evidences and has solely proceeded on the basis of reference received by Id.AO under PBPT Act.

It is thus clear that both additions on account of deposits in bank account of Sh. Ram Singh Meena and investments made by him in immovable properties have been made and confirmed on the basis of statements of Sh. Ram Singh Meena as recorded u/s 131 by officials under PBPT Act, on the basis of which Sh. Ram Singh Meena was held as Benamidar of assessee, though neither copy of such statements nor opportunity of his cross examination was provided to assessee, despite of specific request made by assessee. It is submitted that apart from such order passed under PBPT Act and statements of Sh. Ram Singh Meena, no other evidence was brought on record by Id.AO, which proves that assessee is beneficial owner.

In this regard, it was gathered that some of the properties purchased by Sh. Ram Singh Meena, in respect of which assessee was held as beneficial owner, were sold by Sh. Ram Singh Meena to third parties whereas some of them were held by Sh. Ram Singh Meena as Stock. With regards to this submission, Id. CIT(A) observed that any sale of property after the search and seizure action is mere cover up exercise by the appellant through Sh. Ram Singh Meena. In this regard, it is submitted that assessee with all efforts had gathered certain documents of properties sold by Sh. Ram Singh Meena, which were furnished before Id.AO as well as Id.CIT(A). From perusal of these documents, it is evident that properties were sold much before the date of search and thus observations of Id.CIT(A) are contrary to the facts on record.

It is further submitted that since properties were held by Sh. Ram Singh Meena were considered as Benami, the same were ordered to be attached under PBPT Act, against which, appeal was filed by him before Hon'ble High Court of Rajasthan. Appeals so filed, stood decided by Hon'ble High Court and as a result of which, properties owned by Sh. Ram Singh Meena, which were confiscated under PBPT Act, by holding the same as Benami, have been released either by High Court (APB 118-134) or by Investigation Officer himself vide order dated 7.2.2024 (APB 151-160) by relying upon order passed by Hon'ble High Court, as per the details collected from him. Details of such properties have been tabulated herein below for the sake of convenience:

A.Y. 2013-14

Sl. No.	Address of property	Amount of Consideration	Property release order	APB
1.	1/10 part of Khasra nos. 847/2, 880/2459, 884, 885/1, 886/1, 889/1 (having total area of 0.22 hectare) AND 2/3 part of Khasra nos. 843, 844 (having total area of 0.30 hectare) AND 3/8 part of Khasra nos. 833/2361, 848, 849, 846 (having total area of 0.48 hectare) AND 1/2 part of Khasra no. 833 (having total area of 1.20 hectare) AND 62/80 Part of Khasra no. 749 (having total area of 0.40 hectare) Village- Kukas, Tehsil- Amer, District-Jaipur.	Rs.2,57,91,860/-	Order passed by DCIT (Benami Prohibitions) dated 07.02.2024 letter No. DCIT / BPU / JPR / 2023-24 / 222	151-160
2.	3067/23100 part of Khasra No. 811 (having total area of 2.31 hectare) of Village - Kukas, Tehsil - Amer, Jaipur	Rs.69,07,030/-	Order passed by DCIT (Benami Prohibitions) dated 07.02.2024 letter no. DCIT/BPU/JPR/2023-24/222	151-160
3.	Khasra No. 850, 851 (having total area of 0.53 hectare) AND Khasra no. 669/2349 (having total area of 0.02 hectare) AND Khasra nos. 748/1,748, 755 (having total area of 0.71 hectare) Village - Kukas, Tehsil -Amer, Jaipur	Rs.2,48,41,667/-	Order passed by DCIT (Benami Prohibitions) dated 07.02.2024 letter no. DCIT/BPU/JPR/2023-24/222	151-160
4.	Khasra Nos. 1563 & 1564 (having total area of 0.52 hectare) of Village-Khorameena, Tehsil -Amer, Jaipur	Rs. 84,89,860/-	Civil Writ Petition No.9400/2023	118-134
5.	5/16 part of Khasra no. 832 (having total area of 0.05 hectare) AND 9/32 part of Khasra nos. 833/2361, 848, 849, 846 (having total area of 0.48 hectare), Village Kukas, Tehsil- Amer, Jaipur	Rs. 28,25,312/-	Civil Writ Petition No. 1720/2023	118-134
6.	1/8 part of Khasra No. 832 (having total area of 0.05 hectare) of village- Kukas, Amer, Jaipur	Rs. 1,12,357/-	Order passed by DCIT (Benami Prohibitions) dated 07.02.24 letter no. DCIT/BPU/JPR/2023-24/222	151-160
7.	1/2 part of Khasra Nos. 642- 650, 658, 670- 672, 674-679, 684, 687, 690- 694, 1164-1166, 1170-1171, 673, 689 (having total area of 5.45 hectare) of Village Kukas, Amer	Rs.3,10,51,650/-	Civil Writ Petition No. 19401/2022	118-134

8.	1/3 part of Khasra nos. 653, 654, 655, 656, 657, 658/2340, 658/2341, 662, 664, 665, 652 (having total area of 1.68 hectare) AND 1/5 part of Khasra nos. 847/3, 853, 885/2, 886/2 (having total area of 4.56 hectare) AND 1/9 part of Khasra nos. 869, 871, 872, 873, 874, 875, 876, 878, 879, 882, 1032, 1033, 1034, 1067, 1068, 1069, 1070, 1071, 1072, 1091, 1094, 1095, 1096, 1097, 867, 868 (having total area of 4.40 hectare) AND 3474/8700 part of Khasra no. 840 (having total area of 0.87 hectare)	Rs.4,24,06,753/-	Civil Writ Petition No.1721/2023	118-134
9.	1/2 part of Khasra nos. 1762, 1767, 1768/2264, 1806, 1809, 1810, 1814 (having total area of 0.62 AND 1/2 part of Khasra no. 1763 (having total area of 0.04 hectare) 1/2 part of Khasra Nos. 1791, 1792 (having total area of 0.19 hectare) AND 1/2 part of Khasra nos. 1789, 1790, 1793, 1794, 1795, 1796/2266, 1797 (having total area of 0.54 hectare) of Village Khorameena, Tehsil- Amer, District- Jaipur	Rs.1,11,28,658/-	Order passed by DCIT (Benami Prohibitions) dated 07.02.2024 letter no.DCIT/BPU/JPR/2023-24/222	151-160
10.	1/2 part of Khasra Nos. 1925-1929 & 1964 (having total area of 1.09 hectare) of village- Khorameena, Tehsil- Amer, Distt. - Jaipur	Rs. 73,51,871/-	Order passed by DCIT (Benami Prohibitions) dated 07.02.2024 letter no.DCIT/BPU/JPR/2023-24/222	151-160
	Total	Rs.16,09,07,018/-		

A.Y.2014-15

Sl. No.	Address of property	Amount of Consideration	Ref. Property release order	APB
1.	1/12th part of Khasra No. 832 (having total area of 0.05 hectare) of village- Kukas, Amer, Jaipur	Rs. 1,30,838/-	Civil Writ Petition No. 9399/2023	118-134
2.	1/4 part of Khasra Nos. 833/2361, 846, 848, 849 having total area of 0.48 hectare) AND 1/12 part of Khasra no. 832 (having total area of 0.05 hectare) village- Kukas, Amer,	Rs. 25,00,025/-	Civil Writ Petition No. 1727/2023	118-134

	Jaipur			
3.	Khasra No. 1917 (having total area of 0.39 hectare) of village-Khorameena, Amer, Jaipur	Rs. 63,49,266/-	Order passed by DCIT (Benami Prohibitions) dated 07.02.2024 letter no.DCIT/BPU/JPR/2023-24/222	151-160
4.	233/23100 part of 20033/23100 part of Khasra no. 811 (having total area of 2.31 hectare) Village – Kukas, Tehsil – Amer, Jaipur	Rs. 25,07,002/-	Civil Writ Petition No. 19402/2022	118-134
	Total	1,14,87,131/-		

A.Y.2016-17

Sl. No.	Address of property	Amount of Consideration	Property release order	APB
1.	1/21 part of 5/6 part of Khasra Nos. 688, 695, 696, 698, 699, 702, 703, 704, 707-713, 722- 727, 729, 731/2350, 732-736, 737/2352 & 737/2353 (having total area of 2.30 hectare) Village- Kukas, Tehsil, Amer, Jaipur	Rs.36,04,210/-	Civil Writ Petition No.1725/2023	122-123

At this juncture, reliance is placed on decision of:

Hon'ble Rajasthan High Court in the case of Niharika Jain v, Union of India reported in 107 taxmann.com 272 which has a direct binding on the assessee whereby hon'ble Court after discussing various judicial pronouncements on the issue regarding applicability of Benami Transactions (Prohibition) Amendment Act, 2016 whether retrospective or prospective has held that the Benami Amendment Act, 2016, amending the Principal Benami Act, 1988, enacted w.e.f. 1st November, 2016, i.e. the date determined by the Central Government in its wisdom for its enforcement; cannot have retrospective effect. Headnote of said decision is reproduced as under:

*Section 1 of the Benami Transactions (Prohibition) Amendment Act, 2016, read with section 1 of the Prohibition of Benami Property Transactions Act, 1988 - Short title, extent and commencement of - Whether Benami*

Transactions (Prohibition) Amendment Act, 2016, enacted with effect from 1-11-2016, amending provisions of Benami Property Transactions Act, 1988 (enacted with effect from 1-11-1986), cannot have retrospective effect - Held, yes [Para 93]

[2020] 113 taxmann.com 377 (SC) Fair Communication & Consultants v. Surendra Kardile

Section 3, read with section 4, of the Prohibition of Benami Property Transactions Act, 1988-Prohibition of benami transactions- Whether benami transactions are forbidden by reason of section 3; no action lies, nor can any defence in a suit be taken, based on any benami transaction in terms of section 4 and onus of establishing that a transaction is benami is upon one who asserts it - Held, yes [Para 17]

[2019] 105 taxmann.com 187 (PBPTA – AT) Akashdeep v. Manpreet Estates LLP, Mum

Section 2(9), read with section 24, of the Prohibition of Benami Property Transactions Act, 1988 - Benami Transaction - R-1, LLP purchased ten residential flats in one single building -Said properties were purchased by R1 from ten persons consisting of 5 individuals and 5 companies - Appellant alleged that these 5 individuals and directors of these 5 companies were dummy owner of properties and dummy directors of these companies - Individuals and directors of these companies were employees of R-2 company - It was also alleged that transaction of purchase of properties by R-1 from said ten parties was funded by company 'DHFL' which was related to R-2 by means of common promoters and directors - Also, funds received by ten parties as consideration for sale of properties were immediately transferred directly or through intermediates to different concerns which were controlled and managed either directly by R-2 or through its related entities - On basis of information and material available, Initiating Officer (IO) formed a reason to believe that R-1 was benamidar as actual benefits from property accrued or would accrue to R-2 only and accordingly issued notice under section 24(1) for attachment of said property - It was noted that R-1 had proved that flats were purchased by it through genuine source and for re-development - Further, onus of proving a benami transaction rests entirely on shoulders of I.O. who is making charge and such burden has to be strictly discharged based on legal evidence - However, in present case, IO had failed to discharge such burden and he had merely based on his personal perception with uncorroborated statements had passed order without even a single iota of evidence to discharge such a burden of proof - Whether thus, it could not be accepted that R-2 was beneficial owner, and, in absence of

beneficial owner, allegation of transaction being benami under section 2(9)(A) could not be sustained and thus, were rightly rejected by Adjudicating Authority - Held, yes [Paras 27 and 30]

[2017] 88 taxmann.com 808 (Indore - Trib.) Ashok Nanda v. Deputy Commissioner of Income Tax-1(2), Bhopal

Section 69 of the Income-tax Act, 1961 - Unexplained investment (Burden of proof) -Assessment years 2004-05 to 2008-09 - Merely because a document is recovered from a person, it does not automatically lead to inference that it belongs to him [In favour of assessee]

Section 69 of the Income-tax Act, 1961 - Unexplained investment - (Burden of proof) -Assessment years 2004-05 to 2008-09 - Where certain documents relating to some concerns were found during search at assessee's premises and those concerns, were having drug licence, sales tax number, CST number from various Government agencies, and seized document did not prove that assessee had made investment or was managing or having control over those concerns or income earned through those concerns was passed over to assessee, Assessing Officer was not justified in treating said concerns as benami concerns of assessee [In favour of assessee]

In view of above, it is evident that once the order passed under PBPT Act, on the basis of which, Id.AO has held Sh. Ram Singh Meena as benamidar of assessee itself has been set aside and properties confiscated by holding the same as benami properties of assessee have been released, addition made in the hand of assessee by treating the same as acquired by the assessee out of undisclosed income of assessee has no legs to stand and deserves to be deleted in toto.

On merits, it is submitted that neither there is evidence to prove that assessee has advanced any money to Sh. Ram Singh to make investment in properties nor any of the properties have been transferred in the name of assessee. Thus, holding assessee as beneficial owner of properties purchased by Sh. Ram Singh Meena has no cogent basis.

It is submitted:

1. That there is no doubt with regards to identity of Sh. Ram Singh Meena S/o Shri Ram Karan Meena as he physically appeared before Income Tax Department and deposed his statements in front of the government officials as has been referred by Id.AO himself,

2. That, the statements of Ram Singh Meena were recorded by another officer in different proceedings under different Act i.e. PBPT Act that too behind the back of the assessee and Sh. Ram Singh Meena through an affidavit has retracted from his statements. Therefore, assessee requested before Id.AO to provide opportunity of cross examination, however no such opportunity was afforded to assessee.
3. That all the transactions executed by Ram Singh Meena in his bank account maintained with Kotak Mahindra Bank, C-Scheme Branch, Jaipur are duly recorded in his books of accounts maintained in the regular course of business and explanation of each and every entry is available with Ram Singh Meena which has never been enquired by the department.
4. That Ram Singh Meena is regularly filing the return of income for last so many years and has been assessed by the department either in 143(1) or otherwise. The returns are filed and it is beyond the control of assessee to monitor as to how much income has been offered by him and from which source he is having income.
5. That Ram Singh Meena is personally known to the assessee Shri O.P. Gupta for the reason that the father of Ram Singh Meena was working for Shri O.P. Gupta for last so many years and which is not such an event which needs to be correlated with the concept of benamidar.
6. That the orders so passed by the benami authority has been set aside by Hon'ble Rajasthan High Court in view of decision of Hon'ble Supreme Court in the case of M/s Ganpati Dealcom (P) Ltd.
7. That the immovable properties purchased / sold by Ram Singh Meena are in his individual capacity and he only could explain the purpose and source of purchase of such property and selling thereof. However, no effort was made by Id.AO to make any direct enquiry from him and in absence of which, assessee in no way can be considered as the beneficial owner of such properties.
8. That the amount so advanced to Ram Singh Meena is not given by Shri O.P. Gupta and hence he cannot be considered as the beneficial owner. Moreover no amount, of whatsoever nature or quantum has been given by Shri O.P. Gupta in cash nor has the department brought on record any evidence of giving any advance by assessee in cash to Sh. Ram Singh Meena. Hence, considering Shri O.P. Gupta as beneficial owner of Ram Singh Meena (benamidar) is something beyond the boundaries of evidence and is just a presumption, not based on evidence on record. Further no amount in any manner

whether cheque or cash was received by the assessee from Shri Ram Singh Meena. It is thus incorrect to say that the assessee is the beneficial owner of Shri Ram Singh Meena.

9. That, any amount given by any of the company/ firm, which are related to any family member of Shri O.P. Gupta in any manner is not which is not recorded in the books of accounts and rather every penny of the advance so given is through banking channel and is duly recorded in the respective books of accounts and backed by necessary evidence such as confirmation, bank statement, etc. and are duly acknowledged by Ram Singh Meena. Also, no amount of whatsoever nature or quantum has been given in cash by assessee to Sh. Ram Singh Meena nor the department has brought on record any evidence of giving any advance in cash by assessee.

10. That all the immovable properties purchased or sold by Sh. Ram Singh Meena are duly backed by necessary registered sale deeds which are on record and duly registered with the Sub Registrar office and contained each and every precise details with regard to the buyer and seller of the property. Therefore, considering Shri O.P. Gupta as the beneficial owner of Shri Ram Singh Meena is against the principle of equity and justice and contrary to the evidence on record.

In view of the aforesaid facts, it is submitted that Shri O.P. Gupta, i.e. assessee is not the beneficial owner of Ram Singh Meena nor Shri Ram Singh Meena is benamidar of the assessee. Therefore, the sum credited to the bank account of Shri Ram Singh Meena cannot be held as the deposited by assessee and no addition can be made in the hands of assessee under Income Tax Act, more particularly when as submitted above, all the credits in his bank account are through banking channels that too not from assessee and are mainly receipts as loan. Moreover, assessee has not derived any benefit from these properties purchased by Sh. Ram Singh Meena in any manner whatsoever. It is further submitted that assessee has duly discharged his onus by furnishing the documents showing that neither consideration for making investment by Ram Singh was paid by assessee nor was he enjoying the possession of property. Therefore burden to prove it otherwise now shifts on the department more particularly when statements of Sh. Ram Singh Meena, which were heavily relied upon by the department, stood retracted by him.

Hon'ble Supreme Court in P. Leelavathi vs. V. Shankarnarayana Rao dt : (In Civil Appeal Number 1099 of 2008 Dt 9th April 2019 (Compilation of case laws pages 93-101) has laid down the test as follows :

§ Mere financial assistance by a person to another to buy Property by the latter would not Ipso-Facto hold it a Benami Transaction

§ The Burden to Prove a Transaction as benami is upon the person who asserts it so

§ While considering whether a particular transaction is Benami in nature the following six circumstances can be taken as a guide:

- i) The source from which the purchase money came.
- ii) The nature and the possession of the properties after purchase
- § Motive, if any for giving the transaction a benami colour

§ The position of the parties and the relationship if any between the claimant and the alleged Benamidar

§. The custody of the title deeds after the sale and

§. The conduct of the parties concerned in dealing with the property after the sale.

In view of above, it is submitted that additions made by Id.AO in the hands of assessee, of the deposits in the bank account of Sh. Ram Singh as well as investment made by Sh. Ram Singh Meena in purchase of properties in his own name deserves to be deleted as:

- (i) No advance whatsoever has been made by assessee to Sh. Ram Singh;
- (ii) Major deposits in the bank account of Sh. Ram Singh Meena were made from M/s Om Shree Ram Infrareal (P) Ltd. and Id.AO himself has completed assessments of said company and was thus in possession of complete details of advances so made by the company. However instead of making effort to verify the actual source, he chose to proceed on the basis of information received under PBPT Act, according to which deposits in bank account of Sh. Ram Singh were presumably made by assessee or his group concerns;
- (iii) None of the properties purchased by Sh. Ram Singh has been transferred in the name of assessee even till date;
- (iv) Additions were made solely on the basis of statements of Sh. Ram Singh Meena as recorded under PBPT Act and without conducting any independent enquiry during assessment proceedings;
- (v) Despite of specific request, assessee was not afforded with opportunity to cross examine Sh. Ram Singh;
- (vi) Sh. Ram Singh Meena retracted his statements as recorded under PBPT Act, which remained uncontroverted. Also, Id. CIT(A) at one place has relied

upon such statements and while denying opportunity of cross examination, has observed that witness turned hostile (which implies that cognizance is given to retraction) thus there is no need to grant such opportunity;

(vii) No query whatsoever was raised from assessee during search proceedings in this regard,

(viii) No enquiry whatsoever was made by Sh. Ram Singh Meena during assessment or first appeal stage to cross verify the facts narrated in reference received under PBPT Act ;

(ix) There is no discussion at all as to how provisions of section 69 are applicable to assessee ,when it is proved beyond doubt that no payment was made by assessee nor any property was found in the name of assessee;

(x) No evidence has been brought on record by Id.AO so as to prove that Title deeds of property were found in possession of assessee or assessee in any manner has taken any benefit from these properties while these were held by Sh. Ram Singh Meena or assessee has been benefitted on or after sale of such property.

Without prejudice to the explanation and submission made herein above against the merits of addition so made by Id. AO and confirmed by Id. CIT(A), it is appropriate to submit before your honour about the legality of the additions so made coupled with the facts of the case.

It is submitted that Income Tax Act, 1961 is an independent act self contained in itself and quite comprehensive. On the other hand Prohibition of Benami Property Transactions Act, 1988 [herein after referred as 'PBPT Act' in short] is also an independent act and self contained in itself. Both the acts operate in their respective domain with their specific objectives as mentioned therein.

It is further submitted that there is no specific provision in Income Tax Act, 1961 that once someone is treated as benamidar of some assessee in the proceedings u/s PBPT Act, then income of benamidar will be clubbed in the hands of assessee or income of the benamidar will be treated to be of assessee.

Similarly there is no specific provision in the Income Tax Act, 1961 that investment made in the bank account by the alleged benamidar is to be deemed to be considered as investment made by the assessee.

Nor there is any non-obstante clause in PBPT Act, overriding the provisions of Income Tax Act, 1961.

In absence of any specific provision in Income Tax Act, 1961 neither the income of the benamidar nor the deposit made by him in his bank account can be added in the hands of assessee. Such addition made is unjustified and not within the

four corners of law, more so when the assessee has been consistently protesting that he is not the benamidar of one Shri Ram Singh Meena.

As far as income tax proceedings are concerned, any deposit made in the bank account of Shri Ram Singh Meena has to be explained by Shri Ram Singh Meena only. If any income tax proceedings are taken up against him regarding assessment of income of particular assessment year, the AO can very well ask from him to explain the source of deposit in his bank account and onus lies on him (Shri Ram Singh Meena) to explain the source of deposit in his bank account.

It is submitted that Id. AO of assessee Shri O.P. Gupta is not well within his power to ask the assessee Shri O.P. Gupta to explain the source of deposit found in the bank account of Shri Ram Singh, when undisputedly no any deposit was noticed in the bank account of Shri Ram Singh in the name of Shri O.P. Gupta or by Shri O.P. Gupta. Be it as it may. The moot fact remains that assessee Shri O.P. Gupta is not expected and has in fact no authority to explain the source of deposit in the bank account of Shri Ram Singh. Legally no onus lies on assessee Shri O.P. Gupta to explain the deposit in the bank account of Shri Ram Singh Meena, as far as income tax proceedings in the case of Shri O.P. Gupta are concerned. Accordingly entire enquiries and show cause etc. issued to assessee Shri O.P. Gupta in his income tax proceedings in relation to deposit found in the bank account of Shri Ram Singh is totally unjustified and beyond the legal canons.

These enquiries and show cause etc. would have some leg to stand in the case of income tax proceedings of Shri O.P. Gupta, if and when Shri O.P. Gupta had accepted that Shri Ram Singh is actually his benamidar. But the fact is that Shri O.P. Gupta, the assessee had never accepted this allegation made by the officer of PBPT Act.

In view of the aforesaid legal position coupled with the facts as furnished in detail in the written submission as above, the Id. AO was not at all justified in asking the assessee Shri O.P. Gupta to explain the source of deposit found in the bank account of Shri Ram Singh Meena and also to explain the source of investment in the immovable property made by Shri Ram Singh Meena in his own name, since Shri O.P. Gupta has never accepted this allegation. Consequently the Id. AO was totally unjustified in making the addition of deposits found in the bank account of third person namely Shri Ram Singh Meena u/s 69A of Income Tax Act, 1961 in the hands of assessee Shri O.P. Gupta and similarly AO was totally unjustified in making addition of investment in property made by Shri Ram Singh Meena in his own name. Therefore it is submitted that addition so made by the Id.

AO and so confirmed by Id. CIT(A) in the assessment order so passed under the Income Tax Act, 1961, is totally unjustified and deserves to be deleted in view of the aforesaid legal position coupled with the facts mentioned above.

Under the income tax act, the deposits found in the bank account of particular person is to be explained by that person only regarding the source of such deposit. In the instant case of deposit found in the bank account of Shri Ram Singh Meena and investment in property by him in his own name, it was for the AO / department to have taken up the income tax proceedings against Shri Ram Singh Meena and then would have enquired from him regarding the source of bank deposit and also investment in property. Then the onus was on Shri Ram Singh Meena to explain the source of these deposits and if the source of deposits as well as investment in property was not found explained in his hand, then appropriate addition could have been made in his case.

It may the plea of department that Shri Ram Singh Meena has been held to be benamidar of assessee Shri O.P. Gupta, then it is for Shri O.P. Gupta, the assessee, to explain the source. As already submitted before your honour firstly the proceedings under PBPT Act are independent from the proceedings under Income Tax Act, 1961. Secondly, the inference drawn in PBPT Act of the assessee Shri O.P. Gupta being the beneficial owner is in itself under challenge and the Hon'ble High Court has released the property in favour of the Land Owner which were flagged by the Adjudicating Authority and this finding remained undisputed. Moreover, Shri O.P. Gupta has not at all accepted or admitted this allegation. In such a scenario, the enquiries about source of bank deposit and investment in property in the name of Shri Ram Singh, should have been made by taking appropriate income tax proceedings against him and making addition in his case. Then considering the finding of PBPT Act officer which the Id. AO of income tax wanted to import though the finding are totally disputed and has not at all has been accepted by Shri O.P. Gupta, for the worst to the assessee Shri O.P. Gupta, the Id. AO of Shri O.P. Gupta could have made protective addition that too on the finding of the AO of Shri Ram Singh about substantive addition in his case (that too when the source of deposits are really found unexplained) and finding of protective addition in the case of Shri O.P. Gupta.

As the department has taken no such action against Shri Ram Singh Meena and there is no finding in the income tax proceedings in the case of Shri Ram Singh Meena that deposit in the bank account and investment in property made by him are partly unexplained and substantively added in his case with the direction to add protectively in the case of Shri O.P. Gupta considering that there is finding

under the PBPT Act of Shri Ram Singh Meena being benamidar of assessee. Since under the income tax act no such action has been taken, the addition of bank deposit and investment in property by Shri Ram Singh Meena so made in the hands of Shri O.P. Gupta is totally unjustified and deserves to be deleted.

Without prejudice to above, it is submitted that considering the huge addition made by the Id. AO in the case of assessee against all canons of law, the assessee collected whatever possible information from Shri Ram Singh and it was noticed that the deposits in the bank account of Shri Ram Singh are mainly through banking channels, except proportionately small amount in cash. These details have been furnished earlier in the written submission and were already furnished before the Id. CIT(A). Considering these details, it is seen that none of the deposit are unexplained. The deposits are mainly from Om Shri Ram Infra Real P. Ltd. and all these deposits from this company are through banking channels. The company in his balance sheet has shown the advances given to Shri Ram Singh. The case of the aforesaid company is assessed by the same assessing officer and he has not made any adverse comment while passing the income tax assessment order in the case of aforesaid company. When there is no adverse comment about these advances made by aforesaid company by the same AO, it is not justified for the AO to treat these advances in the hands of recipient Shri Ram Singh Meena as unexplained. Accordingly there is no question of treating these advances in the hands of third person i.e. assessee Shri O.P. Gupta as unexplained and making addition in his hand.

It is submitted that Id. CIT(A) has observed that Om Shri Ram Infra Real P. Ltd. is the group company of assessee Shri O.P. Gupta and accordingly these advances are given by or at the instance of Shri O.P. Gupta and these advances belong to Shri O.P. Gupta. For this purpose Id. CIT(A) has backed up by just mentioning 'lifting of corporate veil' concept. It is humbly submitted that the Id. AO has not given any adverse finding against the company, least about the so called 'lifting of corporate veil'. Moreover Id. CIT(A) has also not brought anything on record by which he wants to infer for using the concept of 'lifting of corporate veil' in the instant case. On the other hand it is noticed that Id. AO has not even whispered about anything which may lead to the application of concept of 'lifting of corporate veil'. Thus, it is submitted that the observation of Id. CIT(A) in this regard is totally misplaced and made without appreciating the facts correctly.

In view of the aforesaid legal position coupled with the facts as mentioned above, it is submitted that addition so made in the hands of assessee Shri O.P. Gupta in respect of bank deposit found in the bank account of Shri Ram Singh and

investment in property made by Shri Ram Singh in his own name is totally unjustified and deserves to be deleted.

Issue 2: Addition on account of Investment in partnership firm “M/s Om Realty”

Ground of Appeal No. 4 and 4.1 A.Y. 2015-16

In these grounds of appeal, assessee has challenged the action of Id.CIT(A) in confirming the addition of Rs.13,00,000/- made by Id.AO on account of investment by assessee in partnership firm “M/s Om Realty”.

In this regard, it is submitted that during the course of search, certain documents were found containing details of receipts and payments of M/s Om Realty. While completing assessment in the case of M/s Om Realty, (wherein assessee is acting as partner and has made investment as stated in above para), for A.Y. 2015-16, Id.AO alleged that expenses to the tune of Rs. 80,50,541/- have been made by Om Realty out of unexplained sources. Detailed submission was filed in the case of M/s Om Realty, duly explaining the source of such expenses, which included sum of Rs.48,00,000/- being received from Sh. O.P. Gupta (i.e. assessee) as his unexplained investment in the firm. Still Id.AO without considering the submission of assessee, made addition of entire Rs.80,40,541/-.

Your honours would appreciate that Investment of Rs.13,00,000/- by assessee (for which addition is made in the hands of assessee) has been utilized in incurring part of the expenses as stated above. Thus, such investment made by assessee in M/s Om Realty has suffered tax twice, once in the hands of assessee and secondly in the hands of M/s Om Realty. These facts were duly communicated before Id.CIT(A) during appellate proceedings, but Ld CIT(A) confirmed the addition made by Id.AO on the incorrect appreciation of facts.

In this regard, it is submitted that appellate proceedings in the case of M/s Om Realty are pending before Id.CIT(A). Even though assessee has made such investment out of disclosed sources, however and it is requested that in the event your honours proceed to confirm addition of Rs.13,00,000/- in the hands of assessee, directions may be issued to allow telescoping benefit of the same against addition made in the hands of M/s Om Realty.

Issue 3: Invocation of provisions of section 115BBE:

A.Y. 2013-14 and 2014-15, 2016-17, Ground of Appeal No. 6

A.Y. 2015-16 and 2019-20 Ground of Appeal No.5

A.Y. 2017-18 and 2018-19 Ground of Appeal No.4

In these grounds of appeal, assessee has challenged the invocation of provisions of section 115BBE in respect of additions made in Assessment order, which are consequential in nature and therefore no separate submission is being made in this regard.

Issue 4: Addition on account of Cash found from the possession of assessee during search

In these grounds of appeal, assessee has challenged the action of Id.CIT(A) in confirming the action of Id.AO in making addition of Rs.13,30,360/- on account of cash found from possession for assessee by holding the same as unexplained.

Facts pertaining to the grounds of appeal are that during the course of search at the residence of assessee, cash worth Rs.13,30,360/- was found in the case of assessee and his wife Smt. Snehlata Agrawal, details of which are as under:

Sl. No.	Particulars	Cash found	Cash seized
1.	Sh. O.P. Agrawal (residence)	4,30,360/-	3,00,000/-
2.	Sh. O.P. Agrawal and Smt. Snehlata Agrawal (Locker No.38)	6,50,000/-	6,50,000/-
3.	Smt. Snehlata Agrawal and Sh. Rachit Agrawal (Locker No.45)	2,50,000/-	2,50,000/-
		13,30,360/-	12,00,000/-

W.r.t. above cash, during the course of search, in statements recorded, Sh. Rachit Agrawal at question No.15 was required to explain the source of cash so found. Question No.15 and its answer is reproduced hereunder for the sake of ready reference:

प्रश्न.15 आज दिनांक 16.01.2019 को आपके निवास 40 जवाहर नगर, गुलाब बाग पर सर्च की कार्यवाही के दौरान नगद राशि रुपये 4,30,360/- पाई गई इसके अतिरिक्त आपसे एस.बी.आई. मानराउन, सवाईमाधोपुर के लोकर नं. 38 में रुपये 6,50,000/- तथा लोकर नं. 45 में रुपये 2,50,000/- भी पाये गये। इस तरह कुल रुपये 13,30,360/- पाये गये हैं। कृपया कर इसके स्रोत के बारे में विस्तृत जानकारी दीजिए ?

उत्तर:- श्रीमान जी मेरे निवास 40, जवाहर नगर, गुलाब बाग, सवाईमाधोपुर पर सर्च की कार्यवाही के दौरान व एस.बी.आई. बैंक के लोकर में मिले रुपये कुल 13,30,360/- हमारे परिवार की व्यक्तिगत आयकर विवरणी का कॅश बैलेंस है। इसके अलावा हमारी कृषि से आय के रुपये एवं मेरी माताजी श्रीमती स्नेहलता अग्रवाल की बचत(स्त्रीधन) हैं।

Thus, it was explained by Sh. Rachit Agrawal that cash balance of Rs.13,30,360/- represented cash available with the family members in their individual capacity and was in consonance with Return of Income filed by them. It was also stated that some of the cash represented agriculture income and some was Pin money held by her mother.

Similarly, assessee also at Question No 12 of statements recorded (as reproduced in assessment order also) stated the same thing that, cash so found primarily belonged to assessee and his family members, who live in joint family and that some of the cash was brought from office.

It was thus submitted before Id.CIT(A) that assessee, his wife Smt. Snehlata Agrawal and his son Sh. Rachit Agrawal all are regularly filing Returns of Income for past many years. In fact, during the course of search Returns of Income for A.Y. 2013-14 and onwards were filed by them before Id.AO himself, still Id.AO concluded that no evidence was given w.r.t. source of cash so found. Details of Returns of Income filed by assessee, his wife and son in response to notice u/s 153A, are tabulated hereunder for the sake of convenience:

Assessment Year	O.P. Gupta	Snehlata Agrawal	Rachit Agrawal
2013-14	Rs. 73,27,660/-	Rs. 3,37,890/-	Rs. 15,13,130/-
2014-15	Rs. 46,66,860/-	Rs. 7,40,940/-	Rs. 11,27,530/-
2015-16	Rs. 61,11,3450/-	Rs. 6,47,780/-	Rs. 7,73,930/-
2016-17	Rs. 70,81,570/-	Rs. 14,15,250/-	Rs. 9,43,230/-
2017-18	Rs. 78,58,660/-	Rs. 14,02,650/-	Rs. 24,34,890/-
2018-19	Rs. 75,86,890/-	Rs. 15,74,320/-	Rs. 33,25,560/-
2019-20	Rs. 80,96,580/-	Rs. 25,20,110/-	Rs. 17,49,670/-

It was further submitted before Id.CIT(A) that assessee belongs to a reputed Agrawal family, where cash is received by ladies as gift also on various family functions and festivals, thus savings to the tune of Rs.13,30,360/- in the form of cash, as found during survey is fully explained and it was requested that addition made by Id.AO deserves to be deleted.

Ld.CIT(A) though agreed with the contention of assessee, however merely allowed telescoping benefit of the same towards additional income worth Rs.

36,60,103/- disclosed by assessee during the course of assessment proceedings on account of Undisclosed receipts from M/s Trinetra Ganesh Smart Bazar Developers Pvt. Ltd.

It is submitted before your honours that no benefit has been given to assessee towards savings of family members at all, and it is requested that in view of returned income of all family members, cash found is fully explained, which deserves to be held as explained.

The Annexure – I attached to the written submission reads as follows:

Annexure - I					
AY	Additions by AO	Amounts Deposited	Deposited by Party Name	Difference	Remarks
2013-14	7,94,79,167.00	5,85,53,000.00	M/s Om Shree Ram Infrareal (P) Ltd.	1,95,72,667.00	Diff of Rs. 1,90,75,000 is due to cheques dishonoured and stopped and of Rs. 4,86,667 due to one entry being considered twice by AO
		13,53,500.00	Cash deposit out of Amount withdrawal earlier		
2014-15	6,40,70,011.00	39,50,000.00	Ram Babu Sarraf	14,54,000.00	Diff of Rs. 14,60,000 is due to cheques dishonoured and stopped & of Rs (6000) is not clear
		5,56,09,511.00	M/s Om Shree Ram Infrareal (P) Ltd.		
		30,56,500.00	Cash deposit out of Amount withdrawal earlier		
2015-16	9,45,50,000.00	5,36,25,000.00	Om Shree Ram Infra Real Pvt. Ltd.	-	
		2,00,000.00	Agarwal Namkeen Sweets Pvt. Ltd		
		4,06,25,000.00	Amigo Hotels		
		1,00,000.00	Cash deposit out of Amount withdrawal earlier		
2016-17	1,49,00,000.00	99,00,000.00	Agarwal Sweets & Namkeen Pvt. Ltd.	50,00,000.00	Diff of Rs. 50,00,000 is due to cheques dishonoured and stopped
2017-18	10,000.00	10,000.00	Rachit Agarwal	-	
2018-19	48,56,076.00	6,00,000.00	Om Shree Ram Infrareal Pvt. Ltd	-	
		1,11,100.00	Ram Dhan Meena		
		12,00,000.00	Amigo Hotels		
		6,10,000.00	Being Enterprising Financial & Property LLP		
		6,13,664.00	Hemendra Meena Plot No.2		
		5,63,680.00	Satya Narain Saini Plot No. 8		
		6,00,000.00	Priya Mishra		
		5,57,632.00	Kaluram Meena Plot No.9		
2019-20	33,70,848.00	5,70,848.00	Shri Ram Meena (Plot No. 7)	-25,14,864.00	
		23,00,000.00	A Sarraf & Om Group Developers		
		4,00,000.00	Palace of Jewels		
		5,64,864.00	Lallu Prasad Sharma (Plot No. 23)		
		6,00,000.00	Sita Ram Sharma		
		3,50,000.00	Ashutosh Upadhyay		
		11,00,000.00	Cash deposit out of Amount withdrawal earlier		

6.1 In addition to the detailed written submission, on 06.08.2025 the Id. AR appearing on behalf of the assessee submitted gist of the arguments which reads as under ;

At the cost of repetition, the gist of submission already filed is again narrated in the shape of bullet points for the convenience of the Hon'ble Court:-

1. That proceedings under Income Tax Act and Benami Act are separate and independent.
2. That main emphasis of Id. AO while making addition of deposits in the bank account of Shri Ram Singh Meena (Page 2 para 5.1 of assessment order for A.Y. 2013-14) is REFERENCE from Benami Authority that assessee (Shri Om Prakash Gupta) has deposited amount in bank account of Shri Ram Singh Meena, whereas not a single penny is deposited by assessee which is a fact on record (Annexure-1 of written submission already filed).
3. That main emphasis of Id. AO while making addition of investments made by Shri Ram Singh Meena (Page 10 para 6.1 of assessment order for A.Y. 2013-14) is REFERENCE from Benami Authority that assessee (Shri Om Prakash Gupta) has purchased various properties in the name of Shri Ram Singh Meena, whereas not a single piece of property is owned by assessee in his name as on date.
4. That documents pertaining to Shri Ram Singh Meena seized during the course of search is ONLY from the premises of M/s Om Shreeram Infrareal Pvt. Ltd. and not from the possession of the assessee (Shri Om Prakash Gupta) (page 3 of assessment order for AY 2013-14).
5. That Shri Ram Singh Meena has received major amount as loan from M/s Om Shreeram Infrareal Pvt. Ltd. apparent from Annexure-1 of written submission already filed and at the same time the Id. AO has assessed the company M/s Om Shreeram Infrareal (P) Ltd. u/s 153A for AY 2013-14 to 2018-19 (APB 272-291) and u/s 143(3) for AY 2019-20 (APB 292-294) and no adverse inference of whatsoever nature has been made with reference to Shri Ram Singh Meena.
6. That Id. AO has made addition u/s 69 of the Income Tax Act, 1961 which is with reference to the investment made by the "ASSEESSEE" and not recorded in books of accounts, whereas in the case under consideration, Id. AO has only taken a shelter of Benami Proceedings and apart from that has grossly failed to substantiate anything on record.
7. That Id. CIT(A) has observed at page 30 of his order for AY 2013-14 that presumption provided u/s 132(4A) and 292C of Income Tax Act, 1961 is

applicable in the case. However it is an undisputed fact that bank documents pertaining to Sh. Ram Singh Meena were found from the premises of M/s Om Shreeram Infrareal (P) Ltd. and not from assessee. Moreover, assessment of such company was also being carried on by same Assessing officer, who was empowered to conduct any further enquiries to verify the fact as to whom such documents belonged to. However, both Id.AO and Id. CIT(A) have proceeded on preconceived notion that such documents had bearing on assessments of Shri Om Prakash Gupta.

8. That Id. AO has solely based his conclusion on the basis of statements of Shri Ram Singh Meena which are retracted by him and is a fact on record. Ld. CIT(A) at page 56 of his order for AY 2013-14 has observed that “..... *Merely because the person who had given statement earlier against the appellant had turned hostile and later on retracted from the earlier statement does not mean that the original statement was to be discarded*”, which basis cannot be given any credence in the eyes of law.

9. That Id. CIT(A) at page 49 of his order for AY 2013-14 has referred to the finding in Benami Proceedings which reads as “*However, a retraction letter dated 24.01.2019 alongwith affidavit dated 24.01.2019 was furnished on behalf of Shri Ram Singh Meena before the ADIT (Inv.), Kota in which it had been claimed that he was totally ignorant about the contents of his statement and he had also challenged the legal sanctity of that statement. It had been claimed that this statement was neither correct nor known to him. ....*”.

From the reading of said para, it is crystal clear that statements given by Shri Ram Singh Meena stood retracted supported by an affidavit. Further Hon'ble Supreme Court in the case of Mehta Parikh & Co. reported in 30 ITR 181 has held that “*an un-controverted affidavit should be accepted as such*”. Similarly, Hon'ble Gujarat High Court in the case of Glass Line Equipment 253 ITR 454 has held that when affidavit was not controverted, it has to be taken as accepted. It is therefore submitted that no credence can be given to statements of Sh. Ram Singh Meena which stood retracted by him.

10. That Id. AO has not considered the contention of assessee that amount has not been deposited by him in the bank account of Shri Ram Singh Meena, however while rejecting one of the observation of Id. AO is at page 7 of assessment order for AY 2013-14 that “*the assessee Shri Om Prakash Gupta made deposits in the bank account of Shri Ram Singh Meena and all the amounts were provided by the assessee OR his group persons / concerns only.*” Meaning thereby that Id. AO himself was not sure about the source of deposit or he was trying to assess the group under one PAN.

11. That the assessee has made a request before the Id. AO for allowing the opportunity to cross examine Shri Ram Singh Meena, however the request was

rejected by the Id. AO while observing at page 9 para 5.4 of assessment order for AY 2013-14 that “*contention of the assessee to provide cross examination of Shri Ram Singh Meena as the statement taken are on the back of the assessee is not acceptable.*” It is important to mention that in the case of Andaman Timber Industries v. CCE [2015] 62 taxmann.com 3/52 GST 355 (SC), the Apex Court observed that not allowing the assessee to cross-examine the witness whose statement has been relied upon to frame the order is a serious flaw. This makes the order a nullity. Further, Hon'ble Supreme Court in the case of State of Kerala v. Shaduli Grocery Dealer (K.T.) AIR 1977 SC 1627 held that when the assessment was based on information collected from the books of a third party, necessary opportunity must be given for cross examination, if specifically requested for, when such information formed the sheet anchor of evidence to frame the assessment. In this case, the assessment was declared as void, confirming the decision of the Kerala High Court, for not affording opportunity for cross examination of the third party.

12. That there is no doubt with regards to identity of Sh. Ram Singh Meena S/o Shri Ram Karan Meena as he physically appeared before Income Tax Department and deposed his statements in front of the government officials as has been referred by Id.AO himself.

13. That Ram Singh Meena is regularly filing the return of income for last so many years (APB 135-150) and has been assessed by the department either in 143(1) or otherwise. The returns are filed and it is beyond the control of assessee to monitor as to how much income has been offered by him and from which source he is having income.

14. That all the transactions executed by Ram Singh Meena from his bank account maintained with Kotak Mahindra Bank, C-Scheme Branch, Jaipur are duly recorded in his books of accounts maintained in the regular course of business and explanation of each and every entry is available with Shri Ram Singh Meena which has never been enquired by the department. Also cash book of Shri Ram Singh Meena as submitted before Id. CIT(A) is enclosed.

15. That the orders so passed by the benami authority has been set aside by Hon'ble Rajasthan High Court in view of decision of Hon'ble Supreme Court in the case of M/s Ganpati Dealcom (P) Ltd. (APB 151-160).

16. That the immovable properties purchased / sold by Ram Singh Meena are in his individual capacity and he only could explain the purpose and source of purchase of such property and selling thereof. However, no effort was made by Id.AO to make any direct enquiry from him and in absence of which, assessee in no way can be considered as the beneficial owner of such properties.

17. That all the immovable properties purchased or sold by Sh. Ram Singh Meena are duly backed by necessary registered sale deeds which are on record

and duly registered with the Sub Registrar office and contained each and every precise details with regard to the buyer and seller of the property. Therefore, considering Shri O.P. Gupta as the beneficial owner of Shri Ram Singh Meena is against the principle of equity and justice and contrary to the evidence on record.

18. That none of the properties purchased by Sh. Ram Singh has been transferred in the name of assessee even till date.

19. That no enquiry whatsoever was made from Shri Ram Singh Meena during assessment or first appeal stage to cross verify the facts narrated in reference received under PBPT Act.

20. That during the course of search, the department officials could not identify any single piece of paper wherein amount is given by assessee to Shri Ram Singh Meena or vice-versa nor there was any cash / cheque transaction slip between them. It is to emphasize that during the entire period of search not a single page could be found which substantiates the assertion of the assessee.

21. That there is no attachment of any property of Shri Ram Singh Meena as on date.

Case laws:

R. Ranjith Singh & Ors. Vs. The State of Tamilnadu & Ors. (SC)

Civil Appeal No. 6305-6306 of 2025 Judgment dated 01.05.2025

*23. The State Government after realizing its mistake has gone to the extent of giving retrospective effect in the matter of seniority meaning thereby giving a preferential treatment to the in-service candidates who are less meritorious and who have already been granted a concession by permitting them to appear under the 20% quota earmarked for them. In the considered opinion of this Court, the action of the State Government in amending the recruitment rules with retrospective effect is certainly violative of Articles 14, 16 and 21 of the Constitution of India. A statute which takes away the right of an individual with retrospective effect deserves to be set aside by this Court.*

Fair Communication & Consultants Vs. Surendra Kardile (SC)

[2020] reported in 113 taxmann.com 377

*Income Tax / Benami Act: No action lies, nor can any defense in a suit be taken, based on any benami transaction and onus of establishing that a transaction is benami is upon one who asserts it.*

Mangathai Ammal (Died) through LRs and Others Vs. Rajeswari & Others (SC)

Civil Appeal No. 4805 of 2019, judgement dated 09.05.2019

12. *It is required to be noted that the benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) Act 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By Benami Amendment Act, 2016, Section 3 (2) of the Benami Transaction Act, 1988 the statutory presumption, which was rebuttable, has been omitted. It is the case on behalf of the respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory presumption that the purchase made in the name of wife or children is for their benefit would not be available in the present case. Aforesaid cannot be accepted. As held by this Court in the case of Binapani Paul (Supra) the Benami Transaction (Prohibition) Act would not be applicable retrospectively. Even otherwise and as observed hereinabove, the plaintiff has miserably failed to discharge his onus to prove that the Sale Deeds executed in favour of defendant no.1 were benami transactions and the same properties were purchased in the name of defendant no.1 by Narayanasamy Mudaliar from the amount received by him from the sale of other ancestral properties.*

Snowtex Investment Ltd. Vs. PCIT, Central-2, Kolkata (SC)

[2019] 105 taxmann.com 282 / 265 Taxman 3 / 414 ITR 227

*Income Tax: Amendment to Explanation to section 73 by Finance (No. 2) Act, 2014 is prospectively effective from 1-4-2015 and cannot be given retrospective effect.*

CIT Vs. Essar Teleholdings Ltd. (SC)

[2018] 90 taxmann.com 2

*IT: Rule 8D is prospective in operation and cannot be applied to any assessment year prior to assessment year 2008-09.*

CIT (Central) – 1, New Delhi Vs. Vatika Township Pvt. Ltd. (SC)

[2014] 49 taxmann.com 249

*Section 113 of the Income Tax Act, 1961 – Block assessment in search cases – Tax in case of (Operation of) – Whether proviso appended to section 113 by Finance Act, 2002 is to operate prospectively with effect from 1-6-2002 – Held, yes [Para 41] [in favour of assessee].*

Akashdeep Vs. Manpreet Estates LLP, Mum. (PBPTA – AT)

[2019] 105 taxmann.com 187

*IT / Benami Transactions Act: Onus of proving a benami transaction rests on shoulders of I.O. who is making charge and such burden has to be strictly discharged based on legal evidence.*

6.2 In addition to the additional written submission, the Id. AR appearing on behalf of the assessee submitted that ;

Kindly refer to the captioned cases for A.Yrs. 2013-14 to 2019-20 filed before the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur and are fixed for hearing before the Hon'ble Court today.

In the matter it is submitted that on the last date of hearing, Id. DR seek time to review the assessment proceedings undertaken in the case of M/s Om Shree Ram Infrareal Pvt. Ltd. In this regard, your honours kind attention is invited to notice dated 07.02.2021 issued u/s 142(1) of the Act during the course of assessment proceedings of M/s Om Shree Ram Infrareal Pvt. Ltd. by the Id. AO.

**On perusal of S.no 11 & 13 (copy attached)** of the notice it is evident that, Id. AO had made the detailed enquiry pertaining to unsecured loan taken and advances given by M/s Om Shree Ram Infrareal Pvt. Ltd. from/to various persons/concerns. Relevant query of the notice is reproduced as under for ready reference-"11. Complete details of unsecured loans of Rs. 18,93,00,029/-, Confirmations & other documentary evidences in support of identity & creditworthiness of creditors and genuineness of transaction in respect of fresh loans taken.

13. Furnish the details of short term loan and advances of Rs. 12,18,87,000/-as shown in the return of income."

From the perusal of query raised it is evident that Ld. AO has conducted a detailed and in-depth enquiry, in the case of M/s Om Shree Ram Infrareal Pvt. Ltd. and after such inquiry, passed an order under section 153A of the Act, which, in law, carries its own sanctity and credence. Copies of such orders of M/s Om Shree Ram Infrareal Pvt. Ltd.is available at APB 272 to 284.

In view of above, it is that submitted that when Id. AO after conducting detailed and comprehensive enquiry in the case of M/s Om Shree Ram Infrareal Pvt. Ltd. passed the order u/s 153A of the Act, wherein no adverse inference in drawn in the case of M/s Om Shree Ram Infrareal Pvt. Ltd. than no adverse view could be taken in the case of captioned assessee.

## ANNEXURE

Please refer to the assessment proceedings pending in your case for AY 2018-19. Earlier notice under section 153A of Income-tax Act, 1961 was issued on 21.09.2020. Now, in order to complete the assessment, please submit the following information/details/explanation/justification pertaining to year under Consideration.

1. A Brief Note on your income earning activities and copy of return filed along with computation of Total Income in respect of Return filed u/s 139 as well as filed in response to notice u/s 153A.
2. Copy of final accounts (balance sheet, profit & loss account etc.) and complete audit report along with its enclosures.
3. Copy of return of income, computation of total income and copy of ledger account of directors in your books.
4. Furnish details of all bank accounts maintained by you in below mentioned format for the year under consideration :

S. No.	Name and address of account Holder	Name and address of bank branch	Account Number	Nature of account

5. Furnish complete details in respect to deduction made in the fixed asset . Also furnish detail w.r.t. depreciation claimed during the year under consideration as well as in the previous years.
6. Bills of addition made to the fixes asset and justification of claim of depreciation thereof.
7. Ledger accounts for expenses above Rs. 50,000/- w.r.t. the TDS compliance.
8. Complete details of sales/ purchases made during the year under consideration.
9. Furnish copy of TDS return.
10. Furnish documentary evidences for ownership of the properties from which rental income has been declared in the return of income.
11. Complete details of unsecured loans of Rs. 18,93,00,029/-. Confirmations & other documentary evidences in support of identity & creditworthiness of creditors and genuineness of transaction in respect of fresh loans taken.
12. Complete details of interest income earned during the year under consideration and details of expenses claimed against the same. Also furnish details of interest received and interest paid person wise mentioning the rate of interest. Copy of ledger account of all such persons may also be furnished.

13. Furnish the details of short term loan and advances of Rs. 12,18,87,000/- as shown in the return of income.

14. Reconciliation of Form 26AS and how the income earned have been offered in the return of income filed.

15. Please show cause as to why interest payment on TDS/Late payment of TDS of Rs. 9320/- and 1,15,378/- may not be disallowed.

16. Produce complete books of account along with all the accessories i.e. bill/vouchers etc.

The above information has been called under section 142(1) of the I T Act, 1961. Failure to submission of the requisite information will attract penal provisions as per law. It may also please be noted that in the case of non-submission of requisite information /detail/ explanation/ justification, the case will be decided ex-parte on the basis of material available on record.

7. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	PARTICULARS	PAGE NOS.
1.	Copy of Acknowledgement of Return of Income filed u/s 139 and 153A for A.Y. 2013-14 to 2019-20	01-43
2.	Copy of Statements of Sh. Rajesh Kabra recorded u/ s 131 by DCIT (B.P.U.) Jaipur on 16.02.2019	44-72
3.	Copy of Statements of Sh. Ram Singh Meena recorded u/ s 131 on 17.01.2019	73-89
4.	Copy of Relevant extract of order passed u/s PBPT Act, wherein it is clearly mentioned that Sh. Ram Singh Meena has retracted from his earlier statements	90-92
5.	Copy of Common reply filed before DCIT for A.Y. 2013-14 to 2019-20	93-95
6.	Copy of Bank statements of Ram Singh Meena of account No.5111215909 held with Kotak Mahindra bank, C Scheme Jaipur, for the period from 01.04.2012 to 31.12.2018	96-111
7.	Copy of Bank Book of Ram Singh Meena in respect of bank account no.5111215909 with Kotak Mahindra Bank, C-Scheme, Jaipur for the period from 22.08.2012 to 31.12.2018	112-117

S. No.	PARTICULARS	PAGE NOS.
8.	Copy of orders passed by Hon'ble High Court of Rajasthan in the case of Sh. Ram Singh, whereby properties confiscated under PBPT Act were released	118-134
9.	Copy of Acknowledgement of Return of Income & Computation and Financial Statements of Ram Singh Meena for A.Y. 2014-15 to A.Y. 2018-19.	135-150
10.	Copy of Order dated 07.02.2024 passed by DCIT (Benami Prohibition), Rajasthan, i.e. "Withdrawal of prohibitory order in compliance to the Hon'ble High Court order dated 31.08.2022 and Hon'ble Supreme Court order dated 23.08.2022".	151-160
11.	Copy of replies filed before Id. CIT(A) for A.Y. 2013-14 to 2019-20.	161-269
12.	Copy of common reply filed before Id. CIT(A) dated 14.11.2024 for A.Y. 2013-14 to 2019-20 alongwith annexures.	270-294

**Case laws relied upon:**

S.No	PARTICULARS	PAGE NOS.
1.	Copy of order passed by Hon'ble Supreme Court in the case of in the case of Mahaveer Kumar Jain vs CIT in Civil Appeal No.4166 of 2006	01-14
2.	Copy of order passed by Hon'ble Mumbai bench of ITAT in the case of M/s Asian Star Company Ltd in its decision dated 23.05.2023 in ITA No.2778/Mum/2022	15-72
3.	Copy of order passed by Hon'ble Delhi Bench of ITAT in the case of Shri Akashdeep, Initiating Officer and DCIT (Benami Prohibition) Unit-2 vs M/s Manpreet Estates LLP and M.s RKW Developers (P) Ltd.in its decision dated 26.03.2019 in appeal No. FPA/PBPT/206/2018/Mum	73-92
4.	Copy of order passed by Hon'ble Supreme Court in P. Leelavathi vs. V. Shankarnarayana Rao dt : (In Civil Appeal Number 1099 of 2008 Dt 9th April 2019	93-101
5.	Copy of order passed by Hon'ble Jurisdictional High Court in the case of Niharika Jain vs. Union of India.	102-161
6.	Copy of order passed by Hon'ble Indore Bench of ITAT in the case of Shri Ashok Nanda vs Deputy Commissioner of Income Tax-1(2), Bhopal in its decision dated 31.10.2014 reported in 88 taxmann.com 808	162-198

8. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the contention of the revenue are beyond the provision of the Income Tax Act. Ld. AR of the assessee submitted a chart which reads as follows:

Shri Om Prakash Gupta ITA Nos. 395 to 401/JPR/2025 Statements of Additions disputed							
A.Y.	Addition on account of Investment in Property by Shri Ram Singh Meena	Addition on account of Deposit in bank account of Shri Ram Singh Meena	Bounced / Returned Cheque	Calculation Error	Actual Deposit	Remarks	
						Amount	Deposit details
1	2	3	4	5	6 = 3 - 4 - 5	7 = 6	8
2013-14	16,09,07,018.00	7,94,79,167.00	1,90,75,000.00	4,88,667.00	5,99,17,500.00	18,53,500.00	Cash deposit out of earlier withdrawals
						11,000.00	Clearing
						5,80,53,000.00	M/s Om Shree Ram Infrareal Pvt. Ltd
2014-15	1,14,87,131.00	6,40,70,011.00	14,60,000.00	(6,000.00)	6,26,16,011.00	30,56,500.00	Cash deposit out of earlier withdrawals
						39,50,000.00	Ram Babu Saraf
						5,56,09,511.00	M/s Om Shree Ram Infrareal Pvt. Ltd
2015-16*		9,45,50,000.00	-	-	9,45,50,000.00	1,00,000.00	Cash deposit out of earlier withdrawals
						2,00,000.00	M/s Agarwal Namkeen Sweets Pvt. Ltd
						4,06,25,000.00	M/s Amigo Hotels
						5,36,25,000.00	M/s Om Shree Ram Infrareal Pvt. Ltd
2016-17	36,04,210.00	1,49,00,000.00	50,00,000.00	-	99,00,000.00	99,00,000.00	M/s Agarwal Namkeen Sweets Pvt. Ltd
2017-18		10,000.00	-	-	10,000.00	10,000.00	Rachit Agarwal
2018-19		48,56,076.00	-	-	48,56,076.00	8,00,000.00	M/s Om Shree Ram Infrareal Pvt. Ltd
						1,11,100.00	Ram Dhan Meena
						12,00,000.00	M/s Amigo Hotels
						6,10,000.00	M/s Being Enter. Fin. & Property LLP
						6,13,664.00	Hemandra Meena Plot No 2
						5,63,680.00	Satya Narain Saini Plot No. 8
						6,00,000.00	Priya Mishra
5,57,632.00	Kaluram Meena Plot No.9						
2019-20**		33,70,848.00	-	(25,14,864.00)	58,85,712.00	5,70,848.00	Shri Ram Meena (Plot No. 7)
						23,00,000.00	A Sarraf & Om Group Developers
						4,00,000.00	Palace of Jewels
						5,64,864.00	Lalu Prasad Sharma (Plot No. 23)
						6,00,000.00	Sita Ram Sharma
						3,50,000.00	Ashutosh Upadhyay
11,00,000.00	Cash deposit out of earlier withdrawals						
<b>Total</b>	<b>17,59,98,359.00</b>	<b>26,12,36,102.00</b>					

\* In A.Y. 2015-16, there is addition of Rs. 13,00,000/- on account of unexplained investment in M/s OM Realty  
\*\* In A.Y. 2019-20, there is addition of Rs. 13,30,360/- on account of unexplained cash.

As is evident from the above chart that for the year under consideration i.e. A. Y. 2013-14 as against the addition of Rs. 16,09,07,018/- for the investment made in the assets whose source is not doubted no addition can be made. As regards the addition for the credit, addition on account of bounced cheque for an amount of Rs. 1,90,75,000/- cannot be made and for that Id. AR of the assessee filed a bank statement of the assessee. He also submitted that there exists a calculation of error for an amount of Rs. 4,86,667/- thereby out of total alleged deposit of Rs. 7,94,79,167/- the actual deposit comes to Rs. 5,99,17,500/- and the source of this deposit in the account of the Shri Ram Singh Meena is explained as under;

Cash deposit made by Ram Singh Meena out of earlier withdrawals	Rs. 18,53,500/-
Cheque received by him independently	Rs. 11,000/-
Credit received from M/s. Om Shree Ram Infrareal Private Limited	Rs.5,80,53,000/-

As is evident that none of the credit as alleged to have been made by the assessee to the account of Shri Ram Singh Meena in that situation there is nothing to add in the case of the assessee. Be that it may under which section the law empower the Id. AO to make the addition of sum which is already recorded in the regular books of account. Since the assessee has neither paid the money nor acquired the assets for this

benefit even the invocation of the proceedings under the Prohibition of Benami Property Transaction Act, 1988 is not applicable and that being the separate law the assessee has challenging that aspect of the matter separately.

Since, the Id. AO has proved that when the assessee has no role to play on the acquisition of the property merely the record found at the premises of the assessee it does directly affect the assessment of income in the hands of the assessee. Not only that the case of M/s. Om Shree Ram Infrareal Private Limited was assessed independently after search and in that proceeding revenue could not establish that the funds that flowed to Shri Ram Singh Meena was sourced from the assessee. As such the acceptance of transaction in the hands of M/s. Om Shree Ram Infrareal Private Limited and that of the Shri Ram Singh Meena the allegation made by the revenue fails at that stage even though the revenue made the addition and Id. CIT(A) has not properly appreciated the fact and thereby the assessee is in appeal to challenge the addition of the independent credit in the account of Shri Ram Singh Meena. Revenue in both cases preferred not to make the protective addition because the source were clear in their respective hand. Having accepted the credit as source from the books of M/s. Om Shree Ram Infrareal Private Limited to finance the money

to Shri Ram Singh Meena were also accepted. If that is so what is the reason to make the addition in the hands of the assessee where the assessee has nothing to do with the two independent transactions between M/s. Om Shree Ram Infrareal Private Limited and Shri Ram Singh Meena. Based on that set of facts Id. AR of the assessee submitted that the addition made and sustained by the Id. CIT(A) is required to be deleted for an amount of Rs. 7,94,79,167/-.

As regards the addition of Rs. 16,09,07,018/- Id. CIT(A) should have directed the Id. AO to delete the addition because the source of the money was never to have been established that flows from the assessee. In the light of these facts whether the provision of the Prohibition of Benami Property Transaction Act, 1988 is applicable to the assessee or not the investment which is independently made by Shri Ram Singh Meena cannot be held be the unexplained investment of the assessee. Because the source is not financed by the assessee and when the Id. AO examined the case of M/s. Om Shree Ram Infrareal Private Limited who being the major financier to Shri Ram Singh Meena how the addition be sustained of the investment made by Shri Ram Singh Meena whose source has been examined in those two cases and there is no material placed on record to support the impugned addition. Merely the records founds from the

assessee and the source the amount invested is not doubted how the addition of investment made by Shri Ram Singh Meena be sustained in the hands of the assessee and he vehemently submitted that the Income Tax Act proceeding and proceeding under the Prohibition of Benami Property Transaction Act, 1988 are separate and independent proceedings and therefore, based on the material placed on record the addition so made in the hands of the assessee is required to be deleted.

9. On the other hand Id. DR has filed the paper book, written submission and placed on record even the order passed u/s. 26(3) of the PBPT Act to support the case of the revenue. While relying on the findings of the lower authorities, Id. DR vide submission dated 06.08.2025 submitted as under :

Dated 06/08/2025

The Department respectfully submits the following for kind consideration of the Hon'ble Tribunal:

1. That the present appeals involve core issues arising out of the application of the Prohibition of Benami Property Transactions Act, 1988 (as amended by the 2016 Amendment Act), and consequential actions taken by the Department under Section 24(1) and 24(4) of the Act.

2. That the Hon'ble Supreme Court in the case of Union of India & Anr. vs. M/s. Ganpati Dealcom Pvt. Ltd. [(2022) 141 taxmann.com 389 (SC)] held that criminal prosecution or confiscation proceedings could not be initiated under the 2016 Act for transactions that took place prior to 25.10.2016. The Hon'ble Court also held Sections 3 and 5 of the unamended 1988 Act to be unconstitutional from inception.

3. That based on the above judgment, the Hon'ble Rajasthan High Court, Jaipur Bench in D.B. Special Appeal Writ No. 1392/2019 (Ram Singh Meena vs. Dy Commissioner (Benami Prohibition)) passed order dated 31.08.2022, revoking the provisional attachment orders made under Section 24(4) of the PBPT Act.

4. However, the Hon'ble Supreme Court has since recalled the earlier decision dated 23.08.2022 in Ganpati Dealcom Pvt. Ltd. (Civil Appeal No. 5783/2022) and has admitted the review petition filed by the Union of India. Thus, the validity of the earlier decision and the consequential effect on all pending matters, including the present appeals, is sub judice before the Hon'ble Apex Court

5. In view of the above development and in the interest of justice, the Revenue respectfully prays that the present appeals be adjourned sine die until final adjudication of the review petition by the Hon'ble Supreme Court, as the outcome will have a direct bearing on the merits of these cases.

6. The Department undertakes to mention the matter before the Hon'ble ITAT for listing as and when the final judgment is rendered by the Hon'ble Supreme Court in the review proceedings.

**PRAYER:**

It is most respectfully prayed that the above appeals may kindly be adjourned sine die in view of the pendency of the review before the Hon'ble Apex Court.

9.1 Vide submission dated 12.08.2025 Id. DR filed the Rejoinder to the submission of the assessee which reads as under:

**1. Preliminary Statement**

This rejoinder is respectfully submitted on behalf of the Revenue. The present appeal arises from the order of Ld. CIT (A), Jaipur against which the assessee is in appeal. The brief facts of the case as noted in the assessment order are that a search and seizure action u/s 132 of the Act was carried out by the department on the members of OM Gupta Group. The assessee has filed paper book, written submission and grounds in form no 36 and has raised various grounds of Appeal. The revenue submits rebuttal on ground raised by the assessee w.r.t. section 69 in this rejoinder and request to consider this rejoinder as part of record and arguments of revenue.

2. Before making submission on applicability of Section 69 in the hands of Assessee Sh. Om Prakash Gupta, Revenue respectfully brings following findings of Adjudicating Authority during Benami Proceedings:-

Quote:

(PBT Act u/s 71 reference No. R-1550/2019/order u/s 26(3) of PBT dated 08/06/2020, appellant Shri Ram Singh Meena S/o Ram Karan Meena, Shri Om Prakash Gupta (first beneficial owner) M/s Om Shree Ram Infra Real Pvt. Ltd. (Second beneficial owner))

"Key statutory triggers in the present case:

Shri Ram Singh Meena

S/o Shri Ram Karan Meena

Address-Village& Post - Mainpura,

Tehsil & District - Sawai Madhopur (Rajasthan)

Mobile Number 9413213484

E-mail Id: Not provided

Owners

1. Shri Om Prakash Gupta

S/o Shri Mohan Lal Agarwal

Address Plat No. 40, Jawahar Nagar, Gulab Bagh, Sawai Madhopur (Rajasthan)

Mobile Number-9414045258

E-mail Id:accounts@omgroup.org

2. M/s Om Shree Ram Infreal Private Limited

Address-409-413, 4th Floor, Crops Arcade, K-12, Malviya Marg, C-Scheme, Jaipur, Rajasthan-302001

Mobile Number: Not available

E-mail Id:accounts@omgroup.org

Shri Ram Kripal Sisodia had purchased many benami properties in the name of Shri Ramjilal Meena

it was gathered that Shri Medicaling Authority Ram Kripal Sisodiya had purchased many agricultural lands in the name of Shri Rarnjilal Meena in Villages.

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It was also noticed from the registered sale deeds executed in the name of Shri Ram Singh Meena that all the payments were made through cheques drawn on Kotak Mahindra Bank, Sardar Patel Marg, Jaipur branch or in cash to the sellers. Summons u/s 19(1)(b) of the PBPT certified copies of all the sale deeds/POAs/Exchange deeds registered in the name of Shri Ram Singh Meena. In response to this summons, certified copies of certain sale deeds, POAs and exchange deeds were furnished by the Sub-Registrar, Amer, District documents were examined and analysed. Jaipur. These

(ii) The website of Govt. of Rajasthan regarding the land records (Le. <http://apnakhata.raj.nic.in>) was examined regarding the lands purchased in the name of Shri Ram Singh Meena.

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(i) Summons u/s 19(1)(b) of the PBPT Act was issued to the Sub-Registrar, Amer, District-Jaipur requiring him to furnish the certified copies of all the sale

deeds/POAs/Exchange deeds registered in the name of Shri Ram Singh Meena, In response to this summons, certified copies of certain sale deeds, POAs and exchange deeds were furnished by the Sub-Registrar, Amer, District documents were examined and analysed. Jaipur. These

(ii) The website of Govt. of Rajasthan regarding the land records (i.e. <http://apnakhata.raj.nic.in>) was examined regarding the lands purchased in the name of Shri Ram Singh Meena.

(iii) Certified copies of the latest jamabandi (land record) of the lands purchased in the name of Shri Ram Singh Meena were obtained from the Tehsildar - Amer, District-Jaipur

(iv) Summons u/s 19(1)(b) of the PBPT Act were issued to the branch manager, Kotak Mahindra Bank, Sardar Patel Marg. Jaipur and he was requested to furnish the certified copies of account opening form alongwith KYC documents and statement of the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in that branch. These documents were received from that branch and the same were examined.

(v) Copies of the relevant documents seized and statements recorded during a search conducted by the ADIT(Inv), Unit-Kota were called for from the office of the ADIT(Inv.), Unit-Kota u/s 21 of the PBPT Act, The ADIT (Inv.), Unit-Kota provided copies of the relevant documents seized and statements recorded during search conducted by the Kota Unit of the Investigation Wing of the Income Tax Department in the case of Om Agarwal Group of Sawai Madhopur. These details were also examined.

(vi) Enquiries were also made from the Jaipur Development Authority (IDA), Jaipur

(vii) Shri Ram Singh Meena was summoned for statement w/s 19(1)(b) of the PBPT Act but he did not appear.

(viii) Enquiries were made from the ITD system of Income Tax Department regarding payment of taxes by Shri Ram Singh Meena.

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6. On examination of the statement of the bank account no. 5111215909 held in Kotak Mahindra Bank, Sardar Patel Marg. Jaipur In the name of Shri Ram Singh Meena; it was observed that transactions of crores of rupees had been made in this bank account. Details of the transactions made in this bank account held in the Before issuing any cheque or making DDs or cash withdrawals from this bank account, immediate credit entry(s) received in this bank account were mostly from the bank account of M/s Om Shree Ram Infrareal Private Limited.

(ii) Details of Cash Deposits in this bank account are as under

Sr. No.	Date	Amount (in Rs.)
1	12.10.2012	400000
2	13.10.2012	750000
3	26.10.2012	100000
4	1.11.2012	3500
5	07.11.2012	100000
6	23.03.2013	500000
7	17.09.2013	486500

8	30.11.2013	45000
9	04.12.2013	25000

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The above analysis of the cash balance in the hands of Shri Ram Singh Meena showed that most of the times Shri Ram Singh Meena was having negative cash balance in his hands. Therefore, he was not having cash in hand to make payments for purchasing these lands. Thus, it was evident that unaccounted cash had been paid for purchasing these lands in the name of Shri Ram Singh Meena. All the transactions in the bank account in the name of Shri Ram Singh Meena had been done by Shri Om Agarwal (ie. Om Prakash Gupta), therefore, the unaccounted, cash had been invested by Shri Om Agarwal only in the name of Shri Ram Singh Meena.

(vi) During the course of enquiry carried out by the undersigned with the Kotak Mahindra Bank, Sardar Patel Marg, Jaipur, it was gathered that the bank account no 5 111215909 held in the name of Shri Ram Singh Meena was operated by Shri Rajesh Kabra (who is a close relative of Shri Om Prakash Gupta), therefore, the unaccounted, cash had been invested by Shri Om Agarwal only in the name of Shri Ram Singh Meena.

(vi) During the course of enquiry carried out by the undersigned with the Kotak Mahindra Bank, Sardar Patel Marg, Jaipur, it was gathered that the bank account no 5 111215909 held in the name of Shri Ram Singh Meena was operated by Shri Rajesh Kabra (who is a close relative of Shri Om Prakash Gupta).

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(vii) The mobile number 9414045253 was registered in this bank account which belonged to Shri Rachit Agagrwal. Shri Rachit Agarwal is son of Shri Om Prakash Gupta. Thus, it was evident that this bank account was being operated in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta Group.

(viii) The mobile and net banking facilities were also availed on mobile no. 9414045253. The email id info.omgroup@gmail.com was registered in this bank account which is the e-mail id of the group of Shri Om Prakash Gupta. Thus, it was evident that this bank account was being operated in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta Group.

(ix) On examination of bank statement of aforementioned bank account, it was gathered that there were total credits of ₹ 26,07,55,435 and total debits were at 25,99,41,868 from account opening date to 14.09.2018. Major credit transactions were from M/s Om Shree Ram infrareal Private Limited. This M/s Om Shree Ram Infrareal Private Limited is a private limited company incorporated on 13.08.2012 having its registered office at 409-413, 4th Floor Crops Arcade K-12, Malviya Marg, C-Scheme, Jaipur, Rajasthan 302001. As per data available on MCA website, Shri Ashok Kumar Agarwal, Shri Om Prakash Gupta, Shri Ashok Kumar Gupta, Shri Ram Kripal Sisodia, Shri Ashish Agarwal and Lavanya Agarwal are directors in this company. Details of the amounts credited in this bank account no. 5111215909 from M/s Om Shree Ram Infrareal Private Limited alongwith utilization of the same are as under

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it was evident that whenever certain payments were to be made to the land owners (i.e. sellers of lands) as a consideration for purchasing their land in the name of Shri Ram Singh Meena, amounts were transferred to Shri Ram Singh Meena's bank account held in Kotak Mahindra bank from M/s Om Shree Ram Infrareal Private Limited. Even, source of most of the cash withdrawals was from funds credited in the bank account of Shri Ram Singh Meena from M/s Om Shree Ram Infrareal Private Limited. Some payments had been made from Shri Ram Singh Meena's bank account to M/s Amigo Hotel which is partnership firm in which the persons of Om Agarwal Group are partners. Thus, it was evident that this bank account was being operated in the name of Shri Ram Singh Meena by the group of Shri Om Prakash Gupta.

(xi) Shri Ramjilal Meena had categorically admitted in his sworn statement recorded u/s 19(1)(b) of the PBPT Act on 16.01.2019 that he had neither purchased nor sold any lands in any year but the lands were purchased in his name by Shri Ram Kripal Sisodia and that the bank account in his name in the Kotak Mahindra Bank, Sardar Patel Marg, Jaipur and the Punjab National Bank, Raja Park were being operated by Shri Ram Kripal Sisodia only.

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(xii) The corresponding evidences in the form of copies of cheques, RTGS application form, cheque issued details etc, related to this bank account opened in the name of Shri Ram Singh Meena were found and seized during the course of search action from the premises of Shri Om Prakash Gupta.

7 A Search & Seizure action u/s 132(1) of the Income-tax Act, 1961 had been carried out at the residential as well as office premises of Om Agarwal Group of cases on 16.01.2019 by the Assistant Director of Income Tax (Investigation), Unit-Kota. Therefore, a letter dated 29.01.2019 was written to the ADIT (Inv.), Kota requesting him to provide the copies of seized documents seized from the premises of Shri Ram Kripal Sisodia and Shri Ram Singh Meena's statement recorded u/s 131 of the Income-tax Act, 1961. The ADIT(Inv.), Kota provided copies of the documents seized from the premises of Shri Ram Kripal Sisodia and copy of Shri Ram Singh Meena's statement vide his office letter no. 291 dated 29.01.2019 received in this Office on 30.01.2019. This material was thoroughly examined. On examination of these seized documents, it was gathered that following documents pertained to Shri Ram Singh Meena but found and seized from the possession of Shri Ram Kripal Sisodia during search:

(6) Details of the lands located at Village - Kukas and Khora Meena, Tehsil - Amer, District-Jaipur transferred to Shri Ram Singh Meena and Shriram Om Group by Shri Ram Kripal Sisodia in pursuance of MOU executed by him with Shree Ram Om Group (seized as page no. 5 and 10 of Exhibit -2, Annexure AS from the residence of Shri R K. Sisodia). These pages contain the khasra wise details of the properties transferred to Shri Ram Singh Meena and Shree Ram Om Group.

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(ii) Summary of accounts containing details of investment made by Shri Ram Kripal Sisodia and S.R.O.G. (Shree Ram Om Group) in respect of immovable

properties situated at Village Kukas and Khora Meena, Tehsil - Amer, District Jaipur but purchased in the names of Shri Ramdhan Meena, Shri Ram Singh Meena and Shri Ramjilal Meena (seized as page no. 12, Exhibit-2, Annexure AS from the residence of Shri R. K. Sisodia).

(iii) The details of properties purchased by Shri Ram Kripal Sisodia in the names of Shri Ramdhan Meena and Shri Ramjilal Meena and the land transferred in the name of Shri Ram Singh Meena in pursuance of MOU (seized as page no. 25-27, Exhibit -2, Annexure AS from the residence of Shri R. K. Sisodia).

(iv) Copy of dated 20.07.2013 executed between Shri Ram Kripal Sisodia, Shri Om Agarwal (i.e. Shri Om Prakash Gupta), Shri Madan Agarwal, Shri Ashish Agarwal and Shri Dharmendra Agarwal in which it had been written that from date of writing this letter, shareholding of Shri Ram Kripal Sisodia and Shree Ram Om Group (SROG) would be 50.50. This letter was written for development and Further sale of lands purchased in the name of Shri Ramjilal Meena, in the name of Shri Ram Dhan Meena and Shri Ram Singh Meena (seized as page nos. 7-9 of Exhibit 4, Annexure AS from the residence of Shri R. K. Sisodia).

(v) The details of properties purchased in the name of Shri Ram Singh Meena from Shri Ram Dhan Meena, Shri Ramjilal Meena (Benamidars of Shri Ram Kripal Sisodia and directly from the sellers (seized as page nos. 41 and 42 of Exhibit-8, Annexure-AS from the residence of Shri R.K. Sisodia). The seized page no. 43 of this exhibit from the residential premises of Shri R. K. Sisodia contained the summary of statement of expenditure incurred for procurement of (57+4)=61 Bigha land. This entire land purchased in the name of Shri Ramdhan Meena and Shri Ramjilal Meena

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vi) Page nos. 62-72 of Exhibit 9 of Annexure - AS seized from the residence of Shri R. K. Sisodia contained the details of lands as under:

Ram Singh Meena	24.555
Ram Dhan Meena	10.558
Om Shree Ram Infra Real Pvt. Ltd.	8.0270
Saroj Mena (90B Land)	6.1290
Saroj Meena (Non 908 land)	0.3950
	49.691
Land yet to be provided	4.5000
Total saleable land	54.191

[these details were related to MOU executed between Shri Ram Kripal Sisodia and SROG. Page no. 25 of this Exhibit contained the details of the lands purchased in the name of various benamidars such as Shri Ram Singh Meena, Shri Ramdhan Meena and Ramjilal Meena.]

(vii) The details of the lands transferred to Shri Ram Singh Meena, Om Infra and Shri Pushyamitra Singh Dev located at Khorameena and Kukas, Tehsil - Amer, District-Jaipur (seized as Exhibit 12, Annexure AS from the residence of Shri R. K. Sisodia). These lands were initially purchased in the name of Shri Ramjilal Meena and in the name of Shri Ram Dhan Meena by Shri Ram Kripal Sisodia. This exhibit also contained details of various expenses incurred and borne by

Shri Ram Kripal Sisodia and SROG with regard to the properties located at Village - Khora Meena and Kukas

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8. Further, during the course of search proceedings at the business premises of Mis Om Shree Ram Infrareal Private Limited (located at 409-413, 4th Floor, Crops Arcade K-12, Malviya Marg, C-Scheme, Jaipur, Rajasthan), following incriminating documents pertaining to Shri Ram Singh Meena were found and seized:

(i) Cash deposit slips and cheque deposit slips related to the Kotak Mahindra Bank account held in the name of Shri Ram Singh Meena.

(ii) Photocopies of the cheques issued to Shri Ramjilal Meena and other sellers of the lands from the bank account opened and operated in the name of Shri Ram Singh Meena in Kotak Mahindra Bank.

(iii) Copies of RTGS application forms submitted to the Kotak Mahindra Bank for payments from the bank account opened and operated in the name of Shri Ram Singh Meena.

(iv) Copy of fee deposit slip related to the payments made to the JDA for land use conversion in the name of Shri Ram Singh Meena.

(v) Copies of applications submitted to the bank in the name of Shri Ram Singh Meena for cancellation of DD, making of DD, revoke cheque from stop payment, blank revoke cheque from stop payment and letter for confirmation of signature mismatch related to bank account opened and operated in the name of Shri Ram Singh Meena in Kotak Mahindra Bank.

(vi) Copies of application forms for funds transfer under RTGS/NEFT related to the bank account opened and operated in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur.

(vii) Original Cheque book counterfoil (containing details of date, cheque no. cheque recipient name/issued to and amount of cheque) of the bank account

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It is pertinent to mention here that 409-413, 4th Floor, Crops Arcade K-12, Malviya Marg, C-Scheme, Jaipur is the office of the group of Shri Om Prakash Gupta. The seizure of such vital documents related to Shri Ram Singh Meena from this office made it clear that this bank account in Shri Ram Singh Meena's name was opened and operated by Shri Om Prakash Gupta only and used by him only for his own benefits (ie. purchasing of lands in Shri Ram Singh Meena's name).

9. During the course of search action in the Om Agarwal group of cases, Shri Ram Singh Meena's statement u/s 131 of the Income-tax Act, 1961 was recorded on oath at the camp office held at Panchayat Bhawan, Mainpura, Tehsil & District - Swai Madhopur (Rajasthan). Copy of this statement was received from the ADIT(Inv.), Unit-Kota. In his statement, Shri Ram Singh Meena categorically admitted that: He was obliged by Shri Om Agarwal (ie. Shri Om Prakash Gupta) as Shri Om Agarwal used to help him as and when required by him and his family.

b) He had not purchased any lands located in Jaipur but the lands were purchased by Shri Om Agarwal (ie. Shri Om Prakash Gupta) and he had put his signatures on the sale deeds on the instruction of Shri Om Agarwal, owner of Om Transport Company.

c) He was not aware of the lands purchased in his name and the locations of the lands purchased in his name by Shri Om Agarwal.

d) He was not aware of the consideration paid for purchasing any lands located in Jaipur as he had only put his signatures on the sale deeds.

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1)

e) He had put his signatures on various papers and cheques but he was not aware of the bank name on which these cheques were drawn. He was also not aware of the amount mentioned in these cheques.

He had also put his signatures many times on blanks cheques.

He had not seen the lands purchased in his name.

He had not taken any loan for purchasing any lands. He did not maintain any books of accounts. He had not seen the original papers of the lands purchased in his name and Shri Om Agarwal only could tell about possession of these documents/sale deeds.

k) He did not know the names of the villages in which these lands were located. He was only aware that these lands were located at Jaipur - Delhi road.

He was not aware that these lands were located at Village Kukas and Khorameena.

m) He was not aware of opening of mutations in his name regarding the lands purchased in his name.

n) He was not aware of the procedure of opening mutations. He was not aware of any application filed for conversion of these lands in JDA. He knew that once he had visited JDA with an employee of Shri Om Agarwal and also put his signature on some papers but he was not aware of the contents of these papers and address of JDA.

p) He had never visited any bank for opening any bank account.

He had put his signatures on various papers as per instructions of Shri Om Agarwal therefore, Shri Om Agarwal might have opened bank account in his name in any bank.

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He had accepted that the photo, identity proof and signatures put on the account opening form (Kotak Mahindra Bank) were of him but he was not aware of the transactions routed in the bank account no. 5111215909 held in Kotak Mahindra Bank in his name.

He was not aware of the source of deposits in the bank account held in his name in Kotak Mahindra Bank.

t) He was not aware of any withdrawals made in the bank account held in his name in Kotak Mahindra Bank.

He was not aware of the possession of bank pass book and cheque book of the bank account held in his name in Kotak Mahindra Bank and stated that only Shri Om Agarwal could tell about this.

He used to visit Jaipur by train with regards to these lands as per the telephonic instructions received from Shri Om Agarwal. Some person of Shri Om Agarwal used to pick him from Railway Station and used to take him at the concerned Sub-Registrar office and after getting his signatures and photographs before the Sub-Registrar for the registration of the sale deeds, that person used to drop him at the Railway Station.

He had not received any consideration from Shri Om Agarwal for executing sale deeds in his name.

x) He was not aware of the current position of these lands However, a retraction letter dated 24.01.2019 alongwith affidavit dated 24.01.2019 was furnished on behalf of Shri Ram Singh Meena before the ADIT (Inv. Kota in which it had been claimed that he was totally ignorant about the contents of his statement and he had also challenged the legal sanctity of that statement. It had

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But, Shri Ram Singh Meena's such claim was totally incorrect as he was a literate person and his statement had been recorded on 17.01.2019 in the office of Gram Panchayat Mainpura and that too in the presence of the Village Development Officer, Mainpura, Tehsil and District - Sawai Madhopur. The Village Development Officer had also signed this statement. At the end of this statement, he read over this entire statement loudly for Shri Ram Singh Meena so that he may listen and understand what had been written in the statement. Shri Ram Singh Meena had admitted at the end of this statement that he had deposed this statement without any pressure and coercion

10. As, Shri Ram Singh Meena had filed a retraction letter before the ADIT(Inv.). Kota on the basis of sweeping allegations therefore, he was summoned u/s 19(1)(b) of the PBPT Act on 08.02.2019 for his examination on 14.02.2019 but no compliance was made by him. Therefore, his retraction letter was not acceptable being based on misconstrued facts of the case. Had the contents of his retraction been true, he would have appeared personally before the undersigned in compliance of the summons served upon him to explain his case.

11 Meanwhile, a search & seizure action u/s 132(1) of the income-tax Act, 1961 was also carried out at the residential premises of Shri Rajesh Kabra (the person who has executed registered sale deeds in the name of Shri Ram Singh Meena as his

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Special Power of Attorney holder) by the Investigation Wing of the Income Tax Department. During this search proceedings, his statement was recorded on oath u/s 132(4) of the Income-tax Act, 1961. In this statement, Shri Rajesh Kabra stated that:

a) He had signed the sale deeds on behalf of Shri Ram Singh Meena on the basis of one Power of Attorney received by him from Shri Ram Singh Meena.

b) He had handed over this original Power of Attorney to Shri Ram Singh Meena 5-7 days ago through Shri Bharat Sharma as a search action and action under

the benami act had been initiated against Shri Ram Singh Meena by the Income Tax Department as per him.

c) He is close relative of Shri Om Agarwal and generally goes to the Om Group's office. He uses the Fortuner car of Om Group too.

d) He has not seen the lands purchased by him in the capacity of Shri Ram Singh Meena's Power of Attorney holder but were or might had been seen by Shri Ram Singh Meena only

e) Sometimes mutations were got opened in the name of Shri Ram Singh Meena by him, Shri Ram Singh Meena had given him power of attorney for opening mutations also.

f) He is familiar with Shri R.K. Sisodia and his driver Shri Bhupesh Mathur

g) He is known to Shri R.K. Sisodia as a few registered sale deeds were executed by Shri R.K. Sisodia in Shri Ram Singh Meena's favour

h) Shri R.K. Sisodia was present at the time of registration of some of the sale deeds executed in the name of Shri Ram Singh Meena.

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12. On examination of ITD system of Income Tax Department, it was gathered that Shri Ram Singh Meena had been allotted PAND AMTPM9998G but he had no not filed

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any Income Tax Return for any Assessment Year on this PAN number. This showed that Shri Ram Singh Meena was a person of no means and he had no creditworthiness for purchasing these lands of crores of rupees

Non Submission of reply by Shri Om Prakash Gupta, one of the beneficial owners:

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Non Submission of reply by M/s Om Shree Ram Infrareal Private Limited, one of the beneficial owners.

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24. Total 16 Show Cause Notices u/s 24(1) of the PBPT Act had been issued and duly served upon Shri Ram Singh Meena and he was asked to furnish reply to the Show Cause Notices on or before 18.03.2019. On 12.03.2019, a reply was received on the official e-mail id of the undersigned on behalf of Shri Ram Singh Meena. The screen shot showing receipts of this email on the official email of the undersigned is as under

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Enquiries made from Jaipur Development Authority (JDA):

32. Copies of the files related to conversion of the lands purchased in the name of Shri Ram Singh Meena were called from the JDA. The JDA provided the copies of the same. During the course of proceedings w/s 24 of the PBPT Act, a letter was written to the JDA vide which it was specifically asked to the JDA to explain its interest in the lands purchased in the name of Shri Ram Singh Meena but till date no response has been received from JDA.

Analysis of the lands purchased in the name of Shri Ram Singh Meena

33. The land records related to the lands purchased in the name of Shri Ram Singh Meena were examined. Apart from this, the files of conversion of some of these lands were also examined. Transaction wise outcome of such examination is tabulated below:

Sr. No.	Property address	Analysis of further transactions of the lands purchased in the name of Ram Singh Meena
1	1/12 <sup>th</sup> part of Khasra No. 832 (having total area of 0.05 hectare)	It is in the name of Ramsingh Meena as per the latest jamaband of samvat 2073-2076 kukas

Enquiries made from PAN facility Centre regarding applications made for allotment of PAN in the name of Shri Ram Singh Meena:

On examination of these Income Tax Returns, it was gathered that all these ITRs have been filed with PAN no. EHLPS60701 whereas he has not filed any ITR with PAN no. AMTPM99986 (which was also in the name of Shri Ram Singh Meena as per the data available on ITD system). It is also pertinent to mention here that PAN no. AMTPM9998G was allotted to Shri Ram Singh Meena on 23.03.2006 and PAN No. EHLPS60701. was allotted to him on 15.08.2012.

35. Accordingly, information u/s 21 of the PBPT Act was called from PAN facility Centre regarding these PAN numbers through e-mail by the undersigned. Information from PAN facility Centre was received through email. Through this email, photocopies of PAN application form alongwith Voter Identity Card of Shri Ram

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Documents related to PAN No. AMTPM9998G:

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Shri Ram Singh Meena had obtained PAN No. AMTPM9998G in 2006 and another PAN no. EHLPS60701, was obtained in his name in 2012 on which ITRs have been filed. It is pertinent to mention here that in 2012, certain immovable properties located at Village Kukas and Khora Meena, Tehsil - Amer, District - Jaipur were purchased in the name of Shri Ram Singh Meena and a bank account was also opened in the year of 2012 in his name in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur. These lands were purchased in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta and M/s Om Sharee Ram Infrareal Private Limited and first sale deed was registered in the name of Shri Ram Singh Meena in 2012. Consideration for purchasing these lands was paid through cheques/DDs/RTGS from account opened in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur in 2012. The PAN no.

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obtained in 2012 was submitted in the bank as a KYC document. All these facts makes it evident that PAN no. EHLPS6070L was obtained in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited for purchase of lands in his name,

Enquiries made from Agarwal Namkeen Sweets Private Limited:

37. Since, few lands had further been transferred in the name of M/s Agarwal Namkeen Sweets Private Limited, therefore, summons u/s 19(1)(b) of the PBPT Act was issued to the Principal Officer, M/s Agarwal Namkeen Sweets Private Limited fixing the date for compliance on 22.04.2019 and it was asked from this company what interest it was having in these lands. This summons was duly served upon M/s Agarwal Namkeen Sweets Private Limited. In response to this summons, Shri Manish Agarwal, CA & AR attended on 22.04.2019 and furnished a letter dated 22.04.2019

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39. Statement of Shri Vipin Agarwal was also recorded on oath is 19(1)(b) of the PBPT Act on 25.04.2019 in which he has stated that some lands located at Village Kukas were purchased by his company M/s Agarwal Namkeen Sweets Private Limited through Shri Rachit Agarwal. He also stated that Shri Rachit Agarwal told him about the lands available at Kukas for sale and also sent his employee with him for physical verification of the land. He has further admitted that he had negotiated the R-1550/2019 Shri Ram Singh Meena and others) deal with Shri Rachit Agrwal instead Shri Ramdhan Meena and Ram Singh Meena for purchasing the lands in his company. He has further stated that Shri Rachit Agarwal told him about sale of land by him to J. Oberoy also at Kukas, Tehsil - Amer, District-Jaipur. It was also stated that cheques for advance payments were also handed over by him to Shri Rachit Agarwal. Shri Vipin Agarwal has also stated that on being asked about Shri Ram Singh Meena and Shri Ramdhan Meena, Shri Rachit Agarwal told him that these persons are included in their company and the lands were taken in company. He has further stated that he has met Shri Ram Singh Meena and Shri Ramdhan Meena for the first time at Sub-registrar office (ie. at the time of registration of documents). Thus, it is evident that Shri Ram Singh Meena was not the actual owner of the lands and his name was only used for purchasing these agricultural lands.

Enquiries made from M/s Amigo Hotels.

40. Since, few lands had further been transferred in the name of M/s Amigo Hotels, therefore, summons u/s 19(1)(b) of the PBPT Act was issued to the Managing Partner, M's Amigo Hotels fixing the date for compliance on 22.04.2019 and it was asked from this company what interest it was having in these lands

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it is evident that the partners of the M/s Amigo Hotels were fully aware of the benami transactions executed in the name of Shri Ram Singh Meena.

Franscation

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Analysis of Income Tax Returns filed on PAN no. EHLPS6070L

43. On examination of ITD system of income tax Department, it was gathered that Shri Ram Singh Meena had not filed any Income Tax Return (ITR) till Assessment Year (A.Y.) 2013-14. He had filed his ITR for the first time for Assessment Year 2014-15 on PAN no. EHLP56070L. On examination of his ITRs filed for the A.Ys. 2014-15 to 2018-19, it was gathered that he had been a person of no means and

had no capacity to purchase such a huge chunk of lands of crores of rupees. Analysis of his ITRs is being done as under

AY 2014-15

ITR-2 for this A. Y had been filed in which he had shown income from other sources at 5483 and agricultural income has been shown at 1,98,560.

A.Y 2015-16.

ITR-2 for this A.Y had been filed in which he had shown income from other sources at 8596 and agricultural income has been shown at 1,91,400.

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Shri Ram Singh Meena was a person of little means and had little sources of income. No ITRs have been filed in his name till A.Y. 2013-14.

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Analysis of evidences gathered through enquiries.

45. The details/documents/information/evidences gathered through enquiries conducted by the undersigned from various sources and discussed in the earlier part of this order are being analyzed as under

(i) Status of Shri Ram Singh Meena, his financial position and his acquaintance with Shri Om Prakash Gupta, one of the beneficial owners

a. Shri Ram Singh Meena is a person from Schedule Tribes: Shri Ram Singh Meena is a person belonging to Schedule Tribes category: Before discussing the financial condition of Shri Ram Singh Meena, it is very important to discuss here the restrictions imposed by Rajasthan Tenancy Act, 1955 on transfer of agricultural land belonging to Schedule Tribes persons to other category persons. As per section 42(b) of the Rajasthan Tenancy Act, 1955, agricultural land belonging to persons of Schedule Tribes can be purchased by the persons from the same category Le. Schedule Tribes persons.

b. Relationship of Shri Ram Singh Meena and Shri Om Prakash Gupta. Shri Ram Singh Meena has stated in his sworn statement recorded u/s 131 of the Income-tax Act, 1961 on 17.01.2019 that he is acquainted with Shri Om Agarwal (i.e. Shri Om Prakash Gupta) since last 40 years. He has also stated that whenever he needs some help, then Shri Om Agarwal would help him and his family members. Relevant extract of his statement is reproduced below

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c. Financial condition of Shri Ram Singh Meena. Shri Ram Singh Meena is a person of little means and his regular source of income was income from agriculture. Statement of Shri Ram Singh Meena was recorded on oath w/s 131 of the Income-tax Act, 1961 on 17.01.2019 in which he has stated that his sole source of income is from agriculture and income from tractor. Scanned copy of relevant extract of his statement is reproduced below:

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ii) Bank Account was opened in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta for purchase and sale of lands in his name:

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(iii) Special Power of Attorney was obtained in the name of Shri Rajesh Kabura from Shri Ram Singh Meena for purchasing agricultural lands in his name:

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(iv) Purchase consideration for lands paid or provided by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareai Private Limited:

As discussed at length in foregoing paras of this order, Shri Om Prakash Gupta and Mis Om Shree Ram Infrareal Private Limited have purchased agricultural lands in the name of Shri Ram Singh Meena and entire sale consideration was paid or provided by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited in cash or through the bank account opened in the name of Shri Ram Singh Meena. Shri Ram Singh Meena has also admitted in his statement reco he is not aware of the transactions made in the bank account opened in his name in Kotak Mahindra Bank, recorded on 17.01.2019 that

(v) Relationship of the parties from whose accounts payments were received in the bank account of Shri Ram Singh Meena and transactions made by Shri Om Prakash Gupta in this bank account in the name of Shri Ram Singh Meena

(vi) Utilization of lands purchased in the name of Shri Ram Singh Meena:

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It is pertinent to mention here that during the course of search action at the residential premises of Shri Ram Kripal Sisodia (located at D-10, Anand Vihar, Jagatpura, Jaipur), a Scanned copy of this dated 20.07.2013 was found and seized. dated 20.07.2013 is reproduced below:

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Further, the contents of the aforementioned MOU are totally correct and independently verifiable as Shri Ram Kripal Sisodia became director in M/s OM Shree Ram Infrareal Private Limited on 24.03.2015. Further, half of the sale consideration from sale of lands was received/receivable by SROG, and half by Shri Ram Kripal Sisodia. Some papers containing these details were seized from the residence of Shri Ram Kripal Sisodia during the course of search action.

Scanned copies of some of these papers are reproduced as under

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From above pages, it is evident that Shri Ram Kripal Sisodia received half of the sale consideration as per MOU executed with SROG and remaining half consideration was received by Shri Om Prakash Gupta from sale of lands purchased in the name of Shri Ram Singh Meena. This makes it clear that these lands were purchased by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited in the name of Shri Ram Singh Meena for their own benefits.

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Execution of exchange deed with Shri Pushya Mitra Singh Dev and MOU with Shri Ram Kripal Sisodia by Shri Om Prakash Gupta:

Shri Ram Kripal Sisodia, POA holder of Shri Ramjilal Meena has exchanged some lands with Shri Pushyamitra Singh Dev by executing an exchange deed on 11.07.2012. The land received by Shri Ram Kripal Sisodia from Shri Pushyamitra Singh Dev was to be used for constructing road named "G Ramchandra Marg" The purpose for executing this exchange deed was development of the land purchased in the name of Shri Ramjilal Meena and other benamidars by

constructing a road on the exchanged land received from Shri Pushya Mitra Singh Dev. Shri Ram Kripal

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sisodia has executed an MOU with Shri Om Prakash Gupta for joint development and sale of lands located at Village Kukas and Khorameena. For effective development of these lands, the construction of the road was necessary therefore, the land was exchanged with Shri Pushya Mitra Singh Dev for which excess land admeasuring 11359 (i.e. 14426 square meter land given -3067 square meter land taken) square meters was given to Shri Pushya. Mitra Singh Dev except the land utilized in construction of road.

It is also pertinent to mention here that Shri Ram Kripal Sisodia has executed an MOU with Shree Ram Om Group (group of Shri Om Prakash Gupta) regarding development of the lands purchased in the name of Shri Ramjilal Meena and other benamidars and land to be purchased directly from the sellers in the name of Shri Ram Singh Meena. Certain papers containing details of the lands exchanged with Shri Pushyamitra Singh Dev were found and seized during the course of search action carried out at the residence of Shri Ram Kripal Sisodia located at D-10, ANand Vihar, Jagatpura, Jaipur Scanned copy of one of the papers containing details of the exchanged land is reproduced below.

The details of this exchange deed are also available at para no. 2 of the dated 20.07.2013 seized during search from residence of

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after executing exchange deed with Shri Pushya Mitra Singh Dev, the land received in exchange from Shri Pushya Mitra Singh Dev was sold in the name of Shri Ram Singh Meena. On this land a road has been constructed in accordance with the conditions stipulated in the exchange deed.

(vii) Income Tax Returns were filed in the name of Shri Ram Singh Meena by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited:

As discussed in the foregoing paragraphs, two PAN cards were obtained in the name of Shri Ram Singh Meena by furnishing different credential in PAN application. One PAN card was obtained in 2006 and another PAN was obtained in 2012. It is pertinent to mention here that the bank account in the name of Shri Ram Singh Meena in Kotak Mahindra Bank was opened in 2012 and agricultural lands were also purchased for the first time in 2012. No return of income was filed on the old PAN (Le. AMTPM8998G) and first return of income was filed for assessment year 2014-15. In the Income Tax Returns filed for the Assessment Year 2014-15 to 2018-19, address, mobile number and email were furnished as under

A.Y	Mobile number/landline number	Email-id
2014-15	9610778000/0141-4068778	<a href="mailto:accounts@omgroups.org">accounts@omgroups.org</a>
2015-16	9610778000/0141-4068778	<a href="mailto:accounts@omgroups.org">accounts@omgroups.org</a>
2016-17	9610778000/0141-4068778	<a href="mailto:accounts@omgroups.org">accounts@omgroups.org</a>

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The email id mentioned in these Income Tax returns belongs to Om Group (group related to Shri Om Prakash Gupta) and on true caller mobile number 961077800

shown in the name of Shri Deepak Agarwal. Thus, it is evident that these returns were filed by Shri Om Prakash Gupta in the name of Shri ram Singh Meena.

Conclusion

46. From above discussed facts, it is evident that:

(i) Shri Ram Singh Meena is a person of little means. He does not have credit worthiness to purchase the lands under reference (including the said land).

(ii) Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited have purchased various lands in Villages - Kukas and Khora Meena, Tehsil - Amer, District Jaipur (Rajasthan) in the name of Shri Ram Singh Meena and all the sale

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51. Therefore, in view of above, 1. Sushil Kumar Kulhari, being the Initiating Officer under the PBPT Act for the State of Rajasthan, hereby order the continuation of the provisional attachment of the land admeasuring 0.00625 hectares [which is 1/8" part of Khasra no. 832 (having total area of 0.5 hectare)) of Village - Kukas, Tehsil -Arner, District-Jaipur, Rajasthan u/s 24(4)(a)(i) of the PBPT Act until such time as the or der u/s 26(3) of the PBPT Act is passed by the Adjudicating Authority

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Unquote

The above order discusses the circumstantial evidences in detail that how Sh. O. P. Gupta was beneficiary owner of the property which has been purchased through routing the money by M/s Om Shree Ram Infra Real Pvt. Ltd.and assessee was squarely failed to rebut the circumstantial evidences relied by the Adjudicating authority

1. It is vital to bring the fact before the Hon'ble Bench ITAT Jaipur that the above order has been challenged on the ground of release of property on the ground of retrospective applicability PBPT Act. The Hon'ble Rajasthan High Court after following the judgement of Hon'ble Supreme Court in the case of Union of India and another vs. M/s Ganpati Dealcom Pvt. Ltd. AIR 2022 Supreme court SC 4558 as under

Quote

(D.B. civil Writ Petition No. 1725/2023 dated 19/05/2023)

"Learned counsel for the petitioner submits that the issue raised in this petition has been decided by the Hon'ble Supreme Court in the case of Union of India & Another vs M/s Ganpati Dealcom Pvt. Ltd., AIR 2022 SC 4558.

Learned counsel for the respondents, however, would submit that though the Hon'ble Supreme Court has decided the issue in the aforesaid case, review petition has been filed which is pending consideration before the Hon'ble Supreme Court.

Learned counsel for the respondents, however, could not dispute that the order passed by the Hon'ble Supreme Court in Union of India & Another Versus M/S. Ganpati Dealcom Pvt. Ltd. (supra) remains operative and has not been decided so far

In view of the above, this petition also deserves to be allowed and accordingly, the property in dispute being "1/21 part of 5/6 part of Khasra Nos. 688, 695, 696,

698, 699, 702, 703, 704, 707-713, 722-727, 729, 731/2350, 732-736, 737/2352 & 737/2353 (having total area of 2.30 hectare) in Village - Kukas, Tehsil -Amer, Jaipur" deserves to be released. Let necessary steps be taken to release the disputed property.

It is, however, made clear that the release will be subject to the final order that may ultimately be passed by the Hon'ble Supreme Court in the pending review petition.

Writ petition is, accordingly, allowed."

Unquote

Similar decision has been given by the Hon'ble Rajasthan High Court in D.B. Civil Writ Petition No. 1727/2023, 9399/2023, 9400/2023, 19401/2022 and 19402/2022. The Revenue filed special SLP before the Hon'ble Supreme Court in the case of Union of India and another vs. M/s Ganpati Dealcom Pvt. Ltd. AIR 2022 Supreme court SC 4558 and the same has been admitted by the Apex court on 18/10/2024 and Order has been recalled. The Revenue has now filed review petition before the Hon'ble Rajasthan High Court accordingly

In light of above background, the Revenue respectfully submits as under:-

### 3. Section 69-Statutory Interpretation

Section 69 reads:

"Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

#### 3.1 "The assessee has made investments"

This has been established by the revenue & BPU on the basis of evidence found during the search and in the order of Adjudicating Authority No.

The real investor is Shri O.P. Gupta, who routed funds through companies under his control as a colourable device.

The ostensible purchaser, Shri Ram Singh Meena S/o Ram Karan Meena, was a man of no means, incapable of such investment.

Documentary evidence from the assessee's residence and office (seized chequebooks, property papers, bank records) establish control over the transaction.

#### 3.1.a. The assessee "has made investments" - through company's funds

The fact that the consideration for the property flowed from a company's account does not insulate the assessee from Section 69. The company was under the assessee's control and acted merely as a funding conduit. The PBPT Adjudicating Authority has conclusively held that the assessee is the beneficial owner and the ostensible holder is a benamidar. In substance, therefore, the assessee "has made investments" within the meaning of Section 69, even though the immediate payment was routed through company funds.

3.2 "Statutory limb: "...which are not recorded in the books of account, if any, maintained by him..."-Assessee-specific test

Neither the investment in the property nor its funding trail is recorded in the personal books of the assessee.

The lending companies' books reflect loans to Shri Meena, not any direct investment in the property, thus camouflaging the true ownership.

The investment is absent from the assessee's own books of account, as required by the statutory trigger of Section 69. Even the company's accounts through which the funds were routed do not show this as a genuine investment in property, but as a sham loan to the benamidar. The omission from the assessee's own accounts is decisive; the fact that the assessee retained full control, possession, and benefit of the property despite this absence in the records conclusively establishes that the condition of "not recorded in the books of account" is met, attracting the deeming fiction of Section 69.

3.3 "The assessee offers no explanation about the nature and source" -

The assessee has denied ownership altogether and has failed to counter the cogent evidence of his control and benefit.

This constitutes absence of a satisfactory explanation within the meaning of Section 69.

3.3.a Nature: Statutory Requirement:

Section 69 mandates that the assessee must satisfactorily explain both the nature and source of the investment. The term "nature" is qualitative and pertains to the intrinsic character, form, and ownership status of the asset acquired. An explanation that does not truthfully and fully identify the actual asset holder, form of holding, and purpose of acquisition is legally insufficient.

(a) The asset in question is immovable property, registered in the name of Shri Ram Singh Meena S/o Ram Karan Meena.

(b) However, evidence seized from the premises of Shri O.P. Gupta including established that he possession documents, bank records, and correspondence exercised complete control and beneficial enjoyment over the property.

(c) The assessee's stand that "the property is not mine" is a mere denial. It fails to identify the real capacity in which the asset was held or the purpose for which it was acquired, despite corroborative evidence from the Benami Prohibition Adjudicating Authority establishing Shri O.P. Gupta as the beneficial owner.

(d) Such a bare denial neither rebuts the presumption under Section 69 nor satisfies the statutory requirement of explaining the nature of the investment.

Conclusion:

acquisition in the name of Ram Singh The failure to explain the true nature ie., the fact that this was a benami Meena S/o Ram Karan Meena, with the renders the deeming fiction of Section 69 beneficial owner being the assessee fully applicable. The investment, being unrecorded in the assessee's books and its real nature concealed, is rightly taxable in the assessee's hands.

3.3.b Source

The assessee has claimed that the property in question does not belong to him and that the investment was made by Shri Ram Singh Meena S/o Ram Karan Meena out of a loan taken from a company. This, according to the assessee, explains the "source" of the investment.

Revenue's position under Section 69:

Section 69 does not merely seek an explanation of "source" in an abstract sense; it requires that the investment be recorded in the assessee's own books of account, if any, maintained for any source of income.

In the present case, the property investment is not recorded in the assessee's books.

The fact that a company (in which the assessee had significant control and influence) routed funds to Shri Ram Singh Meena S/o Ram Karan Meena does not remove the assessee from the ambit of Section 69 when evidence demonstrates that the assessee was the real beneficiary.

Control and Benami structuring:

Seized documents from the assessee's residence and office establish his possession and control over the property and the transaction chain.

The company's funds were deployed at the direction of the assessee to a name-lender (Shri Ram Singh Meena So Ram Karan Meena) solely to camouflage the assessee's investment.

The adjudicating authority under the Prohibition of Benami Property Transactions Act has already recorded findings that the transaction is benami with the assessee as the beneficial owner.

Why the explanation is unsatisfactory:

The assessee's denial of ownership is contradicted by physical evidence and corroborative findings from the Benami authority.

Merely pointing to a company loan as the source in another entity's records does not meet the statutory requirement; the investment remains unrecorded in the assessee's own books.

Conclusion:

The routing of funds through a controlled company to a benamidar is a colourable device designed to conceal the assessee's ownership and benefit. Under Section 69, this constitutes an unexplained investment in the assessee's hands, as all statutory conditions are fulfilled.

3.4 Deeming fiction -

Once these conditions are satisfied, the law mandates that the value of the investment shall be deemed to be the income of the assessee.

Source genuineness in another entity's books does not dilute the "unrecorded investment" character under Section 69.

4. Benami Facade - Legislative Intent

4.1 The finance minister, while introducing the 2016 Amendment to the PBPTA, stated that the rationale was "to root out the common practice of holding assets in others' names to conceal wealth and evade tax or accountability"

4.2 This is precisely the modus operandi here:

The investment was structured through a benamidar to ultimately confer the economic benefits of the property/project on Shri O.P. Gupta.

The colourable arrangement ensured that profits from any sale or development would accrue to him while shielding the asset from disclosure.

4.3 The PBPTA adjudication has already confirmed the benami nature of the transaction. While its legal finality is pending before the Hon'ble Rajasthan High Court, the factual findings are highly relevant corroborative material.

#### 4.3.a. Application to Present Facts

Control over source of funds Companies under the assessee's influence advanced funds to the ostensible purchaser without commercial justification.

Control over property Seized documents from the assessee's premises show possession, transaction control, and intended benefit to him.

Failure to rebut The assessee's denial of ownership, without addressing the substantive evidence, leaves the statutory presumption under Section 69 unrebutted.

Colourable device The arrangement bears all hallmarks of a sham transaction designed to conceal true ownership.

5. Genuineness of loan by the company to Sh. Ram Singh Meena S/o Ram Karan Meena.

As per the statements recorded by the Investigation Wing and financial status of Sh. Ram Singh Meena the genuineness of the business transaction by company controlled by Shri Om Prakash Gupta named as M/s Om Shree Ram Infra Real Pvt. Ltd., is not established. A prudent business company without any financial capacity of returning back of loan will never lend the loan to a man without any mean to repay the loan. Shri Ram Singh Meena was not even having taxable income and no commercial office setup. He was not having any future projects or source of income that could substantiate the loan repayment. The company M/s Om Shree Ram Infra Real Pvt. Ltd. is a Sham face of beneficiary owner Sh. Om Prakash Gupta. The genuineness and credit worthiness of Shri Ram Singh Meena has never been established in this case. Hence the transaction is unexplained.

Prayer

In light of the statutory provisions, legislative intent, factual matrix, and settled legal position, it is respectfully prayed that the addition made under Section 69 be upheld in toto, as the investment is clearly unexplained within the meaning of the Act, notwithstanding the pendency of PBPTA proceedings before the Hon'ble High Court

Respectfully Submitted on Behalf of the Revenue

9.2 In support of the written submission so filed Id. DR also relied upon the following evidence / records :

S. No.	Particulars	Page No.
1	Kotak Mahindra Bank (5411220788) account statement FY 2012-13 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	1-2
2	Part of Annexures of Balance sheet for FY 2012-13 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	3-4
4	Part of Annexures of Balance sheet for FY 2013-14 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	5-8
5	Kotak Mahindra Bank (5411220788) account statement FY 2013-14 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	9-10
6	Part of Annexures of Balance sheet for FY 2013-14 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	11-12
7	Part of Director's report page No. 2, 4 for FY 2018-19 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	13-14
8	Part of Significant Accounting Policies and notes to the financial statements for FY 2018-19 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	15-16
9	Annexure to form 3CD for FY 2017-18 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	17-18
10	Notes forming part of financial statements as n 31st March, 2018 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	19-22
11	Kotak Mahindra Bank (5411220788) account statement for FY 2014-15 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	23-24
12	Balance sheet for the FY 2015-16 in the case of M/s Om Shree Ram Infrareal Pvt Ltd	25-27
13	Kotak Mahindra Bank (5411220788) account statement for FY 2015-16 in the case of M/s Om Shree Ram Infrareal Pvt. Ltd.	28-29
14	Notes forming part of financial statements as at 31/03/2017 in the case of M/s Shree Ram Infrareal	30-32

### 9.3 Ld. DR also relied upon the following judicial precedent ;

- Union of India & Anr vs. M/s Ganpati Dealcom Pvt. Ltd. in Review Petition (Civil) No. 359 of 2023 in Civil Appeal No. 5783 of 2022
- CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)
- CIT vs. P. K. Noorjahan (1999) 237 ITR 570 (SC)
- Sumati Dayal v. CIT (1995) 214 ITR 801 (SC)

- CIT vs. Amiya Bala Paul (2003) 262 ITR 407 (SC)
- ITO v. M. Pirai Choodi (2011) 334 ITR 262 (SC)
- CIT vs. Prakash Chand Lunia [2023] 149 taxmann.com 416 (SC)

9.4 In addition to the above submission Id. DR vehemently argued and supported the finding recorded in the order of the Id. Adjudicating Authority under the Prohibition of Benami Property Transaction Act 1988 passed as per provision of section 26(3) of that Act holding that the investment made by the assessee is unexplained in the hands of the assessee. In that order it has been categorically held that “Shri Om Prakash Gupta purchased the various land in the name of Shri Ram Singh Meena who is Benamidar” as per the detailed reasons as much as point (a) to (x) given in the said order at page 33 to 35.

This makes it clear that these lands were purchased by Shri Om Prakash Gupta and M/s. Om Shree Ram Infrareal Private Limited in the name of Shri Ram Singh Meena for their own benefit and that investment and source being not clear rightly added in the hands of the assessee.

As regards the retraction of the statement by Shri Ram Singh Meena he was issued summons to examine him about the retraction but he did not turned up. Even the search was conducted at the premises of Shri Rajesh Kabra and for that at page 37 and 38 shows as to how he become the

power of attorney holder of Shri Ram Singh Meena and he is relation with the assessee.

Ld. DR also argued that the majority of the money that has been transferred from the account of M/s. Om Shree Ram Infrareal Private Limited. The said company is controlled and managed by the assessee and his family members. The source of the funds given from the company has not been examined and thereby the investment made were routed through that company and that being so the addition is required to be confirmed as per the detailed finding given in the order of the adjudicating authority under the Prohibition of Benami Property Transaction Act 1988 and the orders of the Id. CIT(A).

As regards the cash deposited into the bank account of the assessee explained to have been out of the withdrawal of Shri Ram Singh Meena was not established. Therefore, that cash deposit itself proves the contention of the revenue that the assessee is covered with in the provision of Prohibition of Benami Property Transaction Act 1988 and thereby that income is that of the assessee. The person, in whose name all the investment made is not having proper means to invest in such a huge fund which has been financed by the assessee and/or by the company owned by him and his family members. He also supported the orders of the lower authority

because the assessee is in possession of all the cheque book, Slip book for the money deposited and other material so as to consider the contention of the revenue that the investment made by Shri Ram Singh Meena is of the assessee and thereby the same is required to be taxed in the hands of the assessee.

Based on these set of facts and relying on the provision of section 69 of the Act and various judicial precedent cited he submitted that since the investment made by the assessee is not recorded in the books of account of the assessee and the source of that money is also not established he supported the finding recorded in the orders of the lower authority because Shri Ram Singh Meena is a person having no means to invest such a huge money.

On another day of hearing the Id. DR submitted that the corporate veils are required to be lifted looking to the fact that all the investment made by Shri Ram Singh Meena has been routed through a company formed by the assessee and his family members for their benefit and the Shri Ram Singh Meena is mere conduit for making such huge investment. As is evident from the chart placed on record that all the property which was alleged to have been purchased by Shri Ram Singh Meena were either financed by the assessee or that of the financial help given by M/s. Om

Shree Ram Infrareal Private Limited and therefore, since the assessee has not recorded that asset in his books of account same is required to be taxed in his hands. To support that contention he relied upon the Balance Sheet of the company wherein the debit in the name of Shri Ram Singh Meena and the credit of the assessee is reflected. This fact further got supported from the paper found in the form of MOU wherein the assessee has finalized the terms and condition of the MOU. He stated that this aspect of the matter is discussed at page 111 & 112 of the order passed under the Prohibition of Benami Property Transaction Act 1988. Thus, Id. DR heavily relied upon the circumstantial evidence in the form of cheque book, MOU and PAN number applied by the assessee, provision of section 69 and 292C of the Act and finding recorded in the order passed under the Prohibition of Benami Property Transaction Act 1988.

He also submitted based on the record that the assessee was in possession of the two separate PAN numbers. The earlier PAN number allotted him was not used by him and another PAN was applied by the office of the assessee.

Conclusively Id. DR submitted that Id. AO correctly made two addition one of the credit in the bank account which has not been explained by Shri Ram Singh Meena but was financed by the assessee out of his undisclosed

source and another of the investment made in the land in the name of Shri Ram Singh Meena who has no means to invest such a huge fund and based on the documents found at the time of search at the premises of the assessee the addition of the investment is squarely covered as per the provision of section 69 of the Act.

10. In the rejoinder the Id. AR of the assessee submitted that the case of M/s. Om Shree Ram Infrareal Private Limited has already been examined and there is no addition as to unexplained credit which that company has advanced to Shri Ram Singh Meena and thus the accounted transaction irrespective of the finding under the Prohibition of Benami Property Transaction Act 1988 cannot be taxed in the hands of the assessee when the company who advanced the money in that case source of the investment has been examined by passing scrutiny order. In those years there is no finding that the investment made by that company whose source is not genuine. As is evident that the AO of the assessee and that of the company being same how he can take a contradictory stand that in the case of the assessee hold that the source is not clear and in the case of the company named M/s. Om Shree Ram Infrareal Private Limited hold that source and investment are satisfactory explained and he passed accepting

the book result of that company. Ld. AR of the assessee in support of the contention that the issue has been examined in that company's case he cited the notices issued in the case of M/s. Om Shree Ram Infrareal Private Limited which reads as follows:

 GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT			
To, OM SHREE RAM INFRAREAL PRIVATE LIMITED 409-413,K-12 CROP ARCADE,MALVIYA MARG C- SCHEME JAIPUR 302001,Rajasthan India			
PAN: <b>AABCO7059H</b>	AY: <b>2018-19</b>	Dated: <b>07/02/2021</b>	DIN & Notice No : <b>ITBA/AST/F/142(1)/2020-21/1030427464(1)</b>
<b>Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961</b>			
Sir/ Madam/ M/s,			
In connection with the assessment for the assessment year <b>2018-19</b> you are required to:			
a) Furnish or cause to be furnished on or before <b>17/02/2021</b> at <b>11:00 AM</b> the accounts and documents specified overleaf.			
b) Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before <b>17/02/2021</b> at <b>11:00 AM</b> .			
c) The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.			
d) Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).			
e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.			
Yours faithfully,			
GIRIRAJ PRASAD SHARMA DCIT CEN CIR 1, JAIPUR			

## ANNEXURE

Please refer to the assessment proceedings pending in your case for AY 2018-19. Earlier notice under section 153A of Income-tax Act, 1961 was issued on 21.09.2020. Now, in order to complete the assessment, please submit the following information/details/explanation/justification pertaining to year under Consideration.

1. A Brief Note on your income earning activities and copy of return filed along with computation of Total Income in respect of Return filed u/s 139 as well as filed in response to notice u/s 153A.
2. Copy of final accounts (balance sheet, profit & loss account etc.) and complete audit report along with its enclosures.
3. Copy of return of income, computation of total income and copy of ledger account of directors in your books.
4. Furnish details of all bank accounts maintained by you in below mentioned format for the year under consideration :

S. No.	Name and address of account Holder	Name and address of bank branch	Account Number	Nature of account

5. Furnish complete details in respect of deduction made in the fixed asset . Also furnish detail w.r.t. depreciation claimed during the year under consideration as well as in the previous years.
6. Bills of addition made to the fixes asset and justification of claim of depreciation thereof.
7. Ledger accounts for expenses above Rs. 50,000/- w.r.t. the TDS compliance.
8. Complete details of sales/ purchases made during the year under consideration.
9. Furnish copy of TDS return.
10. Furnish documentary evidences for ownership of the properties from which rental income has been declared in the return of income.
11. Complete details of unsecured loans of Rs. 18,93,00,029/-. Confirmations & other documentary evidences in support of identity & creditworthiness of creditors and genuineness of transaction in respect of fresh loans taken.
12. Complete details of interest income earned during the year under consideration and details of expenses claimed against the same. Also furnish details of interest received and interest paid person wise mentioning the rate of interest. Copy of ledger account of all such persons may also be furnished.

13. Furnish the details of short term loan and advances of Rs. 12,18,87,000/- as shown in the return of income.

14. Reconciliation of Form 26AS and how the income earned have been offered in the return of income filed.

15. Please show cause as to why interest payment on TDS/Late payment of TDS of Rs. 9320/- and 1,15,378/- may not be disallowed.

16. Produce complete books of account along with all the accessories i.e. bill/vouchers etc.

The above information has been called under section 142(1) of the I T Act, 1961. Failure to submission of the requisite information will attract penal provisions as per law. It may also please be noted that in the case of non-submission of requisite information /detail/ explanation/ justification, the case will be decided ex-parte on the basis of material available on record.

He also submitted that for the reason best known to the revenue Shri Ram Singh Meena was not searched. No Cognizance of the money received, and the investment made were made and even the capital gain income shown by him was accepted by the revenue in that case how the addition of the accounted transaction of a two separate entity be taxed in the hands of the assessee. As regards the holding of two PAN he submitted that date of birth in both the cases are different;

Details	PAN No. EHLPS6070L	PAN No. AMTPM9998G
Name	Ram Singh	Ram Singh Meena
Father's name	Ramkaran Meena	Ram Karan Meena
Address	Paaigav Manpura, Tehsil – Sawai Madhopur, Rajasthan 322001	Village – Mainpura, Post Office – Mainpura, Tehsil – Sawai Madhopur, Rajasthan 322001
D.O.B.	10.07.1968	06.07.1973
Date of PAN Generation	15.08.2012	23.03.2006
AO Code	ITO Ward 7(2), Jaipur	ITO, Ward-1, Sawai Madhopur

Whereas page 170 Party A-12 Exhibit 6 show the date of birth of Shri Ram Singh Meena as under:



Thus, revenue has not verified these very basic details of which Ram Singh Meena alleged to have been considered as Benamidar, no addition was propose of the source and capital gain on the sale of the property were already taxed in his hand in that case how the addition will survive and under which provision of the Income Tax Act provide such power to tax third party transactions. Therefore, the contention of the revenue of having two PAN without verification of these basic details has no bearing and the law provide to levy the penalty in the hands of the Shri Ram Singh Meena and thereby that fact will not hold the assessee liable to be taxed on the accounted transaction for which the source has already been verified by the revenue. The company M/s. Om Shree Ram Infrareal Private Limited is separate entity and the money have been invested by the shareholder and not the assessee alone. When the transaction between Shri Ram Singh Meena and M/s. Om Shree Ram Infrareal Private Limited were not disbelieved how the accounted transaction in the other's books of account can be considered as deemed income of the assessee. Section 69 does not empower to tax the investment made by the other person's name. Even the attachment made considering the Prohibition of Benami Property Transaction Act 1988 were released by the revenue by an order of the High

Court and therefore, even that aspect of the matter is decided by the High Court as such.

As regards the contention that the revenue has filed the review petition based on the decision of the supreme court the matter is not listed and even the notice was not served to the assessee so far from the revenue or that of the Hon'ble Rajasthan High Court.

11. After completing the arguments of the Id. DR, Id. AR of the assessee filed an affidavit to counter the contentions of the revenue with a covering letter dated 29.08.2025. The content of the letter and affidavit reads as follows:

Kindly refer to the hearing concluded in the captioned cases before the Hon'ble Court on 20.08.2025.

In the matter, it is submitted that as directed by the Hon'ble Court during the course of hearing on 20.08.2025, necessary reply along with documents was required to be filed on or before 29.08.2025 with reference to the contention raised by the Id. DR specifically for table appearing at page No. 106 of the order of the Adjudicating Authority, Prohibition of Benami Property Transaction Act, 1988 having reference No. R-1550/2019 which order is passed u/s 26(3) of PBPT Act dated 08.06.2020.

In compliance of the said directions, an affidavit of the assessee duly notarized is attached herewith and it is submitted that proceedings under the Prohibition of Benami Property Transaction Act, 1988 and that of Income Tax Act, 1961 are independent and separate and the page referred by Id. DR appears to be seized from the residence of one Shri Ram Kripal Sisodia during the course of search conducted in his case under the Income Tax Act, 1961 and neither the name of assessee is appearing nor his signatures are there nor is his handwriting

appearing in that table which is seized from the possession of third party. Also there is no wisper of this page No. 106 in the assessment orders passed in the case of captioned assessee and therefore finding so recorded at third party is not binding on the assessee.

Further the affidavit is made in support of the contention raised and to counter the contention of the Id. DR so as to counter the finding stated by Adjudicating Authority which are incorrect. Also the income tax assessments of M/s Om Shree Ram Infrareal Pvt. Ltd. has been done by the same Ld. AO which has attained finality and therefore no adverse inference can be drawn in the case of captioned assessee particularly when the sources has been verified and accepted. Moreover no action has been taken in the case of Shri Ram Singh Meena by the department.

In the circumstances, the contention raised by the assessee deserves to be accepted.

The affidavit so filed in support reads as follows:



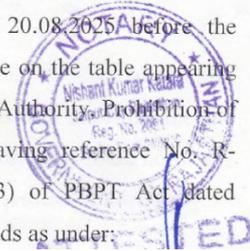
राजस्थान RAJASTHAN

CB 236948

**AFFIDAVIT****Before the Hon'ble Income Tax Appellate Tribunal,  
Jaipur Bench, Jaipur**

I, **Om Prakash Gupta**, aged about 65 years S/o Shri Mohan Lal Agarwal, resident of 40, Jawahar Nagar, Gulab Bagh, Sawai Madhopur do hereby solemnly declare and affirm on oath as under:-

1. That I am an Income Tax Assessee and assessed to tax at PAN: ABNPG-3260-C.
2. That in my case, the proceedings under the Income Tax Act, 1961 are pending before the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur for AY 2013-14 to AY 2019-20 bearing ITA Nos. 395 to 401/JPR/2025.
3. That during the course of arguments on 20.08.2025 before the Hon'ble Court, the Id. DR has placed reliance on the table appearing at page No. 106 of the order of Adjudicating Authority, Prohibition of Benami Property Transaction Act, 1988 having reference No. R-1550/2019 which order is passed u/s 26(3) of PBPT Act dated 08.06.2020 (relevant page attached) which reads as under:



STATEMENT OF ACCOUNT OF S. 424 BIGHA @ 1.17 (SHRI SHANKER AGARWAL RESORT)			
TOTAL AMOUNT		63460800	
LESS EXPENSES			
	TDS	300000	
	WVM ROAD	1001165	DURING SAROJ MEENA
	JDA EXP. (RAJESH JJ)	20000	
	TDS (SAROJ MEENA)	250000	
	BALANCE STOPPED (INFRA REAL)	389635	
	DUE AMOUNT	61500000/2 = 30750000	
			DUE AMOUNT
DATE	AMOUNT RECD.	PAYMENT RECD. MODE	
09.07.2014	25000	CASH	307500
..... 2015	50000	R.K. SISODIA KMB	282500
..... 2015	12000	CASH	232500
..... 2015	25000	R.K. SISODIA KMB	220500
..... 2015	4500	CASH	195500
..... 2015	6500	CASH	191000
..... 2015	25000	RAMDHAN KMB	184500
..... 2015	25000	RAMDHAN KMB	159500
..... 2015	25000	RAMDHAN KMB	134500
..... 2015	25000	RAMDHAN KMB	109500
..... 2015	25000	RAMDHAN KMB	84500
..... 2015	25000	RAMDHAN KMB	59500
..... 2016	48000	RAMDHAN KMB	11500
..... 2016	5000	CASH	6500
	301000		

..... 2016 6000 CASH RECEIVED AGAINST EXP. FOR 90A  
 ..... 2016 5000 CASH RECEIVED AGAINST EXP. FOR 90A

\* ..... Dates are not readable.

4. That during the course of arguments before the Hon'ble Court, Id. DR argued that Shri Ram Kripal Sisodia received half of the sale consideration as per MOU executed with SROG and remaining half consideration was received by Shri Om Prakash Gupta from sale of lands purchased in the name of Shri Ram Singh Meena. This makes it clear that these lands were purchased by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited in the name of Shri Ram Singh Meena for their own benefits (as mentioned on Page 106 referred above).
5. That seized page referred by Id. DR appears to be seized from the residence of one Shri Ram Kripal Sisodia during the course of search conducted in his case under the Income Tax Act, 1961 and neither my name is appearing nor my signatures are there nor is my handwriting appearing in that table which is seized from the possession of third party.
6. That my careful consideration gives me a clear belief that in the assessment orders passed in my case for the abovementioned assessment years there is no discussion of page No. 106 or during the course of assessment proceedings under the Income Tax Act, 1961 and therefore finding so recorded at third party is **not binding on me** moreover when the two authorities below has not made any such finding and there are various decisions of Hon'ble Courts that revenue cannot mould their case at later stage.

7. That based on the facts as stated above this affidavit is made in support of the contention raised by me and to counter the contention of the Id. DR so as to counter the finding stated by Adjudicating Authority which are incorrect so far as it relates to my income tax proceedings. It is also emphasized that I do not abide myself with the findings of the Adjudicating Authority (PBPT) and they shall be challenged before the appropriate authority.
8. That as regards the allegation of Id. DR that the source of money given by M/s Om Shree Ram Infrareal Pvt. Ltd. is also not explained as the same is financed by me. In this aspect of the argument of Id. DR, it is stated that once all these entities cases were specifically reopened to verify the source and having done now the Id. DR cannot challenge the orders passed by the income tax authorities in the case of other entities which has attained finality and therefore no adverse inference can be drawn more particularly in the income tax proceedings pending in my case.
9. That it is also stated that in the case of Shri Ram Singh Meena, the substantive additions were neither proposed nor made by the income tax department. Now once the property attached were released by the department and his capital gain being accepted in his case (for the reason best known to the Department), how department can hold me responsible for the money which is neither reflected in my books of accounts nor found of having paid by me and thereby I challenge the dual approach of the department.
10. That the purpose of making this affidavit is that proceedings under the Prohibition of Benami Property Transaction Act, 1988 and that of Income Tax Act, 1961 being independent and separate and without proving that the investment made by Shri Ram Singh Meena was from my income, the additions made are contrary to the facts and applicable provision of Income Tax Act, 1961 and this affidavit should be considered as Hon'ble ITAT is the last fact finding authority.

*Om Prakash Gupta*  
(DEPONENT)

**VERIFICATION**

I, **Om Prakash Gupta**, the above named deponent state on oath that whatever is stated above is true and correct to the best of my knowledge and belief. Nothing has been concealed. So help me GOD.

Place: Jaipur  
Date: 25.08.2025



*Om Prakash Gupta*  
(DEPONENT)

12. We have heard the rival contentions perused the material placed on record and gone through the orders of the lower authorities. The bench noted that in the lead case Ground no. 1 to 5.1 deals with the one issue of credit in the bank account of Shri Ram Singh Meena be added in the hands of the assessee or not as unexplained credit and with that credit balance the investment so made by the assessee be considered as unexplained investment of the assessee or not.

12.1 The brief facts of the case are that a search & seizure operation under section 132(1) of the Act was carried out on 16.01.2019 at the various premises of Om Agarwal Group, Jaipur. Because of that action notice u/s 153A of the Act was issued to the assessee on 21-09-2020. The assessee returned the same income as was declared in the original return filed u/s. 139 of the Act. Required notice u/s. 143(2) and 142(1) were issued from time to time to the assessee. The assessee complied with such notices. The assessee derives income from salary from M/s Professional Automative Private Limited, business or profession, interest from bank and income from other source during the year under consideration.

12.2 Record reveals that there was a reference from the office of the DCIT (Benami Prohibition), Rajasthan, Jaipur that the assessee has deposited amounts in the bank account of Shri Ram Singh Meena and transaction were made in his bank account through a Special Power of Attorney given in the name of Shri Rajesh Kabra who is used as a conduit of the assessee to operate the bank account of Shri Ram Singh Meena and he was held as a Benamidar of the assessee in terms of Prohibition of Benami Properties Transaction Act 1988.

Since that proceedings were going on under the separate Act simultaneously, we have limited the scope of the addition based on the provisions of the Income Tax Act 1961 and thereby charging provision of the investment or that of the credit under dispute in the name of Shri Ram Singh Meena. The prayer of the revenue that since they have filed the review petition before our Hon'ble High Court and also because the Hon'ble Supreme Court in the case of Union of India & Anr. vs. M/s. Ganpati Dealcom Pvt. Ltd. [(2022) 141 taxmann.com 389 (SC)] held that criminal prosecution or confiscation proceedings could not be initiated under the 2016 Act for transactions that took place prior to 25.10.2016. The Hon'ble Court also held Sections 3 and 5 of the unamended 1988 Act to be unconstitutional from inception. Based on that judgment, the Hon'ble

Rajasthan High Court, Jaipur Bench in D.B. Special Appeal Writ No. 1392/2019 (Ram Singh Meena vs. Dy Commissioner (Benami Prohibition)) passed order dated 31.08.2022, revoking the provisional attachment orders made under Section 24(4) of the PBPT Act.

Since the Hon'ble Supreme Court has since recalled the earlier decision dated 23.08.2022 in Ganpati Dealcom Pvt. Ltd. (Civil Appeal No. 5783/2022) and has admitted the review petition filed by the Union of India. Thus, the validity of the earlier decision and the consequential effect on all pending matters, including the present appeals, is sub judice before the Hon'ble Apex Court. In view of the above development and in the interest of justice, the Revenue prayed that the present appeals be adjourned sine die until final adjudication of the review petition by the Hon'ble Supreme Court, as the outcome will have a direct bearing on the merits of these cases.

On this aspect on being asked we have been informed that, so the matter is at admission stage the High Court or that of the Apex Court in that case not granted any stay. Even we note from the order of Adjudicating Authority placed on record where in that authority vide para 4 considered following enquiries and based on that they have made the case of the assessee;

4. Mainly following enquiries were carried out:

(i) Summons u/s 19(1)(b) of the PBPT Act was issued to the Sub-Registrar, Amer, District Jaipur requiring him to furnish the certified copies of all the sale deeds/POAs/Exchange deeds registered in the name of Shri Ram Singh Meena. In response to this summons, certified copies of certain sale deeds, POAs and exchange deeds were furnished by the Sub- Registrar, Amer, District Jaipur. These documents were examined and analysed.

(ii) The website of Govt. of Rajasthan regarding the land records (i.e. <http://apnakhata.raj.nic.in>) was examined regarding the lands purchased in the name of Shri Ram Singh Meena.

(iii) Certified copies of the latest jamabandi (land record) of the lands purchased in the name of Shri Ram Singh Meena were obtained from the Tehsildar - Amer, District-Jaipur.

(iv) Summons u/s 19(1)(b) of the PBPT Act were issued to the branch manager, Kotak Mahindra Bank, Sardar Patel Marg, Jaipur and he was requested to furnish the certified copies of account opening form alongwith KYC documents and statement of the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in that branch. These documents were received from that branch and the same were examined.

(v) Copies of the relevant documents seized and statements recorded during a search conducted by the ADIT(Inv.), Unit-Kota were called for from the office of the ADIT(Inv.), Unit-Kota u/s 21 of the PBPT Act, The ADIT(Inv.), Unit-Kota provided copies of the relevant documents seized and statements recorded during search conducted by the Kota Unit of the Investigation Wing of the Income Tax Department in the case of Om Agarwal Group of Sawai Madhopur. These details were also examined.

(vi) Enquiries were also made from the Jaipur Development Authority (JDA), Jaipur.

(vii) Shri Ram Singh Meena was summoned for statement u/s 19(1)(b) of the PBPT Act but he did not appear.

(viii) Enquiries were made from the ITD system of Income Tax Department regarding payment of taxes by Shri Ram Singh Meena.

As is evident from the above that while deciding that case no financial transaction or that of any finding to that effect have been considered. Not only that the present proceedings being under the different Act i.e. under the Income Tax Act and that matter which is disputed, and pending is in

respect of the Prohibition of Benami Properties Transaction Act 1988 [ PBPT] being different from that we do not find any force in the prayer of the revenue. Even otherwise the assessee filed the stay petition too before this tribunal and therefore, in the interest of substantial justice we proceeded to take up the appeal under the Income Tax Act on its merits of the dispute.

12.3 Before we deal with that matter it would be appropriate to deal with the primary issue to be decided in the present appeal is that whether based on the facts and on the circumstances of the case the addition of Rs. 16,09,07,018/-, made for the investment made by Shri Ram Singh Meena is required to be sustained or not.

Before we go into the matter to decide the issue on hand it is clear from the orders of the lower authority and since the revenue disputes the source to the extent of Rs. 7,97,79,167/- only the balance amount of investment's source is not disputed by the revenue on the fact and source of that amount.

No material whatsoever was placed before us to whether the investment of the balance amount was sourced from the assessee even though specific question was raised and thereby, they [ revenue ] relied

upon the order of the Adjudicating Authority under the Prohibition of Benami Property Transaction Act 1988.

We also take note of the fact that before us no records be that it is incriminating or not were not placed on record about the source of that investment so made by Shri Ram Singh Meena. Be that it may so whether based on that fact whether the provision of section 69 be applied in the case of the assessee for that investment amount or not. For that first let us examine the provision of section 69 of the Act which reads as under;

**Unexplained investments.**

**69.** Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

As is evident from the above provision of the Act that the investment made by Shri Ram Singh Meena is duly recorded by him in his name and source of acquiring this property is duly recorded in the books of account of Shri Ram Singh Meena. Having noted that the investment made by Shri Ram Singh Meena is duly recorded in his tax records and to the extent of the property sold revenue choose to tax that capital gain in the hands of Shri Ram Singh Meena. This aspect of the matter is duly recorded in the order of the PBPT which reads as under :

43. On examination of ITD system of Income tax Department, it was gathered that Shri Ram Singh Meena had not filed any Income Tax Return (ITR) till Assessment Year (A.Y.) 2013-14. He had filed his ITR for the first time for Assessment Year 2014-15 on PAN ro. EHLPS6070L. On examination of his ITRs filed for the A.Ys. 2014-15 to 2018-19, it was gathered that he had been a person of no means and had no capacity to purchase such a huge chunk of lands of crores of rupees. Analysis of his ITRs is being done as under:

A.Y. 2014-15:

ITR-2 for this A.Y. had been filed in which he had shown income from other sources at 5483 and agricultural income has been shown at 1,98,560.

A.Y. 2015-16:

ITR-2 for this A.Y. had been filed in which he had shown income from other sources at 8596 and agricultural income has been shown at 1,91,400.

A.Y. 2016-17:

ITR-2 for this A.Y. had been filed in which he had shown income from other sources at 7896, Short Term Capital Gain at 1,99,642 and agricultural income has been shown at 2,10,540. Sale consideration of property has been shown at 1,00,00,000 and cost of acquisition has been shown at 98,00,358.

A.Y. 2017-18:

ITR-1 (Sahaj) for this A.Y. had been filed in which he had shown income from other Sources at 6745.

A.Y 2018-19

ITR-2 for this A.Y. had been filed in which he had shown income from other sources at 8945, Short Term Capital Gain at Rs. 5,32,978 and agricultural income has been shown at 92,000. Sale consideration of property has been shown at ₹4,13,34,976 and cost of acquisition has been shown at Rs. 4,08,01,998.

These primary facts were not disputed by the revenue when asked at the time of hearing of the present appeal. But the only dispute is that the based on the evidence gathered at the time of search revenue hold that the assessee is the beneficial owner of the investment made by Shri Ram Singh Meena and the source of the money invested was unexplained

money of the assessee. When that finding was challenged before the Id. CIT(A) he hold a view that ;

I do not agree with the argument of the Id. AR that on this ground both of the additions may deleted. ***Addition in respect of lesser of two amounts deserves to be deleted while sustaining the addition in respect of higher of the two amounts of addition.***

Here we note that while deciding the appeal of the assessee the Id. CIT(A) was of the view that the credit (Source of money) and the debit (Utilization of money) of the money both cannot be added. Having held so and the revenue has not disputed that finding of the Id. CIT(A) we deal with the appeal of the assessee based on that settled finding.

If we considered this finding on overall aspect of the case leaving a part on the allegation on the Prohibition of Benami Property Transaction Act 1988, we note that the Id. CIT(A) has already held that addition of higher of two can be made.

But while doing so when the source is established to have been clear and there is no finding of the lower authority of the source of making the investment is not unexplained then even that finding needs to be decided to the extent of the credit which remains unexplained only and thereby that amount be taxed and not both.

So, to examine this issue for the years of appeal disputed before us we have gone through the records and as is evident from the following chart that has been prepared based on the facts the source of the source money so received by Shri Ram Singh Meena is tabulated herein below ;

ITA Nos. 395 to 401/JP/2025							
Statements of Additions disputed							
A.Y.	Addition on account of Investment in Property by Shri Ram Singh Meena	Addition on account of Deposit in bank account of Shri Ram Singh Meena	Bounced / Returned Cheque	Calculation Error	Actual Deposit	Remarks	
						Amount	Deposit details
1	2	3	4	5	6 = 3 - 4 - 5	7 = 6	8
2013-14	16,09,07,018.00	7,94,79,167.00	1,90,75,000.00	4,85,667.00	5,99,17,500.00	18,53,500.00	Cash deposit out of earlier withdrawals
						11,000.00	Clearing
						5,80,53,000.00	M/s Om Shree Ram Infareal Pvt. Ltd
2014-15	1,14,87,131.00	6,40,70,011.00	14,60,000.00	(6,000.00)	6,26,16,011.00	30,56,500.00	Cash deposit out of earlier withdrawals
						39,50,000.00	Ram Babu Saraf
						5,56,09,511.00	M/s Om Shree Ram Infareal Pvt. Ltd
2015-16*		9,45,50,000.00			9,45,50,000.00	1,00,000.00	Cash deposit out of earlier withdrawals
						2,00,000.00	M/s Agarwal Namkeen Sweets Pvt. Ltd
						4,06,25,000.00	M/s Amigo Hotels
						5,36,25,000.00	M/s Om Shree Ram Infareal Pvt. Ltd
2016-17	36,04,210.00	1,49,00,000.00	50,00,000.00	-	99,00,000.00	99,00,000.00	M/s Agarwal Namkeen Sweets Pvt. Ltd
2017-18		10,000.00	-	-	10,000.00	10,000.00	Racnit Agarwal
2018-19		48,56,076.00			48,56,076.00	6,00,000.00	M/s Om Shree Ram Infareal Pvt. Ltd
						1,11,100.00	Ram Dhan Meena
						12,00,000.00	M/s Amigo Hotels
						6,10,000.00	M/s Being Enter. Fin. & Property LLP
						6,13,664.00	Hemendra Meena Plot No.2
						5,63,680.00	Satya Narain Saini Plot No. 8
						6,00,000.00	Priya Mishra
5,57,632.00	Kaluram Meena Plot No.9						
2019-20**		33,70,848.00		(25,14,664.00)	58,85,712.00	5,70,848.00	Shri Ram Meena (Plot No. 7)
						23,00,000.00	A Sarraf & Cm Group Developers
						4,00,000.00	Palace of Jewels
						5,64,864.00	Lailu Prasad Sharma (Plot No. 23)
						6,00,000.00	Sita Ram Sharma
						3,50,000.00	Ashurosh Upadhyay
11,00,000.00	Cash deposit out of earlier withdrawals						
<b>Total</b>	<b>17,59,98,359.00</b>	<b>26,12,36,102.00</b>					

\* In A.Y. 2015-16, there is addition of Rs. 13,00,000/- on account of unexplained investment in M/s OM Realty  
\*\* In A.Y. 2019-20, there is addition of Rs. 13,30,360/- on account of unexplained cash.

The contention of the assessee is that for the investment contention taken by the revenue based on the statement of Shri Ram Singh Meena

against which no cross-examination opportunity was granted to the assessee and no material as to counter the contention of the assessee was placed on record.

In the light of that facts and in the absence of that material being not placed on record the investment made is already accepted and taxed in the case of Shri Ram Singh Meena the law does not empower us to sustain that addition in the absence of any material and that too based on a statement which was late on retracted. On that aspect of the matter we note from the order of the Adjudicating Authority that they have observed on that event that;

10. As, Shri Ram Singh Meena had filed a retraction letter before the ADIT(Inv.), Kota on the basis of sweeping allegations therefore, he was summoned u/s 19(1)(b) of the PBPT Act on 08.02.2019 for his examination on 14.02.2019 but no compliance was made by him. Therefore, his retraction letter was not acceptable being based on misconstrued facts of the case. Had the contents of his retraction been true, he would have appeared personally before the undersigned in compliance of the summons served upon him to explain his case.

Even the Id. DR stated that the power of attorney holder Shri Rajesh Kabra who is relative of the assessee was searched and he has in his statement confirmed the following facts;

11. Meanwhile, a search & seizure action u/s 132(1) of the Income-tax Act, 1961 was also carried out at the residential premises of Shri Rajesh Kabra (the person who has executed registered sale deeds in the name of Shri Ram Singh Meena as his Special Power of Attorney holder) by the Investigation Wing of the Income Tax Department. During this search proceedings, his statement was recorded on oath u/s 132(4) of the income-tax Act, 1961. In this statement, Shri Rajesh kabra stated that:

- a) He had signed the sale deeds on behalf of Shri Ram Singh Meena on the basis of one Power of Attorney received by him from Shri Ram Singh Meena.
- b) He had handed over this original Power of Attorney to Shri Ram Singh Meena 5-7 days ago through Shri Bharat Sharma as a search action and action under the benami act had been initiated against Shri Ram Singh Meena by the Income Tax Department as per him.
- c) He is close relative of Shri Om Agarwal and generally goes to the Om Group's office. He uses the Fortuner car of Om Group too.
- d) He has not seen the lands purchased by him in the capacity of Shri Ram Singh Meena's Power of Attorney holder but were or might had been seen by Shri Ram Singh Meena only.
- e) Sometimes mutations were got opened in the name of Shri Ram Singh Meena by him. Shri Ram Singh Meena had given him power of attorney for opening mutations also.
- f) He is familiar with Shri R.K. Sisodia and his driver Shri Bhupesh Mathur.
- g) He is known to Shri R.K. Sisodia as a few registered sale deeds were executed by Shri R.K. Sisodia in Shri Ram Singh Meena's favour.
- h) Shri R.K. Sisodia was present at the time of registration of some of the sale deeds executed in the name of Shri Ram Singh Meena.
- i) Shri Ramjilal Meena had executed 1 or 2 sale deeds in the name of Shri Ram Singh Meena.
- j) He had also operated the bank account held in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur in the name of Shri Ram Singh Meena and also signed on the cheques drawn on this bank account.
- k) Shri Ram Singh Meena used to meet him at the railway station or at bus stand when Shri Ram Singh Meena used to come to Jaipur for land dealings and Shri Ram Singh Meena used to inform him about his arrival through mobiles/phone.
- l) He had not charged any fees/commission/amount from Shri Ram Singh Meena for these land deals.

Shri Rajesh Kabra has given evasive answers to the most of the questions asked to him during the search proceedings by stating 'Shri Ram Singh Meena will know about it' or 'why Shri Ram Singh Meena said this can be explained by him only' etc. But, it was evident that Shri Rajesh Kabra is a close relative and close confidant of Shri Om Agarwal (i.e. Shri Om Prakash Gupta). Shri Om Agarwal was a common link between Shri Ram Singh Meena and Shri Rajesh Kabra. Both Shri Rajesh Kabra and Shri Ram Singh Meena were under influence of Shri Om Agarwal, therefore, Shri Om Agarwal got the Power of Attorney registered in the name of Shri Rajesh Kabra from Shri Ram Singh Meena and got the lands registered in the name of Shri Ram Singh Meena through him. The statement of Shri Rajesh Kabra was contrary also to the statement of Shri Ram Singh Meena recorded u/s 131 of the Income-tax Act, 1961.

Based on the above statement of Shri Rajesh Kabra it does not emerge as to the assessee gives his unaccounted money to purchase the property in the name of Shri Ram Singh Meena. Thus, that statement has also no relation to the addition made in the hands of the assessee.

We also note from that order of the PBPT at para 12 wherein it has been alleged that Shri Ram Singh Meena is of no means and he has no credit worthiness for purchasing such a huge land. Had been it been that finding so as to fasten the liability to explain the credit worthiness in the hands of the Shri Ram Singh Meena action was required to be taken and there the credit of the money was required to be established as unexplained or not. Having not done so now that finding is against the set of facts already accepted by the revenue.

As regards the contention of the revenue that the assessee is having two PAN but we note from the order of the PBPT wherein the date of birth referred were different as is evident from the following table extracted from the order of the PBPT

Details	PAN No. EHLPS6070L	PAN No. AMTPM9998G
Name	Ram Singh	Ram Singh Meena
Father's name	Ramkaran Meena	Ram Karan Meena
Address	Paaigav Manpura, Tehsil – Sawai Madhopur, Rajasthan 322001	Village – Mainpura, Post Office – Mainpura, Tehsil – Sawai Madhopur, Rajasthan 322001
D.O.B.	10.07.1968	06.07.1973
Date of PAN Generation	15.08.2012	23.03.2006
AO Code	ITO Ward 7(2), Jaipur	ITO, Ward-1, Sawai Madhopur

We also note from page 170 Party A-12 Exhibit 6 show the date of birth of Shri Ram Singh Meena was 01.01.1969.



Having such contradiction, no sufficient enquiries were made by the revenue to bring the correct facts on record as to the affairs of Shri Ram Singh Meena. We also note as to the contention of the proceeds flowing as contended by the revenue and the assessee filed the counter affidavit to counter the contention of the revenue that recorded at page 106 of the order of the PBPT was not confronted to the assessee and for that the assessee filed a detailed affidavit in the matter. Therefore, that aspect of the matter has no leg to stand. We also note from the para 20 of the PBPT order that the assessee was considered the beneficial owner merely because the assessee did not appear in the proceeding under PBPT but finding as to the source of money flowed from the assessee. The summary of account as found and relied was not found from the premises of the assessee but was found from the premises of Shri Ram Kripal Sisodia and as stated by the assessee in an affidavit that this facts were not confronted to him and that page does not record any finding as to the unexplained money or investment in the case of the assessee. As is evident from that order that in the conclusion drawn in the case of the PBPT which reads as under;

- (xiv) Shri Ram Singh Meena is a person of little means. He does not have credit worthiness to purchase the lands under reference including the said land)
- (xv) Shri Om Prakash Gupta and Mis Om Shree Ram Infrarsal Private Limited have purchased various lands in Villages Kukas and Khora Meena, Tehsil

Amer, District Jaipur (Rajasthan) in the name of Shri Ram Singh Meena and all the sale consideration was paid or provided by Shri Om Prakash Gupta and M/s Om Shree Ram Infrareal Private Limited only.

- (xvi) These lands (including the said land) were never used by Shri Ram Singh Meena but were used by Shri Om Prakash Gupta and Mis Om Shree Ram Infrareal Private Limited only for their own benefits.
- (xvii) These lands (including the said land) belong to persons of Scheduled Tribes. As per the provisions of the Rajasthan Tenancy Act. 1956 any agricultural land belonging to a person of Scheduled Tribe Category can be purchased by a person of Scheduled Tribe Category only.
- (xviii) Shri Rajesh Kabra is a close relative and confident of Shri Om Prakash special power Gupta. Therefore. Shri Om Prakash Gupta took a attomey from Shri Ram Singh Meena in the name of Shn Rajesh Kabra Shri Rajesh Kabra signed all the sale deeds an Singh Meena as a buyer. Shri Ram Singh Meena was even not aware which properties were being purchased in his name. of behalf of Shri Ram
- (xix) Bank account in the name of Shri Ram Singh Meena was opened in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur which was used and operated by Shn Rajesh Kabra (on the basis of the power of attorney) for the sole benefit of Shri Om Prakash Gupta as discussed in forgoing paragraphs of this order.
- (xx) The lands were purchased for the sole benefits of Shri Om Prakash Gupta and Mis Om Shree Ram Infrareal Private Limited. Shri Ram Singh Meena did not get any benefits from these lands.
- (xxi) Income Tax Returns were filed on the PAN of Shri Ram Singh Meena by Shri Om Prakash Gupta for which a new PAN was obtained in the name of Shri Ram Singh Meena in 2012 (ie the year in which agricultural lands were started purchasing in the name of Shri Ram Singh Meena)
- (xxii) An MOU was executed by Shri Om Prakash Gupta with Shri Ram Kripal Sisodia for joint development of lands including the lands purchased the name of Shri Ram Singh Meena Shri Ram Kripal Sisodia had purchased benami lands in the names of Shri Ramjilal Meena, Shri Ramdhan Meena and Smt Sita Devi. Many of these lands were got transferred by Shri-Om Prakash Gupta in the name of his benamidar Shri Ram Singh Meena on the basis of this MOU.
- (xxiii) Internet banking and mobile banking facilities were availed on mobile is the number 9414045253 (belongs to Shri Rachit Agarwal sio Shri Om info.omgroup@gmail.com Prakash The registered e-mail id of the bank account number 5111215009 opened Gupta) e-mail id in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar number 9414045253

in the mobile Patel Marg. Jaipur Similarly. registered mobile number of this bank account.

- (xxiv) Shri Ram Singh Meena did not furnish any submission on the contents of the Show Cause Notices issued u/s 24(1) of the PBPT Act despite ample opportunities provided to him. An affidavit had been filed on Singh Meena before the ADU(Inv) Unit- Kota 131 of the recorded Rajasthan retracting Income-tax Act, 1961 The Authority under the Benami Act wanted to examine Shri Ram Singh Meena to examine the veracity of the contents of the affidavit Number of opportunities were provided to him by the undersigned to appear personally and to explain his case but he chose not to appear before the undersigned for the same.
- (xxv) Shri Om Prakash Gupta did not furnish any submission on the contents of the Show Cause Notices issued to Shri Ram Singh Meena u/s 24(1) of the PBPT Act [and served upon Shri Om Prakash Gupta as per the Act] despite PBPT of 24(2) of the ample section provisions opportunities provided to him.
- (xxvi) M/s. Om Shree Ram Infrareal Private Limited did not furnish submission on the contents of the Show Cause Notices issued to Shri Ram Singh Meena u/s 24(1) of the PBPT Act [and served upon M/s Om Shree Ram Infrareal Private Limited as per the provisions of section 24(2) of the PBPT Act] despite ample opportunities provided it.

The above finding does not specify as to what is the material which shows that there was unexplained money flowing to Shri Ram Singh Meena and thereby the addition can be made. Thus we note that merely the statement without any supporting evidence was relied upon by the revenue which was retracted by him. Since Shri Ram Singh Meena did not appear again in the PBPT proceeding the contention was not accepted. The revenue did not place on record any incriminating material demonstrating that the assessee has in fact financed the money for making the investment in the property purchased by Shri Ram Singh Meena independently. Thus,

it is merely based on the contention raised in the statement without any corroborative evidence and even when that statement so relied upon retracted no addition can be made. This view has already been taken by our own Rajasthan High Court in the case of PCIT Vs. Esspal International P. Ltd [ 166 taxmann.com 722 (Rajasthan) ] wherein the High Court held that ;

11. Now it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. ***Even otherwise, an admission by the assessee cannot be said to be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition.*** Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court; one such decision was rendered in "M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another" [1973] 19 ITR 18.

Respectfully following the above binding precedent, we are of the considered view that merely based on the statement which was retracted no addition can be made.

12.4 Be that it may so now let us examine the credit amount in the Bank account of Shri Ram Singh Meena added in the hands of the assessee as unexplained money for an amount of Rs. 7,94,79,167/-. From the bank statement already on record on the fact of that addition it was contended that out of the disputed credit on account of bounced cheque for an amount

of Rs. 1,90,75,000/- and Rs. 4,86,667/- was on account of calculation error cannot be sustained as they in fact are not credit balance in that bank account. Since, there is no contrary evidence to the factual position argued supported by the evidence on record that there was bounced back cheque credit for an amount of Rs. 1,90,75,000/- revenue did not dispute that factual part and the Id. AO through Id. DR did not dispute that amount and the amount of calculation error for Rs. 4,86,667/- out of total alleged deposit of Rs. 7,94,79,167/- the actual deposit which requires finding as to whether these credits can be considered as unexplained money for an amount of Rs. 5,99,17,500/- or not.

Records reveal that for the lead year credit in the bank account of Shri Ram Singh Meena wherein the source of source in the account of the Shri Ram Singh Meena considered not disputed is as under because revenue accepted that submission of the assessee and no action was proposed in the case of Shri Ram Singh Meena and in the case of M/s. Om Shree Ram Infrareal Private Limited ;

Cash deposit made by Ram Singh Meena out of earlier withdrawals	Rs. 18,53,500/-
Cheque received by him independently	Rs. 11,000/-
Credit received from M/s. Om Shree Ram Infrareal Private Limited	Rs.5,80,53,000/-

As it is available on the record that on the same very facts of the Investment made by M/s. Om Shree Ram Infrareal Private Limited that

company's case was subjected to scrutiny wherein the revenue verified the investment made by that company with Shri Ram Singh Meena not only that the source for making that credit was verified and accepted and thereby there is no finding in that company's case that the source of the source of making the investment with Shri Ram Singh Meena was sourced from the assessee or it was unexplained and that company unable to explain the credit reflected in their books.

Thus, when their credit is accepted and not established to have been invested from the undisclosed source of the assessee by placing any evidence on record and once that fact in the case of company's assessment the source and that of the investment was not disputed by the revenue how that addition which was assessed as such and considered to have been explained in that company's case be considered as unexplained money in the case of the assessee. To examine that we deal with the provision of section 68 of the Act which reads as under:

**Cash credits.**

**68.** Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

**Provided** that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

(a)	the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and
(b)	such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

**Provided further** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a)	the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
(b)	such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

**Provided also** that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of [section 10](#).

As is evidence that there is no credit in the books of account in the case of the assessee which remains unexplained. Not only that revenue has considered the credit in the account of Shri Ram Singh Meena as explained and no action was proposed in that case and in the case of the company who have financed that credit. Based on that set of facts we see no reason to sustain the addition of credit in the bank account of Shri Ram

Singh Meena and therefore, even we see not a single reason to sustain that addition of Rs. 7,94,79,167/- and the same is directed to be deleted.

In addition, we also note that as the source was not disputed nor was any incriminating material found to establish that the credit made in the books of M/s. Om Shree Ram Infrareal Private Limited was sourced by the assessee by way of illegal credit entries or thereby remained unexplained. Having not established so by the revenue taxing the credit in the books of Shri Ram Singh Meena as unexplained money or the investment made by him as unexplained investment of the assessee is somewhat fastening the tax liability on accounted transactions treating it as unaccounted and that too in the case of the assessee without bringing any tangible material for doing so.

The bench also noted that the revenue while assessing the case of the company M/s. Om Shree Ram Infrareal Private Limited knows the real facts of the case of the assessee and having noted that facts accepted the investment not only that credit of that company was not established to have been bogus or flowed from the assessee. This can be accepted to have been happen if the officer who deal with the case of the assessee and that of the company is different but when the officer who passed the order in the

case of the assessee and that of the company being same officer that aspect of the matter cannot be accepted.

12.5 Be that it may so having alleged to have such a serious addition or allegation to the assessee revenue has not taxed the gain or loss on account of the property in hands of the assessee but made it to tax in the hands of Shri Ram Singh Meena thereby accepting that the credit and investment as from genuine sources. This dual standard cannot be accepted. Here also we would like to press emphasis that ***the officers handing the case of the assessee and that of the company or that Shri Ram Singh Meena would have taken a conscious decision to place on record the correct facts.*** Having observed so we would like to reiterate the quote of famous lawyer of the country Shri Nani Palkhivala about the collection of tax which reads as under:

“Taxes are the life blood of any government, but it cannot be over emphasized that the blood is taken from the arteries of the tax payers and therefore, the transfusion has to be accomplished with the principles of Justice and fair play”

“Every Government has right to levy taxes, But no government has the right in the process of extracting tax, to cause misery and harassment to the taxpayer and the gnawing feeling that he is made a victim of palpable injustice”

We also would like to deal with the contention of the revenue that the assessee is found to be in possession of cheque books, deposition slips etc. of bank account, PAN Card and ITR, operation of bank account

through the power of attorney holder. But at the same time having searched the premises of the assessee and connected parties to the group entity including the person who holds the power of attorney but has not covered the premises of Shri Ram Singh Meena. Not only that based on the provision of section 153A/153C revenue did not deem it fit and proper to examine him and no proceeding after the search have been conducted for the reasons best known to place on record the correct facts.

12.6 Thus, even otherwise the addition was made on the completed assessment without bringing any incriminating material and thereby the addition cannot be permitted of the disclosed transaction as it was held by the Apex Court in the case of Principal Commissioner of Income tax, Central-3 Vs. Abhisar Buildwell Private Limited [ 149 taxmann.com 399 (SC) ] wherein it was held that ;

**5.** We have heard learned counsel for the respective parties at length.

The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under section 132 or requisition under section 132A or not, *i.e.*, whether any addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132 A of the Act, 1961 or not.

**6.** It is the case on behalf of the Revenue that once upon the search under section 132 or requisition under section 132A, the assessment has to be done under section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into

consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. The lead judgment is by the Delhi High Court in the case of *Kabul Chawla (supra)*, which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of *Saumya Construction (supra)*, which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of *Pr. CIT v. Mehndipur Balaji* [2022 SCC Online All 444/\[2023\] 147 taxmann.com 201/ \[2022\] 447 ITR 517](#) has taken a contrary view.

7.1 In the case of *Kabul Chawla (supra)*, the Delhi High Court, while considering the very issue and on interpretation of section 153A of the Act, 1961, has summarised the legal position as under:

Summary of the legal position

38. On a conspectus of section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

*i.* Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

*ii.* Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

*iii.* The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

*iv.* Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an

assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e., those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

**7.2** Thereafter in the case of *Saumya Construction (supra)*, the Gujarat High Court, while referring the decision of the Delhi High Court in the case of *Kabul Chawla (supra)* and after considering the entire scheme of block assessment under section 153A of the Act, 1961, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. In paragraphs 15 & 16, it is held as under:

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year, falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six

assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A, of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of decisions that the heading of the, section can be regarded as a key to the interpretation of the operative portion of, the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning From the heading of section 153, the intention of the Legislature is clear, viz, to provide for assessment in case of search and requisition. When, the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment, should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of *Jai Steel (India) v. Asst. CIT (supra)*, the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act."

**8.** For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of *Kabul Chawla (supra)* and the Gujarat High Court in the case of *Saumya Construction (supra)*, taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

**9.** While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under section 153A of the Act, 1961.

**9.1** That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under section 158BA of the Act, 1961. The erstwhile scheme of block assessment under section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, *i.e.*, (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment *qua* income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under section 153A are triggered by conducting of a valid search under section 132 of the Act, 1961. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, *i.e.*, the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

**10.** On a plain reading of Section 153A of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Section 153A of the Act reads as under:

"153A. Assessment in case of search or requisition - (1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are

requisitioned under section 132-A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

**Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

**Provided further** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132-A, as the case may be, shall abate.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or Section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner:

**Provided** that such revival shall cease to have effect, if such order of annulment is set aside

*Explanation.*—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, section 153-B and section 153-C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

**11.** As per the provisions of Section 153A, in case of a search under section 132 or requisition under section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or making of requisition under

section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

**12.** If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated

assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

**13.** For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of *Kabul Chawla (supra)* and the Gujarat High Court in the case of *Saumya Construction (supra)* and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

- (i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
- (ii) all pending assessments/reassessments shall stand abated;
- (iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
- (iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby

dismissed. No costs.

Respectfully following this finding of the Apex Court and since the revenue accepted the source of the source and upon accepting the credit and thereby the investment merely based on the statement without any supporting corroborative material having nature of incriminating in nature no addition can be made in the hands of the assessee.

12.7 Thus, even though the revenue is shouting with the material lying with the assessee in the form of cheque book, slip book and records of the PAN card and other material ***no action against him [ Shri Ram Singh Meena ] was considered to be initiated against him*** not at the time of search, post search proceeding or during the searched proceeding of the assessee.

Not only that while conducting the assessment proceeding of M/s. Om Shree Ram Infrareal Private Limited the investment made by that company with Shri Ram Singh Meena was considered as explained and the source of giving that money to him was also accepted. Thus, when all the independent transactions with that of independent entities are found genuine and recorded in the books of account of M/s. Om Shree Ram Infrareal Private Limited and Shri Ram Singh Meena merely from the premises of the account revenue found out the records in the form of cheque book, deposit slip book copy of PAN card application or that of the

other record which are not found to have been incriminating in nature it has nothing to do with the case of the assessee while assessing his income.

Hence when revenue has accepted all these transactions being found in order and accepted in that individual with the background of the material found were accepted by the Officer being same, whether that material so found has any effect of treating the transaction as unexplained or that of the for the direct benefit of the assessee? Obviously, no because on the one hand revenue accept the source of investment as genuine and from explained sources in the case of M/s. Om Shree Ram Infrareal Private Limited who is the major investor and all the money flows from the regular source recorded in the books of account and the same were verified in the assessment proceeding by issuing a specific query vide notice u/s. 142(1) of the Act dated 07.02.2021 and having accepted that source of investment with Shri Ram Singh Meena can the said investment or that of the source be considered as unexplained investment or unexplained credit in the hands of the assessee when the same is obviously made by M/s. Om Shree Ram Infrareal Private Limited and those transaction were independently examined and accepted by Revenue by the same officer. Therefore, we see no merits for sustaining the addition on any leg as to whether the source of source flowed from the assessee or that the source

of investment remained unexplained in the hands of the company who made investment or made finance to Shri Ram Singh Meena. Therefore, in the absence of any material placed on record the view advanced in the orders of the lower authority against these facts we do not find any provision under which the income which is duly recorded and reflected as explained can be income of the assessee. On this subject we would like to rely on the decision of the Apex Court in the case of Commissioner of Income tax Vs. Excel Industries Limited [ 38 taxmann.com 100 (SC) ] wherein the Apex Court has given certain principles for taxing the income which we would like to reiterate herein below :

17. First of all, it is now well settled that income tax cannot be levied on hypothetical income. In *CIT v. Shoorji Vallabhdas & Co.* [\[1962\] 46 ITR 144 \(SC\)](#) it was held as follows:—

"Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., ***the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a 'hypothetical income', which does not materialise.*** Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

18. The above passage was cited with approval in *Morvi Industries Ltd. v. CIT (Central)*, [\[1971\] 82 ITR 835 \(SC\)](#) in which this Court also considered the dictionary meaning of the word "accrue" and held that income can be said to accrue when it becomes due. It was then observed that: "..... the date of payment ..... does not affect the accrual of income. The moment the income accrues, the assessee gets vested with the right to claim that amount even though it may not be immediately."

19. This Court further held, and in our opinion more importantly, that income accrues when there "arises a corresponding liability of the other party from whom the income becomes due to pay that amount."

20. It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

21. In so far as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is therefore not the income of the assessee.

22. In *Godhra Electricity Co. Ltd. v. CIT*, [\[1997\] 225 ITR 746/91 Taxman 351 \(SC\)](#) this Court reiterated the view taken in *Shoorji Vallabhdas & Co. (supra)* and *Morvi Industries Ltd. (supra)*.

23. *Godhra Electricity* is rather instructive. In that case, it was noted that the High Court held that the assessee would be obliged to pay tax when the profit became actually due and that ***income could not be said to have accrued when it is based on a mere claim not backed by any legal or contractual right to receive the amount at a subsequent date***. The High Court however held on the facts of the case that the assessee had a legal right to recover the consumption charge in dispute at the enhanced rate from the consumers.

24. This Court did not accept the view taken by the High Court on facts. Reference was made in this context to *CIT v. Birla Gwalior (P.) Ltd.* [\[1973\] 89 ITR 266 \(SC\)](#) wherein it was held, after referring to *Morvi Industries* that ***real accrual of income and not a hypothetical accrual of income ought to be taken into consideration***. For a similar conclusion, reference was made to *Poona Electric Supply Co. Ltd. v. CIT*, [\[1965\] 57 ITR 521 \(SC\)](#) wherein it was held that income tax is a tax on real income.

25. Finally a reference was made to *State Bank of Travancore v. CIT* [\[1986\] 158 ITR 102/24 Taxman 337 \(SC\)](#) wherein the majority view was that ***accrual of income must be real, taking into account the actuality of the situation; whether the accrual had taken place or not must, in appropriate cases, be judged on the principles of real income theory***. The majority opinion went on to say:

'What has really accrued to the assessee has to be found out and what has accrued must be considered from the point of view of real income taking the probability or improbability of realisation in a realistic manner and dovetailing of these factors together but once the accrual takes place, on

the conduct of the parties subsequent to the year of closing an income which has accrued cannot be made "no income".'

**26.** This Court then considered the facts of the case and came to the conclusion (in Godhra Electricity) that no real income had accrued to the assessee in respect of the enhanced charges for a variety of reasons. One of the reasons so considered was a letter addressed by the Under Secretary to the Government of Gujarat, to the assessee whereby the assessee was "advised" to maintain status quo in respect of enhanced charges for at least six months. This Court took the view that though the letter had no legal binding effect but "one has to look at things from a practical point of view." (See *R.B. Jodha Mal Kuthiala v. CIT* [1971] 82 ITR 570 (SC)). This Court took the view that the probability or improbability of realisation has to be considered in a realistic manner and it was held that there was no real accrual of income to the assessee in respect of the disputed enhanced charges for supply of electricity. The decision of the High Court was, accordingly, set aside.

**27.** Applying the three tests laid down by various decisions of this Court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income but only hypothetical income had accrued to the assessee and Section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic.

**28.** Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.

**29.** In *Radhasoami Satsang Saomi Bagh v. CIT* [1992] 193 ITR 321/60 Taxman 248 (SC) this Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years. In arriving at this conclusion, this Court referred to an interesting passage from *Hoystead v. Commissioner of Taxation*, 1926 AC 155 (PC) wherein it was said:

"Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is

exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

**30.** Reference was also made to *Parashuram Pottery Works Ltd. v. ITO* [1977] 106 ITR 1 (SC) and then it was held: "We are aware of the fact that strictly speaking *res judicata* does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken."

**31.** It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the ***Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it.***

**32.** Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.

**33.** For the aforesaid reasons, we dismiss the civil appeals with no order as to costs, but with the hope that the Revenue implements its litigation policy a little more practically and a little more seriously.

As is evident that when the accounted transaction independently accepted in the case of Company and Shri Ram Singh Meena in their cases and while in the case of the assessee it was treated as unexplained but under which section and on what reasons? The question remained unanswered.

As is evident that none of the credit as alleged to have been made by the assessee to the account of Shri Ram Singh Meena and the revenue failed to answer that specific question about the source of the source of the money of the investment made by Shri Ram Singh Meena was flowed from the assessee? The answer is “No” as no material to that contention of the revenue was placed before us. In that situation there is nothing to add as income of the assessee. Be that it may under which section the law empower the Id. AO to make the addition of sum which is already recorded in the regular books of account of two separate entities. Since the assessee has neither paid the money nor acquired the assets for his own benefit even on that account the provision of section 69 on the allegation as alleged investment cannot be made in the hands of the assessee. We also observed that Id. AO has not proved that when the assessee has no role to play on the acquisition of the property merely the record found at the premises of the assessee it does not affect the assessment of income in the

hands of the assessee. Not only that the case of M/s. Om Shree Ram Infrareal Private Limited was assessed independently after search and in that proceeding revenue could not establish that the funds that flowed to Shri Ram Singh Meena is from that company was sourced from the assessee. As such the acceptance of transaction in the hands of M/s. Om Shree Ram Infrareal Private Limited and that of the Shri Ram Singh Meena the allegation made by the revenue fails at that stage even though the revenue made the addition and Id. CIT(A) has not properly appreciated the fact and thereby the assessee is in appeal to challenge the addition of the independent credit in the account of Shri Ram Singh Meena. Revenue in both the before the Id. AO and that of the Id. CIT(A) preferred to remain silent and not made any protective or substantive addition because the source was clear in their respective hand. Having accepted the credit as source from the books of M/s. Om Shree Ram Infrareal Private Limited to finance the money to Shri Ram Singh Meena were also accepted. If that is so what is the reason to make the addition in the hands of the assessee where the assessee has nothing to do with the two independent transactions between M/s. Om Shree Ram Infrareal Private Limited and Shri Ram Singh Meena. Therefore, once the revenue on one hand considered the source as well as investment as explained and in another

without bringing any contrary material as to how explained income be considered as unexplained income of the assessee by adopting the flip flop approach on the same money cannot be accepted. The bench noted that one side revenue accepted the fact that investment recorded and reflected in his ITR is his investment from the explained sources and having accepted and taxed that part of income in his hand, then without bringing any contrary material how the other side revenue alleged that these investment are for the benefit of the assessee and that on that aspect that it has direct benefit to the assessee or not was not established before the lower authority or that of before the present appellate proceedings. Therefore, it would be appropriate to verify the source of the investment made by Shri Ram Singh Meen in the year under consideration, as per the chart submitted by assessee the total investment made by the assessee in the year under consideration is Rs. 16,09,07,018/-. Record reveals that for the year under consideration it was alleged to have been financed or the account of the assessee credit by the following source;

Assessment Year	2013-14	2014-15
Recd. From Ram Babu Sarraf	-	39,50,000/-
Recd. from M/s Om Shree Ram Infrareal (P) Ltd.	5,85,53,000/-	5,56,09,511/-
Cash	13,53,500/-	30,56,500/-
<b>Total</b>	<b>5,99,06,500/-</b>	<b>6,26,16,011/-</b>

Advances have been made by company to Sh. Ram Singh Meen

12.8 Thus, having considered the investment of Shri Ram Singh Meena by accepting his ITR and considering the source of the amount being recorded in the respective books of account of Shri Ram Singh Meena and Company M/s. Om Shree Ram Infrareal P. Ltd., having accepted that what are the evidence based on upon which the addition be sustained remained unanswered.

As is evident from the record that the Id. AO issued a show cause notice on the contention to tax the income to the extent of the credit in the bank account and investment made by Shri Ram Singh Meena. In response the assessee filed the detailed reply to the Id. AO who considered the reply of the assessee but did not find acceptable because the assessee has made deposits in the bank accounts from his own as well from group companies and used Shri Ram Singh Meena and Shri Rajesh Kabra (Special Power of Attorney Holder of Shri Ram Singh Meena) as a conduit to make such transactions. While holding revenue upon the finding of DCIT (Benami Prohibition), Rajasthan, (where detailed investigation has been made in this case as submitted by revenue) and in that proceeding it was concluded as under. We have examined that contention and the finding on that observations are tabulated herein below :

Sr.no	Contention of the Id. AO and that of the DCIT DCIT (Benami	Observation as regards the fact that based on that fact whether
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	<b>Prohibition), Rajasthan</b>	<b>the addition made is sustainable or not</b>
1.	The above persons are of little means. They have credit worthiness to make such huge deposits in their bank account	Whether the person is having means or not. The source of the credit and investment made is from the explained source or not is required to be seen and the same is not doubted. Record reveals that there is no evidence of any incriminating material of having paid any cash while purchasing the property by the assessee even though the premises were searched. The source of the investment made in the property is duly examined and there is no finding of the lower authority that the same remained unexplained.
2.	The assessee Shri Om Prakash Gupta made deposits in the bank account of Shri Ram Singh Meena and all the amounts were provided by the assessee or his group persons/concerns only.	No finding as to which concern has provided the unexplained money. Even there is no finding as to the assessee has provided deposit into the bank account of Shri Ram Singh Meena
3.	The assessee Shri Om Prakash Gupta made deposits in the bank account of Shri Ram Singh Meena and all the amounts were provided by the assessee or his group persons/concerns only.	The money so provided were verified and considered as explained.
4.	This bank account was never used by the above person but were used by Shri Om Prakash Gupta only for his own benefits.	POA was searched no material as to having any incriminating in nature was found merely the account was operated by POA the explained transaction cannot be considered as unexplained money.
5.	Shri Om Prakash Gupta opened and operated the bank accounts in the name of Shri Ram Singh Meena and carried out transactions in these bank accounts as accepted by him in the statement taken.	Each entry of this account were explained and considered so. The statement relied upon were retracted.
6.	Shri Om Prakash Gupta got the books of accounts prepared in the	Neither the source of the credit nor the investment made by Shri Ram

	name of St Ram Singh Meena and got the ITRs filed in the name of Shri Ram Singh Meena show that the transactions of lands carried out by him in the name of Shri Ram Singh Meena are genuine transactions.	Singh Meena has found to have been invested by the assessee and the assets which were acquired by that Shri Ram Singh Meena for the benefit of the assessee.
7.	The above person did not file any reply to the Show Cause Notices issued to them despite ample opportunities given from time to time. The preliminary objections raised were disposed off by the DCIT(BPU) by passing a speaking order.	Every law provide remedy in such a situation to take strict action against who did not comply but it does not give any implication on the assessment of the income of the assessee based on the facts discussed herein above.
8.	Shri Om Prakash also did not file any reply to the detailed Show Cause Notices issued u/s 24(1) of the PBPT Act to Shri Ram Singh Meena served upon him despite ample opportunities given.	When the assessee was not given the statement of Shri Ram Singh Meena and opportunity to cross examine to what have to say comply and what details asked in possession of the assessee is not provided is not a case.
9.	This bank account was never used by Shri Ram Singh Meena but was used by Shri Om Prakash Gupta only for his own benefits.	The use of the bank account by Shri Ram Singh Meena by himself will not make any inference to tax the assessee.
10.	Shri Rajesh Kabra is a close relative and confident of Shri Om Prakash Gupta Therefore, Shri Om Prakash Gupta took a power of attorney from Shri Ram Singh Meena in the name of Shri Rajesh Kabra and bank account of Shri Ram Singh Meena was also operated and controlled by Shn Om Prakash Gupta through Shri Rajesh Kabra.	Shri Rakesh Kabra was searched no incriminating documents found and merely operation of that bank account by his relative has in pact on the income of the assessee since there is no allegation that the credit and that of the debit for the benefit of the assessee.
11.	Bank account in the name of Shri Ram Singh Meena was opened inKotak Mahindra Bank. Sardar Patel Marg, Jaipur and used and operated by Shri Rajesh Kabra for the sole benefit of Shri Om Prakash Gupta.	To support this contention no such evidence placed before us. Not only that the credit and debit were considered as explained in the hands of the Shri Ram Singh Meena
12.	Net and mobile banking facility was availed on mobile number 9414045253 (belongs to Shri Rachit Agarwal s/o Shri Om Prakash Gupta) and e-mail id "info.omgroup@gmail.com", is the	This information being factual not denied but that has no impact on the income to be assessed in the case of the assessee.

	registered e-mail id of the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur. Similarly, mobile number 9414045253 is the registered. mobile number of this bank account.	
13.	On examination of the material available on record, it has been found that the transactions carried out in the bank account number 5111215909 opened in the name of Shri Ram Singh Meena in Kotak Mahindra Bank, Sardar Patel Marg, Jaipur branch were not carried out by Shri Ram Singh Meena but were made by Shin Om Prakash Gupta only. Thus, all these transactions are benami transactions and the money kept in this bank account is a benami property of Shri Om Prakash Gupta	All the credit and debit were accepted it was not finding that the assessee has deposited out of his unexplained money and the investment was again for the benefit of the assessee and therefore, this fact has not direct impact in the assessment of the assessee.

In the light of the above discussion and considering the detailed guideline and decision in the case of our High Court in the case of Esspal International (Supra) decision of Apex Court in the case of Excel Industries Ltd. (Supra) and Abhisar Buildwell P. Ltd. (Supra) we do not find any reason to tax even the higher figure of credit or that of the investment in the case of the assessee and thereby we do not concur with the view of the Id. CIT(A) and thereby we consider ground no. 1 to Ground no. 5.1 raised by assessee in the lead case of the assessee. Ground no. 6 being consequential in nature does not require our finding.

In the results, the appeal of the assessee in ITA no. 395/JP/2025 stands allowed.

13. In ITA No. 397/JP/2025 the different ground with that of the lead case is Ground no. 4 and 4.1 which reads as follows;

4. On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in confirming the addition of Rs. 13,00,000/- made by the Id. AO on account of investment in partnership firm "M/s. Om Realty" u/s 69 of the Income Tax Act, arbitrarily.

4.1 That Id. CIT(A) has further erred in brushing aside the submission made by the assessee that addition on this account was also made in the hands of "M/s. Om Realty" and rather observing that issue of source in the hands of assessee is separate and distinct. Appellant prays that confirming of additions in the hands of assessee has resulted into double taxation of same income in the hands of assessee as well as "M/s. Om Realty" which is not in accordance with law and addition of Rs. 13,00,000/- deserved to be deleted.

14. The brief facts related to this ground as emerges from the order of the assessment is that while search proceedings on Om Agarwal Group Sawai, Madhopur, the residential premises of Shri Puneet Gupta (one of the key person of Group and Directors in M/s Om Transport Company. M/s Professional Automotives Pvt. Ltd., Partner in M/s Om Realty) situated at 41, Gulab Bag, Jawahar Nagar, Sawai Madhopur was also covered. In that search at residence of Shri Puneet Gupta various incriminating documents were found & seized as per Annexure AS, Ex-1 to 2. On perusal of page 119 of Ex-1, it has been noticed that this paper contains data in tabulated form, which pertains to the brief description of income & expenditure of the

project Om Realty, in which the assessee Shri Om Prakash Agarwal (Gupta) is one of the partner During the year 2014-15, he had made capital investment of Rs.66,60,000/- on 31.07.2014. This capital investment amounting to Rs.66,60,000/- has been recovered in the above exhibit seized by the search party from the residence of Shri Puneet Gupta. During the post search investigation proceedings, the assessee has submitted written reply. On perusal of reply and balance sheet for the F.Y. 2017-18, it has been noticed that the assessee has mentioned an amount of Rs.53,60,000/- against M/s Om Realty in the sundry debtors list. Further, the assessee has stated while post search proceedings this entry is related to capital investment in M/s Om Realty, in which he is one of the partner and the transaction mentioned against M/s Om Realty is the amount invested by him. Hence, it was clear that the total investment made by the assessee amounting to Rs. 53,60,000/- was by way of cheque. Therefore, it is clear that he had invested an amount of Rs. 53,60,000/- in M/s Om Realty during the F.Y. 2014-15. But on perusal of seized document, which was annexed at page no. 119 of Ex-1 of party No. 2 (residence of Shri Puneet Gupta), it is clearly mentioned on that the assessee Shri Om Prakash Agarwal (Gupta) had made total investment of Rs.66,60,000/- during the F.Y. 2014-15. Thus, there is a difference of Rs. 13,00,000/-

(66,60,000-53,60,000), which was not shown by the assessee in his books. Therefore, during the course of assessment proceedings the assessee was specifically asked for the explanation of the source of undisclosed investment found in the seized material and how the same was offered for taxation in the return of income, vide query letter dated 10.02.2021. Since, the assessee has not furnished documentary evidences in support of investment made in the firm. Investment amounting to Rs. 13,00,000/- which was reflected in the seized material found from the residence of the Shri Puneet Gupta was treated as unexplained investment of assessee for the year under consideration and the same was added to the total income of the assessee u/s 69 of the Act.

15. When the matter carried before the Id. CIT(A) he upheld the addition in the hands of the assessee by observing as under :

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

In this ground of appeal the appellant has contended that in the assessment of M/s Om Realty addition has been made by the learned AO on account of unexplained sources of the expenses of Rs. 80,50,541 and it was contended during the assessment of this partnership firm that Rs.48,00,000 were given by the appellant which was utilised in incurring the unexplained expenses. In the present ground of appeal the appellant has contended that Rs. 13,00,000 added by the learned AO in the assessment order as unexplained investment of the appellant in the partnership firm M/s Om Realty is part of Rs. 48,00,000 which has been referred above. The appellant has contended that the sum has been already

taxed in the hands of M/s Om Realty and thus the same should not be taxed in the hands of the appellant.

The above contentions of the appellant have been carefully considered and it is noted that the appellant has not placed on record the relevant evidences in this regard and made self-serving statements. The appellant has not placed on record of the (i) submissions made during the assessment proceedings of M/s Om Realty, (ii) the assessment order in the case of M/s Om Realty, (iii) whether the addition made therein has been accepted or not. Thus the contentions made by the appellant are non-verifiable and are rejected.

Even otherwise the addition made in the hands of the appellant is regarding the source of the funds in the hands of the appellant and whereas it appears from the submissions of the appellant in the case of M/s Om Realty it appears that the addition was done in terms of source in the hands of such partnership firms. Thus the issue of source in the hands of the appellant is separate and distinct. The appellant is required to substantiate the source in his own hands and in the absence of the same the investment is liable to be taxed and which has been taxed in the assessment order. In the appeal the appellant has not made submissions on the merits against the additions and has however only made submission regarding the claim of the set off on the ground that the same amount has already been taxed in the hands of M/s Om Realty however which has been found to be unsubstantiated self-serving statement. Thus the addition made in the assessment order is hereby confirmed and this ground of appeal of the appellant is hereby dismissed.”

16. Feeling dissatisfied the assessee challenged that addition and in support of the contention the Id. AR of the assessee submitted that during the course of search, certain documents were found containing details of receipts and payments of M/s Om Realty. While completing assessment in the case of M/s Om Realty, (wherein assessee is acting as partner and has made investment as stated in above para), for A.Y. 2015-16, Id.AO alleged that expenses to the tune of Rs. 80,50,541/- have been made by Om Realty

out of unexplained sources. Detailed submission was filed in the case of M/s Om Realty, duly explaining the source of such expenses, which included sum of Rs.48,00,000/- being received from Sh. O.P. Gupta (i.e. assessee) as his unexplained investment in the firm and thereby he submitted that no separate addition is required to be made in the hands of the assessee.

17. Ld. DR is heard who relied upon the orders of the lower authority and submitted that since there was failure on the part of the assessee to substantiate the claim and without that fact the claim of the assessee was right.

18. We have heard the rival contentions and perused the material placed on record. The apple of the discord in the ground no. 4 & 4.1 taken by the assessee in this appeal is that there was difference in the investment made by the assessee in the material found during the search and thereby the investment shown in the books of account of the assessee and thereby the difference amount of Rs. 13,00,000/- was treated as unexplained investment u/s 69 of the Act. When the matter carried before the Id. CIT(A) he has sustained the addition by observing that the since the assessee has

not substantiated the source the addition was sustained by him. Before us the Id. AR of the assessee submitted that while conducting the assessment proceeding of the firm where the assessee is partner M/s Om Realty for A.Y. 2015-16, Id.AO alleged that expenses to the tune of Rs. 80,50,541/- have been made by Om Realty out of unexplained sources. The contention so raised by the assessee lacks without any supporting evidence and whether there in the case of M/s. Om Realty the contention taken by the assessee were not supported and therefore, we see no infirmity in the finding of the Id. CIT(A) and thereby the addition is sustained and ground no. 4 & 4.1 raised by the assessee are dismissed.

19. In ITA No. 401/JP/2025 the different ground with that of the lead case is Ground no. 1 which reads as follows;

1. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in not deleting the addition of Rs. 13,30,000/- made by the Id. AO on account of cash found during the search rather merely allowing telescoping set off of the same towards additional income offered by assessee, arbitrary. Appellant prays that cash found during search was out cash balances in the books of accounts of assessee, his family members and business concerns as well as part of savings of family members, pin money etc. therefore, cash so found is fully explained and addition made on this account deserves to be deleted.

20. The brief facts related to this ground emerges from the order of the assessment is that while search & seizure operation carried out on the assessee group M/s Om Agarwal, Sawai Madhopur on 16.01.2019.

residence of Shri Om Prakash Agarwal (Gupta) situated at 40. Jawahar Nagar Sawai Madhopur was also covered under search action. During the search proceedings following cash was found from the premises for which details are as under;

(Amount Rs. )

S.No.	Related to the family member	Annexure	Cash found	Cash as per books	Cash seized
1.	Shri Om Prakash Agarwal (Residence of Shri Om Prakash Agarwal)	CF (Page-1)	4,30,360	-	3,00,000
2.	Shri Om Prakash Agarwal & Smt. Snehlata Agarwal (locker No. 38)	CF (Page-1)	6,50,000	-	6,50,000
3	Smt. Snehlata Agarwal & Shri Rachit Agarwal (Locker No. 45)	CF (Page-1)	2,50,000	-	2,50,000
		<b>Total</b>	<b>13,30,360</b>	<b>-</b>	<b>12,00,000</b>

In the search proceedings the statement of Shri Rachit Agarwal, son of Shri Om Prakash Agarwal were recorded for the explanation for the source of the above cash of Rs 13,30,360/ In reply to Q. No. 15, the assessee (Rachit Agarwal) has stated that some part of cash found from the residence as well as lockers is part of individual cash balances of family members & also it is part of agricultural income. However, he did not produce any documentary evidence at the time of search proceedings. Out

of the above cash found Rs. 12 lacs were seized by the department in terms of the Annexure CS dated 16.01.2019. Assessee submitted that as on date of search there was sufficient cash balance in the hand of assessee, his family members and his group concerns. During the course of assessment proceedings, the assessee was specifically asked for the explanation of the cash found during the course of assessment proceedings vide query letter dated 10.02.2021. In the assessment proceeding the assessee submitted the reply which reads as under :

"During the course of search total cash of Rs. 1,04,90,560/- was found out of which Rs 17,00,000/- was seized by the department and balance Rs. 87.90,560 was released being the cash balance available with business concern and saving of the family members. The immediate source of cash is the cash balance available in the books of the assessee and his family members coupled up with the saving and pin money of household ladies. Thus the cash so found is covered and therefore no further adverse inference is required to be drawn with reference to the cash found.

Having considered the above reply Id. AO noted that the the submission of the assessee is unacceptable for the following reasons

- The assessee has not furnished documentary evidences for cash savings
- The assessee has not reconciled the cash balance available with the return of income
- The benefit for the cash balance as available in the books of the assessee's family members and business concern has already allowed to the assessee
- The cash of Rs. 13,30,000/- is over and above the cash balances available in the cash book of the assessee group

- During the course of post search proceedings the assessee has furnished that the cash balance includes agriculture income, however the assessee has not furnished documentary evidences for the same.

Therefore, the submission of the assessee that the cash found during the course of search is part of saving of family members and part of agriculture income is not acceptable in the absence of the documentary evidences of the same and thereby cash of Rs. 13,30,360/- which was found at the premises of Shri Om Prakash Agarwal is being treated as unexplained money of Shri Om Prakash Agarwal and the same is being added to the total income of Shri Om Prakash Agarwal u/s 69A of the Act.

21. The assessee challenged that finding of the Id. AO before Id. CIT(A) who dismissed this ground of appeal by observing as under :

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

The Id. AO has noted that the total cash from the assessee's residence as well as bank locker was found amounting to Rs. 13,30,360/- at the time of search. The cash was found at three namely, the residence of the appellant, joint bank account locker of the appellant with Smt. Sneha Lata Agarwal and joint bank account locker of Smt. Sneha Lata Agarwal and Shri Rachit Agarwal. During the course of search proceedings the statement of Shri Rachit Agarwal, son of Shri Om Prakash Agarwal were recorded for the explanation for the source of the above cash of Rs. 13,30,360/- In reply to Q. No. 15, the assessee (Rachit Agarwal) has stated that some part of cash found from the residence as well as lockers is part of individual cash balances of family members & also it is part of agricultural income. However, he did not produce any documentary evidences at the time of search proceedings.

The Id. AO noted that the assessee has not furnished documentary evidences for cash savings, the assessee has not reconciled the cash balance available with the



X	x	x	x
• PCIT vs. Aliasgar Anvarali Varteji [2018] 96 taxmann.com 231 (Gujarat)			
[17-07-2018]			
X	x	x	x

In view of the above discussion into the facts of the case and in view of the ratio of the judgements the appellant is entitled to the set off or the telescoping of the additional income detected and accepted with respect to the application or investment in the cash found during the course of search and seizure action.

Accordingly, in view of the totality of the facts and circumstances of the case, the addition made in the assessment order in this regard it is hereby directed to be deleted and this ground of appeal is hereby allowed.

22. The bench noted that the Id. CIT(A) has already considered all the aspect of the matter and has already allowed the setoff of the additional income disclosed by the assessee and thereby we do not find any infirmity in the detailed finding of the Id. CIT(A) and thereby the ground no 1 raised by the assessee in this appeal stands dismissed.

23. The bench noted that facts of the case and the grounds of appeal in ITA Nos. 396 to 401/JP/2025 are similar to the facts of the case in ITA No. 395/JP/2025 as tabulated herein below and we have heard both the parties and persuaded the materials available on record. Thus, we notice that the issues raised by the assessee in this appeal No. 395/JP/2025 is equally similar on set of facts and grounds of that of the grounds raised in the appeal of the assessee as tabulated herein below. Therefore, it is not imperative to repeat the facts, various grounds, arguments raised by both

the parties and finding given on that similar issue. Hence, the bench feels that the decision taken by us in ITA No. 395/JP/2025 for the Assessment Year 2013-14 shall apply mutatis mutandis in the case of Om Prakash Gupta in ITA Nos. 396 to 401/JP/2025 for Assessment Years 2014-15 to 2019-20 as tabulated herein below;

S no.	Appeal Number	A. Y.	Remarks
1	396/JPR/2025	2014-15	Ground no. 1 to 5.1 raised in this appeal are similar to the grounds of appeal as raised in ITA no. 395/JP/2025 vide ground no. 1 to 5.1 and that finding shall apply mutatis mutandis in this appeal. Ground no. 1 to 5.1 too. Ground no 6 is consequential.
2	397/JPR/2025	2015-16	Ground no. 1 to 3.2 raised in this appeal are similar to the grounds of appeal as raised in ITA no. 395/JP/2025 vide ground no. 1 to 5.1 and that finding shall apply mutatis mutandis in this appeal Ground no. 1 to 3.2 too. Ground no. 4 to 4.1 dismissed as per the separate finding given herein above. Ground no 6 is consequential.
3	398/JPR/2025	2016-17	Ground no. 1 to 5.1 raised in this appeal are similar to the grounds of appeal as raised in ITA no. 395/JP/2025 vide ground no. 1 to 5.1 and that finding shall apply mutatis mutandis in this appeal. Ground

			no. 1 to 5.1 too. Ground no 6 is consequential.
4	399/JPR/2025	2017-18	Ground no. 1 to 3.2 raised in this appeal are similar to the grounds of appeal as raised in ITA no. 395/JP/2025 vide ground no. 1 to 5.1 and that finding shall apply mutatis mutandis in this appeal. Ground no. 1 to 3.2 too. Ground no 4 is consequential.
5	400/JPR/2025	2018-19	Ground no. 1 to 3.2 raised in this appeal are similar to the grounds of appeal as raised in ITA no. 395/JP/2025 vide ground no. 1 to 5.1 and that finding shall apply mutatis mutandis in this appeal. Ground no. 1 to 3.2 too. Ground no 4 is consequential.
6	401/JPR/2025	2019-20	Ground no. 2 to 4.2 raised in this appeal are similar to the grounds of appeal as raised in ITA no. 395/JP/2025 vide ground no. 1 to 5.1 and that finding shall apply mutatis mutandis in this appeal. Ground no. 1 we have dismissed as per the finding given herein above. Ground no 5 is consequential.

In terms of these observations the appeals of the assessee are disposed off as under :

S no.	Appeal Number	Assessment Year	Results
1	395/JPR/2025	2013-14	Allowed

2	396/JPR/2025	2014-15	Allowed
3	397/JPR/2025	2015-16	Partly Allowed
4	398/JPR/2025	2016-17	Allowed
5	399/JPR/2025	2017-18	Allowed
6	400/JPR/2025	2018-19	Allowed
7	401/JPR/2025	2019-20	Partly Allowed

Order pronounced in the open court on 18/09/2025.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 18/09/2025

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Om Prakash Gupta, Sawaimadhopur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 395 to 401/JP/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar