IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2713/Del/2023	**A.Y. 2015-16**
ITA No. 2714/Del/2023	**A.Y. 2016-17**
ITA No. 7/Del/2024	**A.Y. 2017-18**
ITA No. 51/Del/2024	**A.Y. 2018-19**
ITA No. 271/Del/2024	**A.Y. 2019-20**

Super Cassettes Industries Pvt. Ltd., E-2/16 White House, Ansari Road, Daryaganj, New Delhi-110002. **PAN: AABCS 4712 P**	Vs	DCIT Central Circle-03, Delhi**.**
APPELLANT		**RESPONDENT**

ITA No. 2511/Del/2023	**A.Y. 2013-14**
ITA No. 2512/Del/2023	**A.Y. 2014-15**
ITA No. 2702/Del/2023	**A.Y. 2015-16**
ITA No. 2756/Del/2023	**A.Y. 2016-17**
ITA No. 272/Del/2024	**A.Y. 2017-18**
ITA No. 273/Del/2024	**A.Y. 2018-19**
ITA No. 326/Del/2024	**A.Y. 2019-20**

DCIT Central Circle-03, Delhi**.**	Vs	Super Cassettes Industries Pvt. Ltd., E-2/16 White House, Ansari Road, Daryaganj, New Delhi-110002. **PAN: AABCS 4712 P**
APPELLANT		**RESPONDENT**

AND

ITA No. 1845/Del/2023 A.Y. 2019-20

DCIT Central Circle-03,Delhi**.**	Vs	Luv Ranjan, R-11/40, Rajnagar, Ghaziabad-201002**PAN: AHGPR 9364 K**
APPELLANT		**RESPONDENT**

AND

ITA No. 2510/DEL/2023 A.Y. 2013-14
ITA No. 2509/DEL/2023 A.Y. 2014-15
ITA No. 2950/DEL/2023 A.Y. 2015-16
ITA No. 2951/DEL/2023 A.Y. 2016-17
ITA No. 279/DEL/2023 A.Y. 2017-18
ITA No. 280/Del/2024 A.Y. 2018-19
ITA No. 281/Del/2024 A.Y. 2019-20

DCIT Central Circle-03, Delhi	Vs	Bhushan Dua W-83 Greater Kailash Part II New Delhi 110048 **PAN:AAHPD 9919 L**
APPELLANT		**RESPONDENT**

Assessee represented by:	Shri Anup Mehta, CA; Shri Nirbhay Mehta, Adv; and Ms. Vanshika Mehta, Adv.
Department represented by:	Shri Mahesh Kumar, CIT(DR)

Date of hearing	19.08.2025
Date of pronouncement	25.09.2025

O R D E R

PER Ms. MADHUMITA ROY, JM:

The captioned appeals have been preferred by the assessees and the Revenue, as the case may be, against respective orders of learned CIT(Appeals) which in turn arose against respective orders of Assessing Officer(s), as detailed below.

ITA no./assessment year	Appellant	Order appealed against	AO's order
1. ITA No. 2713/Del/2023 (A.Y. 2015-16)	Super Cassettes Industries Pvt. Ltd.	CIT(A)-23, New Delhi dt. 31.07.2023 DIN: ITBA/APL/M/250/2023-24/1054734942(1)	DCIT, Central Circle-3, New Delhi. Dt. 09.08.2021
2. ITA No. 2714/Del/2023 (A.Y. 2016-17)	-do-	CIT(A)-23, New Delhi dt. 28.07.2023	-do- dt. 09.08.2021
3. ITA No. 7/Del/2024 (A.Y. 2017-18)	-do-	CIT(A)-23, New Delhi dt. 07.11.2023	-do- dt. 09.08.2021
4. ITA No. 51/Del/2024 (A.Y. 2018-19)	-do-	CIT(A)-23, New Delhi dt. 10.11.2023 DIN: ITBA/APL/M/250/2023-24/1057881179(1)	-do- dt. 09.08.2021
5. ITA No. 271/Del/2024 (A.Y. 2019-20)	-do-	CIT(A)-23, New Delhi dt. 28.11.2023 D. No. 1244/Dt. 29.11.2023	-do- dt. 17.09.2021
6. ITA No. 2511/Del/2023 (A.Y. 2013-14)	DCIT, Central Circle-3, New Delhi. V. Super Cassettee	CIT(A)-23, New Delhi dt. 21.06.2023 D.No. 940/21.06.23	-do- dt. 09.08.2021
7. ITA No. 2512/Del/2023 (A.Y. 2014-15)	-do-	CIT(A)-23, New Delhi dt. 21.06.2023 D. No. 945/21.06.2023	-do- dt. 09.08.2021
8. ITA No. 2702/Del/2023 (A.Y. 2015-16)	-do-	CIT(A)-23, New Delhi	
9. ITA No. 2756/Del/2023 (A.Y. 2016-17)	-do-	CIT(A)-23, New Delhi	
10. ITA No. 272/Del/2024 (A.Y. 2017-18)	-do-	CIT(A)-23, New Delhi	
11. ITA No. 273/Del/2024 (A.Y. 2018-19)	-do-	CIT(A)-23, New Delhi	
12. ITA No.	-do-	CIT(A)-23, New Delhi	

326/Del/2024 (A.Y. 2019-20)			
13.ITA No. 2510/Del/2023 (A.Y. 2013-14)	DCIT, Central Circle-3, New Delhi. V. Bhushan Dua	CIT(A)-23, New Delhi dt. 27.06.2023 D.No. 977/28.06.23	-do- dt. 09.08.2021
14.ITA No. 2509/Del/2023 (A.Y. 2014-15)	-do-	CIT(A)-23, New Delhi dt. 27.06.2023 D. No. 978/28.06.2023	-do- dt. 09.08.2021
15.ITA No. 2950/Del/2023 (A.Y. 2015-16)	-do-	CIT(A)-23, New Delhi dt. 17.08.2023 D. No./093 dt. 18.08.23	-do- dt. 09.08.2021
16.ITA No. 2951/Del/2023 (A.Y. 2016-17)	-do-	CIT(A)-23, New Delhi dt. 17.08.2023	-do- dt. 09.08.2023
17.ITA No. 279/Del/2024 (A.Y. 2017-18)	-do-	CIT(A)-23, New Delhi dt. 21.11.2023 D. No. 1240/21.11.23	-do- dt. 09.08.2021
18.ITA No. 280/Del/2024 (A.Y. 2018-19)	-do-	CIT(A)-23, New Delhi dt. 21.11.2023 D. No. 1239/21.11.23	-do- dt. 09.08.2021
19. ITA No. 281/Del/2024 (A.Y. 2019-20)	-do-	CIT(A)-23, New Delhi dt. 30.11.2023 D. No. 1248/30.11.23	-do- dt. 09.08.2021
20. ITA No. 1845/Del/2024 (2019-20)	-do- v. Lav Ranjan	CIT(A)-23, New Delhi dt. 08.02.2024 DIN: ITBA/APL/M/250/2023-24/1060645621(1)	-do- dt. 25.09.2021

2. Since common issues are involved for adjudication in these appeals of the same group of assessees, the entire bunch of appeals was heard analogously and is being disposed of by this common order for the sake of convenience. First we take up the cross appeals filed by the assessee as well as the Revenue in the case of company i.e. Super Cassettes Industries Pvt. Ltd

3. Brief facts leading to the case are that the appellant company is engaged in the business of selling and distribution of music and production of films during the assessment year under appeal. For its music business, the appellant company

acquires copy rights in various sound recordings from film producers, composers and artists. It also produces in house music albums/ songs by engaging singers, composers and lyricists. The sound recordings so acquired or created in house are thereafter commercially exploited through physical and digital medium. The commercial exploitation of sound recordings through physical medium is carried out by sale of CDs, cassettes and pen drives. The commercial exploitation through digital medium is carried out through licensing arrangements with FM Radio Stations, Satellite TV Channels, streaming service providers like Sportify, Kanha.com, Savvan etc. and social media platforms such as YouTube and Face Book etc.

3.1 A search action under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") was conducted on Super Cassettes Industries Pvt Ltd ("SCIPL" group) on 29.11.2018. Subsequently the case of the assessee company along with others was centralised to the charge of PCIT, Central Delhi-I by and under the order under section 127(1) dated 10.12.2020. Based upon the search action, assessment orders were passed under Section 153A in the case of the appellant company for A.Y. 2013-14 to 2018-19 and under Section 143(3) for A.Y. 2019-20. The search proceedings were conducted on SCIPL group on 28.11.2018 and by then the assessment for AY 2013-14 to AY 2015-16 were already completed and therefore, AY 2013-14 to AY 2015-16 were unabated assessments and AY 2016-17 to AY 2019-20 were abated

assessments. Before us, the revenue is in appeal for AY 2013-14 to AY 2019-20 and the appellant is in appeal for AY 2015-16 to AY 2019-20.

4. A perusal of the grounds of appeals, would indicate that there are certain common grounds, in both the assessee's appeal and the Revenue's appeals which are as follows:-

i. Addition on account of Income of SCIPL Retained in BDML UAE in order to avoid payment of taxes in India for AY 2013-14 and AY 2014-15.

ii. Addition on account of Unaccounted Cash Transactions on the basis of seized data with Sonal (Excel Sheet) for AY 2015-16, 2016-17 and 2017-18.

iii. Addition on account of Diversion of Income in Dubai through BKK Investment LLC FZ (Dubai) for AY 2015-16 to AY 2019-20

iv. Addition on account of disallowance of consultancy charges and printing expenses considering them as bogus expense for AY 2013-14 to AY 2017-18.

v. Addition on account of disallowance of legal and professional service from Rohit Tandon group considering them as bogus expense for AY 2013-14 to AY 2017-18.

vi. Addition on account of disallowance of advertisement expense from Sadhna Group considering them as bogus expense for AY 2014-15 to AY 2019-20.

vii. Addition on account of disallowance of Commission expense paid to Sanjay Singhal and M/s Balaji Agencies for AY 2016-17 and 2017-18.

viii. Addition on account of unaccounted cash received from Singers for AY 2016-17 to AY 2019-20.

ix. Addition on account of cash income & expenditure noted in Diary of Sudesh Kumari- Payment to Ved Prakash Chanana for AY 2018-19 and 2019-20.

x. Addition on account of diversion of Income in Bollywood Digital FZE by investing in property of London for AY 2016-17 and 2017-18.

xi. Addition on account of retention of Income in Dubai through M/s Highpath Limited for AY 2017-18 to AY 2019-20.

xii. Addition on account of cash transaction conducted using the-Codewords Tapes for AY 2018-19 and 2019-20.

xiii. Addition on account of enhancement done in appeal by the CIT(A) in respect of Roy Movie / Raabta Expenses for AY 2015-16 and AY 2018-19.

The common grounds are addressed first as under:

Common Grounds

5. Addition on account of income retained in BDML. Under this ground of appeal the department has challenged the addition deleted by CIT Appeal, on account of alleged income of the appellant company retained in BDML Dubai.

Assessment Year	Amount of Income retained
2013-14	2,43,45,103
2014-15	7,12,97,129

5.1 The assessee raised this common issue regarding Income of SCIPL Retained in BDML UAE in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2013-14 and AY 2014-15 (ITA Nos. 2511/DEL/2023, 2512/DEL/2023). The decision for the assessee's appeals for Assessment Years 2013-14 will be applicable for AY 2014-15, as the issues are identical and no new circumstances exist.

5.2 Brief facts of the case are that in order to increase the music licensing income from commercial exploitation of music from sources outside India, a foreign entity by the name of Bollywood Digital Music Limited (BDML) was incorporated on 03.04.2006 as Jebel Ali Free Zone Company in Dubai. At the time of its incorporation the entire shareholding comprising of 10,000 shares of AED 100 each were fully held by Shri Bhushan Kumar as single shareholder. For international licensing of music, BDML entered into a licensing arrangement with SCIPL vide agreement dated 10.04.2006 which gave a license to BDML to commercially exploit the copyrighted contents of SCIPL in the form of audio and audio visual sound recordings by giving further license to the users in territory outside India. Pursuant to this licensing arrangement, BDML entered into further licensing agreements with various parties. The revenue earned from granting licenses to these parties were shared between BDML and SCIPL in the ratio of 50% each. This revenue sharing agreement between SCIPL and BDML

was treated as diversion of income of SCIPL in the hands of BDML in a tax-free jurisdiction by the assessing authorities in the assessment orders passed for A.Y. 2007-08 to A.Y. 2014-15 pursuant to search action undertaken on SCIPL on 29.11.2018. The operations of BDML and the arrangement between SCIPL and BDML was later discontinued, A.Y. 2014-15 being the last year. Hence, from assessment year 2015-16 onwards the entire exploitation of its copyrighted content outside territory of India was carried out by SCIPL on its own. Details of additions made from AY 2007-08 to AY 2014-15 on this issue is tabulated as under:

Assessment year	**Royalty Received**
2007-08	3,69,88,901
2008-09	5,70,15,876
2009-10	1,17,62,546
2010-11	51,87,893
2011-12	3,40,78,168
2012-13	3,89,95,596
2013-14	2,43,45,103
2014-15	7,12,97,129

5.3 The AO has made the addition referred to above in all the years due to the following reasons

a) That there was no real need for setting up BDML. The revenue has been collected and retained by BDML against sale of music rights for which the intellectual property belongs to SCIPL. The main source of revenue for SCIPL is commercial exploitation of sound recordings through licensing. This activity has

been carried out by SCIPL on its own since inception and hence there was no need for setting up a separate company i.e. BDML for acting as an intermediary. To illustrate a copy of agreement dated 03.04.2006 entered into between SCIPL and M/s Viva Entertainment FZE Dubai was recovered during search and seizure operation. This agreement is for distribution of Audio Cassettes, Video CDs and DVDs which clearly indicates that SCIPL is capable of entering agreements for commercial exploitation of its copy righted contents directly with foreign parties. The main purpose behind setting up BDML is only to create a façade for diversion of income of SCIPL to a tax-free jurisdiction.

b) Agreement with foreign entities are being done by BDML and drafted in India's office of SCIPL. During the course of search action many agreements executed between BDML and other parties such as World Space Inc., Hungama Media, Media Concept etc. were found and seized from the office premises of SCIPL. This shows that so-called licensing agreements in the name of BDML are actually being executed from India by SCIPL with the sole intention to divert the income of SCIPL to a tax-free jurisdiction.

c) BDML is actually not doing any business activity in Dubai. It is a case of diversion of income of SCIPL in the hands of BDML, a foreign entity located in a tax free jurisdiction, to escape the tax in India. BDML has been allowed to keep 40-50% of license fee from exploitation of sound recordings of SCIPL in foreign territories while the intellectual property in whole actually belongs to

M/s SCIPL.

d) The contention of the assessee that BDML is a separate legal entity having its own independent existence and therefore its income cannot be taxed in the hands of SCIPL is not acceptable. The concept of lifting the corporate veil disregards separate identity of the company and looks behind true owners or real person who are in control of the company. Whenever a dishonest use is made to the legal entity like BDML, the tax authorities can always lift the corporate veil to go to the root of the transaction. In the present case BDML did not do any business except for helping the assessee to evade tax to divert licensing income to a foreign jurisdiction.

5.4 The additions so made from AY 2007-08 to 2012-13 were deleted by the CIT(A) by appreciating the facts and circumstances and concluding that there was sufficient explanation or the reason for which BDML was incorporated in Dubai and the conclusive findings of the CIT(A) deserves to be reproduced herein below for further analysis and determination of the grounds. The relevant paras 138 and 139 of the CIT(A) order for AY 2007-08 are reproduced below:-

> *"100.Thus, on the basis of above legal discussion the judicial view which emerges is that though a company is a separate legal entity different from its shareholders, however, at times the corporate veil can be pierced by the taxing authorities if it is found that the transactions are sham or bogus or of it is a case of shell company. In this background if we look at the facts of the present case*
>
> *(i) There is ample material brought on record by the appellant to establish the existence and functioning of the BDML as discussed in*

earlier part of this order. The AO has been unable to dislodge any evidence/material furnished by the appellant during assessment proceedings and instead on examining the material has simply overlooked the same by making a generalized statement that it is "self-serving".

(ii) The appellant has explained the need for setting up BDML by explaining that a similar arrangement executed with a third party i.e. Vanilla Electronics LLC in the past failed to generate any revenue and therefore the appellant was constrained to setup BDML for exploring incremental revenue through international licensing of its music content. Copy of the agreement with Vanilla Electronics LLC and termination letter were filed during the scrutiny assessment proceedings for A.Y. 2007-08 vide letter dated 16.03.2009 and therefore cannot be dismissed as after-thought. This arrangement is also discussedinpara5.3oftheTransferPricing Report dated 05.10.2007 for A.Y. 2007- OS and therefore cannot be disregarded as an after-thought. Another factor influencing the setting up of BDML as separate entity was the protection provided to SCIPL against damages which may be granted by International Courts in case of Copyright infringement.

(iii) On the basis of records filed by the appellant it is also seen that the transactions between SCIPL and BDML including the licensing arrangement for international territory and sharing of revenue has been examined in the past by the assessing authorities and no infirmity was found.

(iv) The search action did not detect any worthwhile evidence to indicate that BDML is a shell company or it only existed on paper. Some references have been made to certain material in the form of whatsapp chat and data recovered from emails to make out a case that control and management of funds and immovable properties of BDML was being carried out from India. However, as discussed in earlier part of this order the control and management of BDML continued to remain outside of India and all key management decisions were taken in Board meetings held outside India.Thereisalackofanydirectevidencewhichmayhavebeenfoundasresult of the search action to suggest that the business of BDML was being carried out by SCIPL from India. There is no evidence to show that the negotiations between third parties like World Space Inc. or Hungama FZE

were carried out on email from India or that employees of SCIPL in India were in touch with the aforesaid parties. Similarly, if BDML was a mere paper entity its entire records such as books of accounts, original license agreements, title deeds of immovable properties, original bank statements, original invoices and vouchers would have been based out of SCIPL's office and would have been detected in the search action.

(v) On the contrary the correspondence exchanged between ICC and BDML, which is a third-party evidence, establishes the existence of BDML in Dubai.

101. The AO has failed to bring on record any cogent reasons for resorting to lifting of corporate veil and disregarding the independent existence of BDML. It has been held by the apex court in the case of Vodafone International Holdings B.V. (supra) that-

> *"In short, the onus will be on the Revenue to identify the scheme and its dominant purpose. The corporate business purpose of a transaction evidence of the fact that the impugned transaction is not undertaken as a colourable or artificial device. The stronger the evidence of a device, the stronger the corporate business purpose must exist to overcome the evidence of a device. [Para 68]"Thus, the onus is on the revenue to make out a case of a "device" if the intendment is to lift the corporate veil. However, on the basis of above discussion I find that there is a lack of evidence in the assessment order to hold that the legal arrangement between SCIPL and BDML was a device for evasion of taxes."*

5.5 We have heard the rival submissions made by the respective parties and we have pursued the material available on record.

5.6 At the outset Ld. Counsel for the assessee draws the attention of Bench towards the fact that this ground of appeal is already covered in assessee's own case by the order of ITAT G Bench, Delhi Dated 18.09.2024 for AY 2007-08 to AY 2012-13 in ITAs Numbers ITAs No.214, 215, 216, 1290, 1291 & 1292/Del/2023 in which the additions made on account of income retained in

BDML were completely deleted and the order of the CIT (A) was upheld for these years. Relevant portion of the order is reproduced as under:

> *"8.1 In the case in hand, we appreciate that assessee had come up with a very categorical case that having problems in selling the products outside India due to several regulatory impediment, the assessee had preferred to have an independent and distinct company based in Dubai and to let that entity deal with transactions of the territory beyond India. Thus, Shri Bhushan Kumar being the 100% owner of the equity of BDML and being resident of India had every legitimate right for showing indulgence into the matters of his Dubai based company from India. It is quite irrational and not prudent to expecta businessman having huge network of business activities across various international territories to be present in those territories and to take exclusive assistance of the employees of those entities, who are located or resident, beyond India. On the contrary, for any matter which requires immediate attention or indulgence, Mr. Bhushan Kumar was in his right to engage his immediate staff to help him. The Whatsapp chat relied by the AO may have been those instances where out of urgency or any other expediency Mr. Bhushan Kumar, himself or through counsel or any supporting employee of personal staff was actively or passively controlling the activities of BDML, Dubai.*
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> *9. Next, analyzing the business module of the two entities, there is no allegation of the AO that the transaction between them were not at arm's length. Thus, there is no allegation that any benefit had accrued to BDML out of the transaction. In fact the facts relied by CIT(A) on page 54 is ample evidence to prove by facts and figure that assessee had derived benefits with new agreement with BDML in terms of higher revenue. We consider it expedient to reproduce that relevant para 68.4 from the order of CIT(A) herein below:-*
>
> > *"68.4 The international licensing revenue of SCIPL which existed prior to setting up of BDML in the year 2006 continued to remain in SCIPL even after the licensing agreement with BDML dated 10.04.2006. Details of Foreign Royalty income i.e., income earned by SCIPL from International Licensing for FY 2003-04 to FY 2015-16 have been filed in the Paper Book. From an examination of the se details it is clear that the licensing agreements with foreign*

parties continued to remain as it is and no part of such foreign income was diverted to BDML. The revenue from BDMLwas on account of new parties which was sourced through the marketing efforts of BDML team. A comparative position of revenue earned through International Licensing from BDML and others is tabulated below:-

SUMMARY OF FOREIGN ROYALTY								
	BDML		*% of BDML*	*OTHERS*		*% of OTHERS*	*TOTAL*	
F.Y	*Amountin USD*	*Amountin INR*		*Amountin USD*	*Amountin INR*		*Amountin USD*	*Amount in INR*
2003-04	-	-	-	*29,928*	*13,36,944*	*100*	*29,928*	*13,36,944*
2004-05	-	-	-	*118,180*	*88,66,415*	*100*	*118,180*	*88,66,415*
2005-06	-	-	-	*381,511*	*2,75,49,379*	*100*	*381,511*	*2,75,49,379*
2006-07	*829,074*	*3,69,88,901*	*44*	*684,935*	*4,66,76,535*	*56*	*1,514,009*	*8,36,65,436*
2007-08	*1,423,472*	*5,70,15,876*	*50*	*848,619*	*5,71,88,202*	*50*	*2,272,091*	*11,42,04,078*
2008-09	*231,980*	*1,17,62,546*	*16*	*779,549*	*6,25,68,086*	*84*	*1,011,529*	*7,43,30,632*
2009-10	*115,287*	*51,87,893*	*10*	*650,958*	*4,88,35,928*	*90*	*766,245*	*5,40,23,821*
2010-11	*734,533*	*3,40,78,168*	*30*	*1,502,176*	*7,81,22,307*	*70*	*2,236,709*	*11,22,00,475*
2011-12	*791,606*	*3,89,95,595*	*22*	*2,413,748*	*14,09,08,969*	*78*	*3,205,355*	*17,99,04,564*
2012-13	*442,354*	*2,43,45,100*	*7*	*5,428,359*	*32,89,08,450*	*93*	*5,870,713*	*35,32,53,551*
2013-14	*1,245,722*	*7,12,97,128*	*12*	*8,062,134*	*52,75,87,291*	*88*	*9,307,856*	*59,88,84,419*
2014-15	-	-	-	*9,625,455*	*59,31,00,630*	*100*	*9,625,455*	*59,31,00,630*

10. In this regard, we also observe that Ld. CIT(A) has rightly taken into consideration the fact that the assessee justifies the reasons for setting up of BDML as an independent entity for digital exploitation in foreign territories to have protection for claim of damages under international law and for that reason the assessee company got an added

protection for claim for damages under the international law to the extent that BDML was exposed to substantial IPR liability risk by indemnifying SCIPL for any damages exceeding one million USD that may be awarded in any foreign court on account of any IPR infringement.

11. Then, there was certain materials in the form of expenditures on employees, building, etc., for functioning of BDML in Dubai. The ld. DR has stressed a lot on the fact that the expenditures are not much as should be for an entity working in Dubai. This argument is not much impressive as BDML is not the assessee before the Revenue so as to justify the expenses. Even otherwise, when Shri Bhushan Kumar was the sole owner of the 100% equity of BDML and the said company was incorporated with a specific objective to cater to the territories beyond India in terms of earning royalties only then not much of a business set up or paraphernalia would have been required. Ld. CIT(A) has though examined the fact that there were two employees of BDML with visa permitting to work in UAE. There was a lease agreement for office premises and service agreements. The copies of invoices for legal expenses, audit fees, conversion of audio and video sound recording in digital format, agreement for acquisition of sound recordings from a non-related third party were examined by CIT(A) to conclude that BDML has a separate legal entity and functional independence.

12. It is also established before us also that the assessee had earlier tried for commercial exploitation of the sound recordings owned by the assessee in territories outside India by entering into an agreement of the similar nature as entered into with BDML. However, that company Vanil Electronic LLC was unable to give encouraging business revenues and that when BDML was given the licensing rights, there was substantial increment in the revenue through international licensing of the music content. The assessee was able to establish before the CIT(A) that BDML had independently entered in agreements, on its own, with renowned companies like World space Inc. and Hungama Media Concept, etc., for licensing the music and digital content from the music repertoire of SCIPL. It is also established that a dispute of commercial nature with World space Inc. was settled by arbitrations of International Chamber of Commerce. That was one valid reason for which the assessee had

considered to give the overseas rights to a separate entity with base in Dubai which can independently contest such international transaction issues according to the international laws. The CIT(A) has examined certain Board Resolutions wherein the Board meetings were held in Dubai in the presence of directors who were present in Dubai. The CIT(A) has examined the aspect that by giving rights to BDML there was no diversion of income existing in the hands of the assessee, rather, the new avenues of revenue were discovered by BDML and a part of which were received in India by the assessee and reported as income. We consider it relevant and pertinent to reproduce the findings of the CIT(A) in para 93-95 as follows:-

> *"93. According to the appellant another reason for setting up BDML as an independent entity was due to added protection it provided to SCIPL for claim for damages under the international law. Under the arrangement between SCIPL and BDML the later continued to be exposed to substantial IPR liability risk by indemnifying SCIPL for any damages exceeding 1 million USD that may be awarded in any foreign court on account of any IPR infringement. This was a significant risk which got shifted from SCIPL to BDML particularly when it is customary for Courts in North America and Europe to award very high damages and penalty in cases of IPR infringement.*
>
> *94. The appellant has furnished details of foreign royalty income earned by SCIPL from international licensing from F.Y. 2003-04 to F.Y. 2015-16, which also includes the income earned from BDML. The summary of foreign royalty income is already reproduced in Para 68.4 of this appellate order. Upon examination of the data it emerges that in F.Y, 2006-07 (the year in which BDML was set up) SCIPL earned revenue of 0.8 Million USD from BDML and a revenue of 0.68 million USD from other parties. In the immediately succeeding year i.e. F.Y. 2007-08 the revenue from BDML increased to 1.4 million USD while that from the other parties increased to 0.84 million USD. The same position continued over the years and finally in F.Y.2013-14 (after which the agreement with BDML got terminated), the revenue from BDML was 1.2million USD while that from other parties was 8.06 million USD. Thus, it has been rightly*

pointed out by the appellant that there was no shifting of existing international revenue of SCIPLto BDML but the income earned by BDML was through new sources which did not exist earlier. This is also vindicated by the fact that parties like World Space Inc. and Hungama FZE did not have any business with SCIPL prior to F.Y. 2006-07.

95. The A.O. has taken an argument that the activity of licensing could have been carried out by SCIPL on its own. In support of the same areferencehasbeenmadetoagreementdated03.04.2005betweenSCIPL and Viva Entertainment FZE, Dubai in the assessment order. With regard to the same, it has been clarified by the appellant that the said agreement is with regard to physical sale of audio cassettes, CDs, DVDs in the Middle East Region, whereas the agreement between SCIPL and BDML is with regard to digital licensing for territory outside India. It has also been clarified that even after the setting up of BDML the said agreement for physical sale of products in middle east region continued with Viva Entertainment FZE, Dubai.

13. Based upon the aforesaid discussion, we are of the considered view that the allegation of the AO that BDML was a sham entity has no substance. The AO has been unjust and not tried to understand the commercial expediency for the assessee to not venture into the foreign market on its own, but, by way of a separate and distinct company. There were no cogent reasons, based on direct evidences or circumstances, to establish that transactions of entering into agreement with BDML were sham and bogus. Thus, the conclusions drawn by the ld. CIT(A) require no interference and the grounds of the Revenue cannot be sustained."

5.7 Keeping in view the identical facts and circumstances of the matter in the present appeals for A.Y. 2013-14 & 2014-15, which has not been contradicted by the Ld. DR and particularly applies squarely, consequently, the additions deleted by the Ld. CIT(A) are upheld. Resultantly, the grounds raised by department for

AY 2013-14 and 2014-15 are **dismissed**.

6. The addition on account of Unaccounted Cash Transaction on the basis of seized data with Sonal (Excel Sheet) is challenged by the Department. Details of additions made over the years are tabulated as under:

Assessment Year	Amount of addition
2015-16	14,10,018
2016-17	1,25,90,308
2017-18	1,12,71,587

6.1 The Department has raised a common issue regarding additions on account of unaccounted cash transactions, based on seized data with Sonal, aimed at avoiding tax payments in India, which is under appeal for Assessment Years 2015-16, 2016-17, and 2017-18 (ITA No. 2713/DEL/2023, 2714/DEL/2023, 7/DEL/2024 for the assessee, and ITA No. 2702/DEL/2023, 2756/DEL/2023, 272/DEL/2024 for the Department). The decision for the assessee's appeal for Assessment Years 2015-16 will be applicable for AY 2016-17 and 2017-18, as the issues are identical and no new circumstances exist.

6.2 During the course of search and seizure operations conducted under Section 132 of the Income Tax Act, 1961, at the premises of Super Cassettes Industries Private Limited (SCIPL), digital evidence was seized, from which certain documents were retrieved. Among the extracted materials were screenshots of WhatsApp communications between Ms. Sonal, the Music

Manager of SCIPL, and Shri Bhushan Kumar. These communications included a table delineating revenue derived from artist management activities for the years 2015, 2016, and an estimated projection for 2017. Within these exchanges, Ms. Sonal sought authorization from Shri Bhushan Kumar to share the revenue table with Shri Neeraj Kalyan, President of SCIPL, via WhatsApp, expressly avoiding the use of email due to the inclusion of a cash component in the reported figures.

6.3 Upon reconciliation, it was determined that the total receipts in the excel sheet sent on WhatsApp, inclusive of cash transactions, exceeded the amounts duly recorded in SCIPL's books of accounts, which were confined to receipts processed through banking channels. Based on this discrepancy, the Assessing Officer (AO) inferred that the differential amount constituted unrecorded cash receipts, thereby treating it as undisclosed income of SCIPL for the relevant assessment years, pursuant to the provisions of the Income Tax Act, 1961.

6.4 The additions so made were deleted by the CIT(A) by appreciating the facts and circumstances and concluding that no corroborative material of the excel sheet was found during the search under Section 132(4) of the Income Tax Act, and no statements from key individuals (Ms. Sonal, Shri Neeraj Kalyan, or Shri Bhushan Kumar) were recorded in respect of this addition. The relevant paras of AY 2015-16 are reproduced below:-

> *"159. The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground No. 6, the appellant has contended that the A.O was not*

justified in making an addition of Rs.14,10,018/- by treating the said amount as unaccounted cash income from singers on the basis of excel sheet attached to a WhatsApp message found as a result of search action in the absence of any corroborating material.

160. The issue to be decided in the present ground is whether a presumption can be drawn only on the basis of an excel sheet containing year wise numerical figures without any corroborating material to reach a conclusion that unaccounted cash income was earned by the appellant from singers.

161. The AO has determined unaccounted cash income from singers for various years. It has been presumed by him that the numerical figures appearing in the excel sheet attached to the whatsapp message represent the real income of the appellant from singers i.e. income from artist management. He has compared these figures with the ledger account showing income from artist management as per books of accounts of the appellant and added the difference between the two figures as undisclosed cash receipts from singers.

162. The basis for the entire addition is the excel sheet mentioned above. During the course of search action no other corroborating material has been found to support the Inferences drawn by the AO for making the impugned addition. From the assessment order, it is found that statement of any employee or Director particularly Ms. Sonal (music manager), Sh. Neeraj Kalyan, Sh. Bhushan Kumar (Managing Director) have not been recorded at the time of search u/s 132(4) of the Act or during post search enquiries. It is also found that apart from relying on the excel sheet, the AO failed to make any enquiry on the impugned issue during the course of assessment proceedings.

163. Although, the copies of ledger account titled "Income from Artist" was available with the assessing officer and he has relied upon the same to derive the figures of Income from artist management as books of accounts. The said ledger account also contains the names of various singers from whom the income has been earned. These names include famous singers and the AO could have easily carried out necessary enquiries to verify the contents of the excel sheet.

164. During the year no addition on account of alleged receipts from MIKA is added by the Assessing Officer.

165. The document does not indicate whether or not the appellant has actually received any receipts in cash and that such income in cash was not

disclosed in the books of accounts. In the document, there are estimate also which is written as "(collection upto june + estimate)". On the basis of such noting, the presumption cannot be drawn that the appellant has actually received the money. Similarly, there is a noting for estimate for January to December 2015. The Assessing Officer has extrapolated and presumed that the appellant has actually received the money and that to in cash and not accounted in the books of accounts.

166. For the sake of argument only, even if it is believed that the appellant was supposed to receive any amount from singers and that it was not accounted in the books of accounts, the addition cannot be made. The undisclosed income cannot be taxed on due basis. The principles of 'Real Income apply in respect of undisclosed income or expense.

167. The contents of the excel sheet and the foot note which appears below may be the starting points of enquiry and further investigations but these are by themselves not sufficient material to hold undisclosed cash receipts. As discussed above the AO failed to conduct any enquiries during the assessment proceedings. Even at the time of search or during post-search investigations statements were not recorded regarding the contents of the excel sheet. No other corroborating material was found during search action. It is a predominant judicial view that no arbitrary addition to the income can be made by the Assessing Officer based on the dumb documents, loose papers containing scribbling, rough/vague notings, in the absence of any corroborative material, evidence on record and finding that such dumb documents had materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by the assessee.

168. The appellant has placed reliance in the case of CIT v. D.K. Gupta 174 taxman 476 in which the Hon'ble Delhi High Court upheld the order of the tribunal wherein it was held that Ad-hoc/dumb documents without any corroborative evidence/finding that the alleged documents have materialised into transactions cannot be deemed to be the Income of the assessee. On the similar lines, the Hon'ble Delhi ITAT in case of Ashwani Kumar Vs. ITO [1991] 39 ITD 183 held that in the case of dumb document, revenue should have necessary evidence to prove that the figures represent incomes earned by the assessee. Similar is the decision in the case of PCIT V. Ajanta Footcare 84 taxmann.com 109.

169. On the basis of above discussion, it is held that material in the nature of a mere excel sheet containing certain figures is not sufficient to derive an inference about undisclosed receipts from singers in the absence of any

cogent and corroborating material/evidence and particularly lack of any enquiry from the alleged singers from whom such cash payments have been received. Since the corroborating material/evidence in the present case is completely missing and the addition is only based on presumption the impugned addition of Rs. 14,10,018/- is deleted and this ground of appeal is allowed. Ground No.6 is allowed."

6.5 The Ld. Counsel of the appellant argues that the Excel sheet referred to in the assessment order is a "dumb document"—a document containing unauthenticated, vague entries that lack evidentiary value. While sections 132(4A) and 292C of the Income Tax Act allow for a presumption that documents found during a search belong to the assessee and are true, this presumption is rebuttable.

Key points raised:

- The Excel sheet contains the word "estimate", indicating the figures are not actual receipts.
- No mention of cash transactions is made in the document.
- No specific names (e.g., of singers) are mentioned as sources of the alleged income.
- The reference to "MIKA pending five months = ₹1,04,16,665" does not prove cash receipt and may simply refer to an unrealised amount, not income.

The Ld. Counsel of the appellant contends that the document is non-speaking and unintelligible, and therefore cannot form the sole basis for an addition to income. Further, the Revenue has not corroborated the entries with any cogent or circumstantial evidence. Crucial corroborative elements are missing:

1. Nature of the transactions is unclear.
2. Identity of counter-parties is unknown.

3. No action has been taken against alleged counter-parties.
4. No inquiry was made to verify if the entries materialised into actual transactions.
5. No statements were recorded during the search to support the document's contents.

6.6 The Assessing Officer (AO) compared the numerical figures mentioned in the Excel sheet (attached to the WhatsApp message between Sonal, Music Manager of SCIPL and Bhushan Kumar) with the ledger account of artist management income in the appellant's books, treating the difference as undisclosed cash receipts.

6.7 The CIT (A) observed that no corroborative material was found during the search under Section 132(4) of the Income Tax Act, and no statements from key individuals (Ms. Sonal, Shri Neeraj Kalyan, or Shri Bhushan Kumar) were recorded on this subject during the search or post-search inquiries. The AO also failed to conduct further inquiries during assessment proceedings, despite having access to the ledger account listing singers' names, which could have been verified. Therefore, the addition relies solely on the Excel sheet without supporting material.

6.8 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that that the AO's determination is premised on a comparative analysis of numerical figures contained in Excel sheet, which was appended from WhatsApp communication between Ms. Sonal, SCIPL, and Shri Bhushan Kumar. This

comparison revealed discrepancies between the revenue figures mentioned in the Excel sheet, pertaining to artist management income, and corresponding entries recorded in the ledger account of artist management income maintained in the appellant's books of accounts. Based on this analysis, the AO concluded that the differential amount represented undisclosed cash receipts, which were not accounted for in SCIPL's books, and accordingly, treated the same as undisclosed income.

6.9 We concurs with the findings of the Commissioner of Income Tax (Appeals) [CIT(A)] that no corroborative evidence was recovered during the search conducted under Section 132(4) of the Income Tax Act, 1961, to substantiate the claims made by the Assessing Officer (AO). It is seen that no statements were recorded during post search investigation from key individuals, namely Ms. Sonal, Shri Neeraj Kalyan, or Shri Bhushan Kumar, whether during the search or in post-search inquiries. Furthermore, despite having access to the ledger account containing the names of singers, the AO failed to undertake any verification or inquiry during the assessment proceedings. Consequently, the addition proposed by the AO relies solely on an Excel sheet, unsupported by any additional evidence, rendering it factually and legally untenable.

6.10 The AO's addition of Rs. 1,04,16,665 as undisclosed cash receipts attributed to *the artist "MIKA," based on a footnote in the Excel sheet stating "*MIKA Pending 5 months = 1,04,16,665," with Rs. 41,66,666 allocated to

Assessment Year (A.Y.) 2016-17 and Rs. 62,49,999 to A.Y. 2017-18, is found to be without merit. The AO failed to conduct any inquiry to verify the alleged receipts. The CIT (A) rightly observed that the Excel sheet lacks evidence to confirm that the appellant received the said amount in cash or that it was unaccounted for, particularly as the document includes estimates and projections. Under the 'Real Income' principle, income cannot be taxed on a due basis without evidence of actual receipt. The absence of such proof renders the addition unjustified and unsustainable.

6.11 The CIT (A) correctly concluded that, while the Excel sheet and its footnote may serve as a starting point for inquiry, the AO's failure to conduct any investigation, either during the search or in post-search proceedings, undermines the basis for the addition. In the absence of corroborative material, we finds that no arbitrary addition to the appellant's income can be justified.

6.12 The CIT(A) appropriately relied on the decisions of the Hon'ble Delhi High Court in *CIT v. D.K. Gupta* [2009] 174 Taxman 476 and the Hon'ble Delhi ITAT in *Ashwani Kumar v. ITO* [1991] 39 ITD 183 which establish that ad-hoc or unsubstantiated documents, without corroborative evidence, cannot be deemed to represent the assessee's income. We affirms the applicability of these judicial principles to the present case.

6.13 Having considered the submissions, evidence, and legal precedents, the findings of CIT(A) are upheld and the additions made by the AO are devoid of

evidential support and legally unsustainable. The lack of corroborative material, the AO's failure to conduct necessary inquiries, and the reliance on established judicial precedents render the additions invalid. Accordingly, the deletion of additions on this ground by CIT(A) for AY 2015-16 to AY 2017-18 are upheld, and the Revenue's grounds of appeal for these years are dismissed.

7. Under this ground of appeal, addition on account of diversion of Income in Dubai through BKK Investment FZ is challenged by the Department. Details of additions made over the years are tabulated as under:

Assessment Year	Expenses Incurred
2015-16	6,14,08,363
2016-17	86,88,235
2017-18	2,12,02,003
2018-19	7,92,18,696
2019-20	4,29,32,219

7.1 The Department raised this common issued regarding addition on account of Diversion of Income in Dubai through BKK Investment LLC FZ (Dubai) in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 (ITA No. 2702/DEL/2023, 2756/DEL/2023, 272/DEL/2024, 273/DEL/2024 and 326/DEL/2024). The decision for the Department's appeals for Assessment Years

2015-16, will be applicable for AY 2016-17, AY 2017-18, 2018-19 and 2019-20, as the issues are identical and no new circumstances exist.

7.2 Brief facts of the case are that funds were provided by BDML and Bollywood Digital FZE to BKK to make the investment without charging any interest. All these entities are based out in Dubai and the controlling interest in these entities is with Bhushan Kumar and not with the appellant company. The shareholders of BKK are Bollywood Digital FZE (99%) and Sh. Bhushan Dua (1%). The AO in the assessment order draws the observation that main purpose of BDML is diversion of income by the appellant in respect of copyright income and resultantly funds provided by BDML and Bollywood Digital FZE to BKK Investment is also diversion of income. Further AO added the above-mentioned amounts to the total income of SCIPL alleging that funds remitted through BDML and Bollywood Digital FZE to BKK Investment are logically foreign income of appellant retained outside India to avoid taxes in India.

7.3 The additions so made were deleted by the CIT(A) by appreciating the facts and circumstances and concluding that there was sufficient explanation or the reason for which BDML is not a sham entity and therefore investment made by BKK investment in property via funds received through BDML is not diversion of income. The Ld. CIT(A) while dealing with ground observed as follows in A.Y. 2015-16:

"25. The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground No. 2, the appellant has contended that the A.O was not justified in making an addition of Rs.6,14,08,363/- on account of acquisition of immovable property by M/s BKK Investment LLC FZ (foreign company) by treating the same as diversion of income of SCIPL in the hands of BDML.

26. The issue to be determined in this ground is whether the amount paid by M/s BKK Investment LLC FZ for acquisition of immovable property can be added in the hands of the appellant i.e. SCIPL. The assessing officer has made out a case that the funds invested in the acquisition of immovable property is nothing but income of SCIPL which was diverted to BDML and BD FZE and these entities gave loans to BKK Investments LLC FZ for making the investments in immovable property.

27. The relevant facts briefly recapitulated are as under:-

(i) BKK Investment LLC FZ (Dubai) was incorporated on 01.05.2014. This entity is a Special Purpose Vehicle (SPV) which was incorporated for acquiring an immovable property in Dubai being Villa No. C-104, Mohammed Bin Rashid Al Makhtoum City, District-I which was developed by M/s Meydan Shobha FZ LLC. Further, 99% of the shareholding of BKK Investment LLC FZ was held by Bollywood Digital FZE and the remaining shareholding by Shri Bhushan Dua.

(ii) In order to augment its revenue from international licensing of music, a foreign entity by the name of Bollywood Digital Music Limited (BDML) was set-up on 03.04.2006 as Jebel Ali Free Zone company in Dubai. Its shareholding of 10,000 shares of AED 100 each were fully held by Shri Bhushan Kumar as single shareholder. The directors of the said company at the time of incorporation were Shri Bhushan Kumar and Arvind Khosla. BDML. The license agreement dated 10.04.2006 between SCIPL and BDML gave license to BDML to commercially exploit the copyrighted contents of SCIPL by giving further license to users in territory outside India, pursuant to which BDML entered into further licensing agreement with various parties. The revenue earned from granting license to these parties was shared between SCIPL and BDML 50% each till A.Y. 2014-15 after which this arrangement was discontinued. From A.Y. 2015-16 onwards SCIPL started earning revenue from international licensing of music on its own.

(iii) Bollywood Digital Music Limited (BDML) owns 100% shareholding in its subsidiary company named JMD Investments Ltd. which is a Jebel Ali Free Zone Company and in turn JMD

Investments Ltd. owns 100% shareholding of Bollywood Digital FZE (BD FZE) which is a SAIF Zone company (Sharjah Free Zone). The company BD FZE was incorporated on 03.09.013 and its manager/ director was Neha Shinde. Thus, Bollywood Digital FZE, in effect is step down subsidiary of BDML. Further, there is no activity carried out by JMD Investments Ltd. which is merely a holding company for the shares of BD FZE.

(iv) BD FZE had it independent source of activity and income. The activities of BDFZE primarily included profit from portfolio investment in financial market in Dubai and earning of commission income. For the year ended 31.03.2015 it earned a net profit of 5.997 Million USD.

28. The assessing officer has taxed the year wise investment made by BKK Investments FZE in the immovable property as income of SCIPL. The details of assessment year wise additions made are tabulated below:-

Sl. No.	*Investment during the A.Y.*	*Amount of total investment in INR*
1.	*2015-16*	*6,14,08,363/-*
2.	*2016-17*	*86,88,235/-*
3.	*2017-18*	*2,12,02,003/-*
4.	*2018-19*	*7,92,18,696/-*
5.	*2019-20*	*4,29,32,219/-*
	Total	***21,34,49,516/-***

29. The manner of computation of the addition in the assessment order is as under :-

A.Y.	*Opening Balance (in US $) as on 1st April*	*Closing Balance (in US $) as on 31st March*	*Total Investment made during the year (in US $)*	*Reserve of India's Reference Rate for the US Dollar*	*Total Investment made during the year (in INR)*
2015-16	*0*	*9,81,121*	*9.81,121*	*62.59*	*6,14,08,363/-*
2016-17	*9,81,121*	*1,112,106*	*1,30,985*	*66.33*	*86,88,235/-*
2017-18	*1,112,106*	*1,439,146*	*3,27,040*	*64.83*	*2,12,02,003/-*
Total cumulative investment as on 31.03.2018					*9,12,98,601/-*

Total investment made during the Asst. Year 2018-19

29.1 As per the image extracted from the i-phone of Sh. Beer Singh (key employee of SCIPL) and annexed as Annexure A-1 and the same is also

reproduced in above para No. 8.2 was found & seized during the search reflecting the total cumulative investment made in the said property as on 20.03.2018 is 96,01,902 AED that comes out to be in INR 17,05,17,297/- (Averaging 1AED=17.7587 INR). And the total cumulative investment in INR as on 31.03.2018 as tabulated above is amounting to RS.9,12,98,601/-. So, the total Investment made from 1st April 2018 to 20.03.2018 is of ***Rs. 7,92,18,696/-*** *(17,05,17,297 – 9,12,98,601).*

Total investment made during the Asst. Year 2019-20

29.2 As per another images extracted from the e-mail of the Beer Singh and is also reproduced in above para No. A1.4.1 from which the details of investment made during the A.Y. 2019-20 for the said property has been examined and it is found that the total payment was made on 17.04.2018 is 2,400,473 AED that comes out to be in ***INR 4,29,32,219/-*** *(Averaging 1AED=17.8849 INR).*

30. The source of funds received by BKK Investments LLC FZ for acquisition of the immovable property is through loans received from BDML and BD FZE. In substantiation of the same the appellant has furnished the audited Balance Sheets of BKK Investments LLC FZ and this factual position is not disputed. The position with regard to the amount of loans from these two entities and the investment in value of property as at the end of the financial year is tabulated below:-

Bollywood Digital FZE				
Particulars	*31.03.2015*	*31.03.2016*	*31.03.2017*	*31.03.2018*
Loan Outstanding in USD	*629,929*	*635,367*	*635,367*	*1,616,487*
Loan Outstanding in INR (1 USD = 3.67 AED = 19/-)	*4,39,24,949*	*4,43,04,141*	*4,43,04,141*	*11,27,17,638*
Bollywood Digital Music Ltd. (BDML)				
Loan Outstanding in USD	*463,243*	*472,635*	*820,951*	*1,149,081*
Loan Outstanding in INR (1 USD = 3.67 AED = 19/-)	*3,23,01,934*	*3,29,56,838*	*5,72,44,913*	*8,01,25,418*
Grand Total USD	*1,093,172*	*1,108,002*	*1,456,318*	*2,765,568*
Grand Total INR	*7,62,26,883*	*7,72,60,979*	*10,15,49,054*	*19,28,43,056*
Value of Immovable Property				
Amount Outstanding in USD	*981,121*	*1,112,106*	*1,439,146*	*2,747,307*
Amount in INR	*6,84,13,567*	*7,75,47,151*	*10,03,51,650*	*19,15,69,717*

31. The entire case of the assessing officer for making the addition is that BKKI is owned and controlled by Shri Bhushan Kumar and his office from India itself and there is no business activity in the company and only activity is in the form of investment in property which was bought for a sum

of AED 1,20,02,375/- (22,80,45,125/- INR at 1AED_19 INR). Funds were provided by BDML and Bollywood Digital FZE to BKKI for investing in above said property on an interest free basis as mentioned in the audited balance sheets of BKKI. The structuring of companies and investments outside India has been done in such a manner that foreign based companies/entities are being controlled used by Sh. Bhushan Kumar in Dubai, USA, UAE etc for holding and acquiring various properties in foreign tax-free jurisdiction which should be taxed in India.

31.1 The main source of revenue for SCIPL is commercial exploitation of the copyrighted content i.e. sound recordings. The commercial exploitation is carried out through various modes one of which is licensing of copyrighted content to various users across different platforms such as radio, television, internet, mobile phones, events, public performances etc. for different geographical territories. This activity of licensing has been carried out by SCIPL on its own since inception and hence there was no need for setting up a separate company i.e. Bollywood Digital Music Limited (BDML) in Dubai for acting as an intermediary. The main purpose behind setting up BDML appears to be diversion of income of SCIPL to a tax-free jurisdiction. The said company BDML is 100% owned by Sh. Bhushan Kumar who is holding more than 75% of the shareholding of SCIPL. Thus, setting up of BDML in 2006 is a part of the scheme of keeping the foreign income of SCIPL at foreign jurisdiction such as Dubai to avoid due taxes, transferring income to foreign companies actually controlled and managed from India, thus this foreign income which has been retained in foreign jurisdictions should have been offered to taxation in India. Hence these funds are logically the foreign income of SCIPL which has been retained to BDML, through a complex planning structure to avoid taxes. This income of SCIPL is subsequently invested into foreign assets through subsidiaries and sister concern of BDML, just like as M/s BKK Investment LLC FZ (Dubai).

32. As regards the argument of the Assessing Officer, that BKK Investment LLC FZ is being controlled and managed from India and that there is no business activity in the company is concerned, it is correctly pointed out by the appellant that on the basis of seized material/ evidence reproduced in the assessment order it cannot be held that BKK Investment is managed and controlled from India. It has been alleged in the assessment order that BKK Investments was a conduit company, however, I find that there is lack of any material or evidence brought out in the assessment order in support of the same. I also find that BKKI is only an investment company and that there is no business activity in the company

except for the investment made in immovable property, funds for which has been provided by BDML and BDFZE. The seized material referred to in the assessment order is a notice for completion of the immovable property issued by the developer to M/s BKK Investment containing the sale value of the property, receipt issued by developer for part payment received, shareholder's resolution authorising Beer Singh for taking possession of the immovable property, letter issued by the developer informing to replace the PDCs. None of these evidences or material point out that the company BKK is being controlled or managed from India. Even if it is presumed that BKKI is being controlled or managed from India in that case as per the provisions of Section 6(3) of the Income Tax Act the income of BKKI can be made taxable in India but its income cannot be taxed in the hands of SCIPL. Further it is an uncontroverted position (even accepted in the assessment order) that BKK Investment did not have any business activity and as such did not earn any income therefore the question of taxing its income in the hands of SCIPL does not arise at all. Even the WhatsApp chats reproduced in the assessment order have all been initiated by the real estate agent in Dubai and sent to Beer Singh where the real estate agent is seeking details of immovable property and asking Beer Singh to further provide information so that the property could be listed with other agents for putting up on rent.

33. Further it is also found that the search action did not detect any worthwhile evidence to indicate that BKK Investments is a shell company or it only existed on paper. There is a lack of any direct evidence which may have been found as result of the search action to suggest that the activity of BKK Investments was being carried out by SCIPL from India.

34. As regards the main argument of the A.O. that there was diversion of income of SCIPL in the hands of BDML pertaining to revenue earned from international licensing of copyrighted contents of SCIPL, the same has been dealt with while adjudicating the appeal of the appellant for earlier assessment years and deleted by holding as under:-

> *(a) There is sufficient material on record to hold that M/s BDML had independent existence and functioned independently from Dubai.*
>
> *(b) There, existed genuine business purpose and reasons for setting up BDML in Dubai. Setting up of BDML was need based and creation of such company abroad cannot be simply termed as diversion of income unless the Assessing Officer can bring on record*

with cogent reasoning and substantiate with evidence that it was a colourable device for diversion of income of the appellant.

(c) The search action on SCIPL which had an element of surprise did not detect any original records of BDML in the nature of its books of accounts, invoices, vouchers, original license agreements, title deeds of immovable property, lease rental agreements of immovable properties owned by BDML, cheque books, bank statement etc. If the argument made regarding BDML being controlled and managed from India was taken to be true at least some original record of BDML would have been detected in the search action. Thus, on the basis of various documents on record point-wise clarification of the appellant on material found during search, it is established that the control and management of BDML during assessment year under appeal wa in Dubai only.

(d) Even if it is held that BDML was controlled and managed from India its income cannot be taxed in the hands of SCIPL since it is a separate legal entity. Thus, even if the provisions of section 6(3) of the Income Tax Act were made applicable, then BDML is to be separately taxed in India on the basis of its residence being in India. But under no circumstances, the income of BDML can be taxed in the hands of SCIPL. In the assessment order, the Assessing Officer has discussed and vehemently argued that BDML has place of effective management and control in India. If that be so, then it is not understandable as to why the income of BDML has been assessed t tax in the hands of SCIPL. If the Assessing officer believed that BDML had place of effective management and control in India, then the income accruing in India of BDML's case should have been taxed in the hands of BDML only. Therefore, the addition made in the assessment order is not sustainable even on this ground.

(e) There is no basis and rationale in terming the commercial arrangement between SCIPL and BDML as a case of "diversion of income" of SCIPL to BDML.

(f) The AO has failed to bring on record any cogent reasons for resorting to lifting of corporate veil and disregarding the independent existence of BDML. It has been held by the apex court in the case of Vodafone International Holdings B.V. (supra) that – "In short, the onus will be on the Revenue to identify the scheme and its dominant purpose. The corporate business purpose of a

transaction is evidence of the fact that the impugned transaction is not undertaken as a colourable or artificial device. The stronger the evidence of a device, the stronger the corporate business purpose must exist to overcome the evidence of a device. [Para 68]". Thus, the onus is on the revenue to make out a case of a "device" if the intendment is to lift the corporate veil. However, on the basis of discussion in the appellate order there is a lack of evidence in the assessment order to hold that the legal arrangement between SCIPL and BDML was a device for evasion of taxes.

35. As regards the funds received from BD FZE by BKK Investments, I find that there is no argument in the assessment order that income of SCIPL was diverted to BD FZE. In any case as per facts available on record, the said company was not primarily engaged in the activity of licensing of copyrighted contents of SCIPL. As pointed out by the appellant Bollywood Digital FZE was incorporated as a separate Free Zone Enterprise on 02.09.2013 with its registered office located at PO Box 123029, SAIF Zone, Sharjah, UAE. It was incorporated as a Sharjah Airport International Free Zone Authority Enterprise (SAIF Zone). The manager/ director of the company was Neha Shinde and 100% shareholding was held by JMD Investment Ltd. which is a subsidiary of BDML. The activities of BDFZE primarily included profit from portfolio investment in financial market in Dubai and earning of commission income. For the year ended 31.03.2015 it earned a net profit of 5.997 million USD. The internal accruals of BDFZE were utilized to fund the amount advanced to BKK Investment.

36. In view of the above findings discussed above the addition of Rs.6,14,08,363/- is hereby deleted and this ground of appeal stands allowed."

7.4 The Ld. Counsel of the assessee submitted that it has already been established that the investment was made by BKK Investments LLC from loan received from BDML and BD FZE and the income of BDML was taxed in the hands of the appellant in Assessment Years 2007-08 till 2014-15 and the same has been deleted by CIT (A) and the order of CIT is already upheld by the ITAT

Delhi for Assessment Years 2007-08 to 2012-13. In view of the same BDML was a separate and distinct company and not a sham entity. There is no ground for taxing the investment made by BKK Investments LLC in the hands of the appellant.

7.5 The Ld. Counsel of the assessee draws the attention of the bench towards the fact that it has been held in ITA Nos 214, 215, 216, 1290, 1291, 1292 for Assessment Year 2007-08 till 2012-13 that BDML was a separate and distinct company and not a sham entity Para No. 13 page 22.

7.6 Further the Ld. Counsel of the assessee argued that the AO has not mentioned under which provisions of Income Tax Act this income has been assessed in the hands of the appellant.

7.7 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that that the Ld. AO has disallowed the impugned amount and added to the total income of the assessee pursuant to the finding that BDML Dubai was established as a conduit for diverting the income of SCIPL to evade tax liability in India. The assessing officer has classified BDML as a sham entity, and consequently, the funds transferred through BDML to BKK Investments LLC FZ are deemed to constitute a diversion of SCIPL's income through BDML to avoid taxation in India.

7.8 We have considered the contention of Ld. Counsel for the assessee regarding the issue raised in the ground of appeal concerning the income of BDML Dubai is already adjudicated by the order of the coordinate Income Tax Appellate Tribunal (ITAT), Bench G, dated 18.09.2024, for Assessment Years 2007-08 to 2012-13 in ITAs No. 214, 215, 216, 1290, 1291, and 1292/Del/2023. In the said order, the ITAT Bench G, New Delhi, upheld the deletion by the Commissioner of Income Tax (Appeals) of the additions made on account of income retained in BDML.

7.9 We observed that the contention that the income of BDML Dubai constitutes a diversion of income from SCIPL is fundamentally misconceived and lacks legal and factual merit. The assertion in the assessment order that BDML Dubai was established as a sham entity to facilitate the diversion of SCIPL's income for the purpose of evading tax liability in India is unsustainable. The income generated by BDML Dubai is independent and not derived through any mechanism of diversion from SCIPL. Consequently, the foundation upon which the addition was made in the assessment order is rendered baseless and devoid of substance.

7.10 The AO has sought to add the total investment made in property by Bollywood Digital FZE for AY 2015-16 to AY 2019-20. It is not understandable from the order of the AO that the proposed additions have been made under

provisions of which section of the Income Tax Act. It seems the addtions have been made by the AO on the presumption that the impugned investment in property have been made from loan given by BDML to Bollywood Digital FZE. Furthermore, as it has already been held that the income of BDML Dubai does not constitute a diversion of SCIPL's income, the funds remitted by BDML Dubai to BKK Investments LLC FZ, Dubai, cannot be characterized as a diversion of SCIPL's income. The investments made by BKK Investments LLC FZ, utilizing funds received from BDML Dubai, are legitimate and independent transactions. These investments do not represent a conduit for tax evasion or a mechanism to divert SCIPL's income through BDML Dubai.

7.11 Accordingly, the decision of the CIT (A) for AY 2015-16 is upheld and the appeal of the revenue on this ground is dismissed. This will apply mutatis mutandis in other years wherein same grounds are raised having regard to the identical facts and circumstances of the matter.

8. Addition on account of disallowance of consultancy charges and printing expenses incurred during the years, considering them as bogus in nature has been challenged by the department and assessee too. Details of the expenses are tabulated as under.

Assessment Year	**Expenses Incurred**

2013-14	1,04,70,076 (Department Appeal)
2014-15	1,72,14,878 (Department Appeal)
2015-16	97,41,691 (Department Appeal)
2016-17	6,00,000 (Department Appeal) and Rs. 1,20,60,000 (Assessee Appeal)

8.1 The CIT(A) has deleted the entire addition on this ground for the Assessment Years 2013-14 till 2015-16 and for the Assessment Year 2016-17 addition was partly confirmed. Hence the revenue is in appeal for the Assessment Years 2013-14 to 2016-17 (ITA No. 2511/DEL/2023,2512/DEL/2023, 2702/DEL/2023 and 2756/DEL/2023) and the assessee is in appeal for Assessment Year2016-17 (ITA No. 2714/DEL/2023). The decision for the assessee's appeals for Assessment Years 2013-14, will be applicable for AY 2014-15 and 2015-16, as the issues are identical and no new circumstances exist. The appeal for AY 2016-17 will be discussed on merits separately.

8.2 Brief facts of the case are that the search was conducted on Rohit Tandon and his group of companies and subsequently search was conducted on the appellant company. Based on the information extracted from the data seized during both search, the AO interpreted that companies belonging to Rohit Tandon (CTO Sarviksha Institute Pvt Ltd, C Cube Technologies Pvt Ltd, Sagal International Pvt Ltd, Endecced Global Solutions Pvt Ltd, Karni Enterprises Pvt Ltd, Sirohi Infotech Pvt Ltd, Jask Exports Pvt Ltd) are involved in providing

accommodation entries in the form of Bogus expenses to SCIPL. During assessment proceedings the AO issued summons to these entities u/s 131(1A) and based upon the same the AO drew conclusion that these entities did not provide any service and disallowed the expenses.

8.3 Further the AO relied upon the statement of Sachin Chauhan u/s 132(4) wherein he stated that all analog to digital conversion was done by the appellant in house and based upon same the AO disallowed expenditure of C-Cube Technologies of Rs. 8,00,000/- which was for analogue to digital conversion of data.

8.4 The AO issued Summons to M/s Jask Exports Pvt. Ltd. under Section 131(1A) of the Income Tax Act. Based on their response, the Assessing Officer disallowed expenditure claimed alleging that the entity's business income was solely derived from SCIPL, and SCIPL's claim that Jask Exports provided business advisory services for a deal with M/s Flipkart India Pvt. Ltd. was incorrect.

8.5 The AO issued Summons to M/s Sagal International Pvt. Ltd. under Section 131(1A) of the Income Tax Act. Based on their response, the Assessing Officer concluded that the entity's was not involved in any kind of business of printing and consultancy and disallowed expenditure claimed. The AO disallowed rental expenditure paid to M/s Karni Enterprises alleging that in

respect of summons issued for cross verification, no one from the entity appears and only rental agreements were furnished via email.

8.6 The AO disallowed expenditure incurred from CTO Sarvshiksha Institute Pvt Ltd, Sirohi Infotech Pvt Ltd and Exdeceed Global Solutions Pvt Ltd alleging that summons were issued to these entities but instead of appearing in person for cross verification, only documents were furnished via email. Lastly the AO alleged that principal officer of above companies is Varun Tandon who is an advocate and services provided by his companies require highly technical and engineering skills and therefore, expenses entries are only accommodation entries.

8.7 The additions so made in AY 2013-14, AY 2014-15 and AY 2015-16 were deleted by the CIT(A) by relying on the ratio of judgement of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla 61 Taxmann.com 421 which was upheld by the Supreme Court in the case of Pr CIT Vs Abhishar Buildwell Pvt Ltd vide order dated 24.04.2022. The Ld. CIT(A) highlighted that assessment U/s 143(3) for AY 2013-14 to AY 2015-16 was completed much before the date of search i.e. 28.11.2018 and therefore, the said assessment is completed assessment. Since no incriminating material was found during the course of search, the addition made was liable to be deleted. Relevant paragraps of the appellate order of AY 2013-14 is reproduced as under:

"150.It is seen from the records that return of income for the assessment year under consideration was filed on 30.11.2013. Assessment under section143(3) was taken up and assessment order was passed on 31.0.2015 assessing total income of Rs. 223,64,64,20/-. The date of search is 29.11.2018. Therefore, the assessment year under appeal is a completed assessment. From the examination of the assessment order it is apparent that no incriminating material was found during the course of search action qua the aforesaid disallowance. The appellant has placed reliance on the ratio of the decision of Hon'ble Delhi High Court in the case of Pr.CIT Vs. Kabul Chawla 61 Taxmann.com 421. This decision of Hon'ble Delhi High Court came up for consideration of the Hon'ble Supreme Court in the case of Pr.CIT Vs. Abhisar Buildwell Pvt. Ltd. in Civil Appeal No. 6580 of 2021 and other connected appeals.

……. .

151. Further, a letter dated 16.05.2023 was addressed to the Assessing Officer (DCIT, Central Circle-3, New Delhi) requiring to bring to the notice incriminating evidence, if any, found during search action on SCIPL. In response to the same, the Assessing Officer has sent a letter dated 13.06.2023. On going through the contents of the said letter the relevant observations made pertaining to this issue are summarized as under:-

i. *Books of accounts were seized from the premises of SCIPL and these become incriminating in nature when seen in the light of statements recorded during search and other findings during post search investigations.*

ii. *The requisite incriminating evidences in the form of statement of Sachin Chauhan, Sample invoices/bills, ledger account and sample release orders have been attached to the above referred letter of the Assessing Officer.*

152. From the above summarized contents, it is apparent that there is no incriminating material which was found during search as regards the above addition. Although, this was also clear from an examination of the assessment order, the above referred letter of the assessing officer further confirms this fact. Regular Books of accounts found during

search cannot be termed as incriminating material. Further, the statement recorded during search is also not incriminating material. Therefore, it is found that there is no incriminating material found during search regarding this addition.

153. Books of accounts cannot be incriminating material and the same has been held in the following cases.

154. In the case of Micro Ankur Developers vs DCIT ITA No.1046 to 1050/MUM/2019, ITAT, Mumbai vide its order dated 02.09.2022 held that regular books of accounts cannot be treated as "incriminating material", unless the revenue makes out a case with ***corroborative evidence*** *that the transaction reflected in the books of accounts did not representthetruestateofaffairs.Inpara16,itwasheld:-*

> *"In view of the above, we are of the considered view that the regular books of accounts maintained by the assessee in tally software, now being referred by the revenue, to justify the addition did not constitute incriminating material unearthed during the search."*

155. Further, the Hon'ble Delhi High Court in the case of Pr. CIT, Central-2, New Delhi vs. Param Dairy Ltd. in ITA No.37/2021 & 41/2021, vide para 5 of its order dated 15.02.2021 have held as under:-

> *"We have considered the aforesaid contentions and are of the view that no substantial question of law arises, as the matter is squarely covered by Kabul Chawla supra, which has been correctly applied to the facts of the case by the /TAT. The /TAT, in the impugned order has held that in the audited report filed by the assessee along with the report, cash book, ledger, bank book etc. were mentioned; that the respondent assessee was maintaining books on TALLY Accounting Software which was seized during the search and was being treated as incriminating material; however, regular books of account of the assessee, by no stretch of imagination, could be treated as incriminating material to form basis of framing assessment under Section 153A read with Section 143(3} of the Act."*

155.1 Further, even the statement recorded does not form part of incriminating material and the same has been held in the following cases:-

1. *Ajay Gupta Vs. DCIT 81Taxmann.com462 (Del-lTAT}*

Para 7- No addition can be made or sustained simply on the basis of statement recorded at the time of search, for which no corroborative material is found. In order to make a genuine and legally sustainable addition on the basis of surrender' during search, it is sine qua non that some incriminating material must have been found to correlate the undisclosed income with such statement. Thus, where surrender made by the assessee's elder brother on his behalf on account of commission income was not backed by any material/evidence indicating the involvement of the assessee in the agency business, no addition could be made to the assessee's income on basis of such surrender.

2. CITVs.HarjeevAggarwal70taxmann.com95(Del}

A statement recorded under section 132(4) can form basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search

3. CIT Vs. Sunil Aggarwal 64 Taxmann.com 107 (Del}

Where assessee during search conducted under section 132 made admission that a sum of Rs. 86 lakhs seized from his employee belonged to him and it represented undisclosed income and subsequently he retracted above admission and offered an explanation that said amount was verifiable from record and books of account and Assessing Officer did not accept explanation and added said amount in income as unexplained cash credit, impugned addition was not justified.

156. Therefore, the argument of the AO that the books of accounts and statements during the search and during the post search forms part of incriminating material is not acceptable. It is held that the Assessing Officer was not correct in initiating proceedings u/s153AoftheAct on the impugned issue.

157. In view of the above respectfully following the above order of Hon'ble Supreme Court the impugned disallowance of Rs.1,04,70,076/-is hereby deleted since the disallowance is not based on any incriminating material found during search. Consequently Ground No. 4 appeal is allowed.

158. Since the disallowance is deleted on legality, the merits of the disallowance is not required to be decided.

8.8 The Ld. Counsel of the assessee submitted that from AY 2013-14 to AY 2015-16 assessments were already completed much before the date of search and therefore, these assessment years were unabated years. Since no incriminating material was found during course of search the addition made was liable to be deleted in view of the judgement of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla 61 Taxmann.com 421 which was upheld by the Hon'ble Supreme Court in the case of Pr CIT Vs Abhishar Buildwell Pvt Ltd vide order dated 24.04.2022.

8.9 The Ld. Counsel of the assessee draws the attention of Bench on the letter dated 16.05.2023 written by the CIT(A) to the AO requiring to bring to notice the incriminating document found during search in respect of which a reply was received from AO on 13.06.2023 stating that Books of accounts seized and

statement recording of Shri Sachin Chauhan along with copies of sample invoices, ledgers etc are incriminating in nature.

8.10 From the above summarized content it is evident that no incriminating material was found during search for making the addition. The only document relied by the AO for making the additions are books of accounts seized, copy of invoices and ledger accounts and statement of Sachin Chuahan. It was argued that the books of accounts, copy of invoices and ledger accounts are not incriminating in nature. As regard the statement of Sachin Chauhan, the ld. Counsel argued that in the statement Sachin Chauhan had not mentioned anything to suggest that these expenses were not genuine. In his statement regarding work being done in-house was with reference to conversion of sound recording from physical to digital format. The other specific task i.e. conversion of physical metadata to digital format was outsourced from Rohit Tandon Group entities. The proof of work done was furnished before the CIT (A) in a pen drive.

8.11 The Ld Counsel drew our attention towards order of Micro Ankur developers Vs DCIT ITA No. 1046 to 1050/MUM/2019 and Pr CIT Central 2 New Delhi Vs Param Dairy Ltd in ITA 37/2021 and 41/2021 in which it was held that the regular books of accounts cannot be treated as incriminating material. Further in the following cases also it was held that statement recorded cannot be held as incriminating material:

A. Ajay Gupta Vs DCIT 81 Taxmann.com 42 (Delhi ITAT)
B. CIT Vs Harjeev Aggarwal 70 Taxmann.com 95 (Del)
C. CIT Vs Sunil Aggarwal 64 Taxmann.com 107 (Del)

8.12 We have heard the rival submissions made by the respective parties; we have also perused the relevant materials available on record. The primary contention of the assessee for the Assessment Years 2013-14 till 2015-16 is that no addition can be made by the AO in these years in the absence of incriminating material since these years are unabated years. The CIT(A) in his order has duly verified this aspect by addressing a letter to the AO asking him the furnish the incriminating material relied upon for making the addition. It is seen that the AO in response has mentioned that the marterial relied upon is books of accounts, invoices and statement of Sachin Chauhan. These materials are not incriminating in nature and as regards the statement of Sachin Chauhan reproduced in the order it is neither incriminating in nature. We upon careful consideration of the facts and circumstances of the case, concur with the findings of the CIT(A) that no incriminating material was unearthed during the search proceedings during AY 2013-14 to AY 2015-16. The additions made by the Assessing Officer were solely based on surmises and conjectures, lacking any substantive evidence. Furthermore, the additions pertains to unabated assessment years, as the original assessment under Section 143(3) of the Income Tax Act, 1961, was completed prior to the date of the search, i.e., 28th November 2018.

8.13 Since, no incriminating material was found during course of search, the addition was correctly deleted by the CIT(A) relying on the judgement of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla 61 Taxmann.com 421 which was upheld by the Supreme Court in the case of Pr CIT Vs Abhishar Buildwell Pvt Ltd vide order dated 24.04.2022. Accordingly the finding of the CIT(A) is upheld which is found to be just and proper so as not to warrant interference and thus, ground raised by the department for AY 2013-14 to 2015-16 is dismissed.

8.14 As regard A.Y. 2016-17 addition of expenses incurred of Rs. 1,26,36,000/- was made details of which are tabulated as under:

Name of Party	**Amount of Expenses**
C Cube Technologies Pvt Ltd	8,00,000
CTO Sarvshiksha Institute Pvt Ltd	8,75,000
Sirohi Infotech Pvt Ltd	8,50,000
Endeceed Global Solutions Pvt Ltd	8,25,000
Jask Exports Pvt Ltd	54,36,000
Sagal International Pvt Ltd	38,50,000
Total	**1,26,36,000/-**

8.15 Out of above additions, addition of Rs. 6,00,000/- was deleted by the CIT (A) and pending addition of 1,20,36,000/- was confirmed as A.Y. 2016-17 was of abated assessment year. Ld. CIT(A) confirmed the addition by holding as under:

"APPELLATE FINDINGS & DETERMINATION

124. The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground No. 5, the appellant has contended that the A.O erred in disallowing the various types of expenses incurred through Rohit Tandon Group companies amounting to Rs. 1,26,36,000/-Incurred by the appellant as not genuine by holding the same to be bogus expenses and in the nature of accommodation entries.

125. In the written submissions the appellant has argued that the expenses amounting to Rs. 1,26,36,000/- are genuine in nature. In support of the same, the appellant has provided copies of bills raised by respective companies of the Rohit Tandon Group. The summary of bills alongwith description of services and names of service provider companies are tabulated below:-

S. No.	*Particulars*	*Amount (Rs.)*
1.	*Paid to C-Cube Technologies Pvt. Ltd. for conversion from analogue to digital format for devotional contents*	*8,00,000/-*
2.	*Paid to CTO Sarvshiksha Institute Pvt. Ltd. for conversion from analogue to digital format for Shabad Gurbani*	*8,75,000/-*
3.	*Sirohi Infotech Pvt. Ltd. conversion from analogue to digital format for Punjabi content*	*8,50,000/-*
4.	*Endeceed Global Solutions Pvt. Ltd. conversion from analogue to digital format for Pop/Album contents*	*8,25,000/-*
5.	*Jask Exports Pvt. Ltd. for services provided for acting as Business Advisory for licensing deal with Flipkart*	*54,36,000/-*
6.	*India Pvt. Ltd. vide agreement dated 25.02.2013. Sagal International Pvt. Ltd. for payment of referral commission for securing printing orders.*	*38,50,000/-*
7.	*Karni Enterprises rent for premises bearing no. N-120, Panchsheel Park, New Delhi*	*-*
	Total	*1,26,36,000/-*

126. During the course of appellate proceedings, one general argument was that if the transaction is treated as bogus in the hands of the appellant, in that case the receipts should have been treated as bogus in the hands of the recipient entities. It was argued that as receipts were taxed as normal business income in the hands of the recipient companies, therefore, the payments cannot be treated as bogus in the hands of appellant company. Such an assumption of the appellant is flawed. In the case of the appellant, it has to decide as to whether the impugned expenses were for the purposes of business or not. The treatment of receipts by the recipients will not be a determinative factor in deciding the allowability of expenses claim in the hands of the appellant Therefore, such an argument of the appellant is dismissed.

127. Another general argument of the appellant was that there was no material found during the search, therefore, no addition could have been made by the Assessing Officer in proceedings u/s 153A. For the assessment year under consideration scrutiny assessment proceedings u/s 143(3) of the Act were initiated but were not completed till the date of search. Since the assessment proceedings remained uncompleted the present assessment year is abated assessment year as per provisions of section 153A of the Act. The assessment for an abated assessment year is not dependent upon discovery of any incriminating material found during search and therefore this argument of the appellant is not acceptable. Therefore, such an argument of the appellant is dismissed.

128. The allowability of each expense is discussed separately below.

129. Coming to the item of expenditure of Rs. 38,50,000/- in the nature of referral commission which is appearing at Sl. No. 6 in the above table. The said amount has been paid by the appellant to M/s Sagal International Pvt. Ltd (M/s Sagal). The appellant stated that payment was made during the course of business in order to procure orders. for printing. The impugned transaction was subject matter of investigation by the department. M/s Sagal could not establish that they were capable of rendering any service in the nature of commission. If someone is engaged in the commission business, in that case he is well known in the market and has many clients. It appears that apart from the appellant, M/s Sagal had no other client.

130. The details of printing orders on job work basis executed by the appellant and commission paid are tabulated as under :-

S. No	*Particulars*	*Job Work Amount (Rs.)*	*Page No. of substantiating document*	*Commission @ 5%*	*Page No. of substantiating documents*
1.	*B4U Broadband*	*4,50,00,000*	*468-478*		
2.	*Prism TV Pvt. Ltd*	*1,50,00,000*	*479-492*		
3.	*MaaTelevision Network Ltd.*	*50,00,000*	*493-501*		
		6,50,00,000		*32,50,000*	*467*

131. As per the trade practice, commission is paid for getting business. However, there are established players/commission agents in the market. M/s Sagal is not engaged in the business of being commission agents. Apart from the appellant, no other concern has paid any money to M/s Sagal for commission. If M/s Sagal is an established player, in that case he must have been receiving commission from other parties also which is not the case. The appellant has not been able to furnish any evidence to show that services were actually rendered by M/s Sagal. If the appellant received any service from M/s Sagal, in that case there must have been exchange of correspondence between the two, some sort of agreement defining the terms of contract between the two Including the terms about the rate of commission.

132. Therefore, the claim of expenses is not allowable since the appellant failed to substantiate its claim with evidence/material to show that the commission paid was ulitised for the purpose of its business. The addition made by the Assessing Officer is confirmed. However, it is noted that the appellant has claimed an amount of Rs. 32,50,000/- with regard to the commission paid to M/s Sagal International, whereas the assessing officer has made a disallowance of Rs. 38,50,000/-. Thus, in principle the addition is confirmed but since excess disallowance has been made in the assessment order, the assessing officer is directed to delete the excess disallowance of Rs. 6,00,000/-. Thus, the addition to the tune of only Rs. 32,50,000/- is confirmed.

133. Coming to the item of expenditure of Rs. 54,36,000/- in the nature of referral commission which is appearing at Sl. No. 5 in the above table. The said amount has been paid by the appellant company to M/s Jask Exports Pvt. Ltd. The explanation of the appellant to justify the expenditure is that the amount of Rs. 54,36,500/- was paid to M/s Jask Exports Pvt. Ltd. for

services provided for acting as business advisory for licensing deal between SCIPL and following licensees:-

(a) Disney Broadcasting (India) Limited for a deal value of Rs 7,00,00,000/- vide agreement dated 23.09.2015 (copy enclosed at Page 503 to 507 P/B Vol. 1)

(b) Pioneer Channel Factory Pvt Ltd for a deal value of Rs 3,87,20,000/- vide agreement dated 28.04.2014 (copy enclosed at Page 508 to 515 P/B Vol.1)

134. In this regard, it has been explained that commission 5% on the deal of Rs. 7,00,00,000/- (between SCIPL and Disney Broadcasting (India) Ltd & commission @ 5% on the deal aggregating to Rs 3,87,20,000/- (between SCIPL with Pioneer Channel Factory Pvt Ltd) was paid for acting as business advisory. The expenditure has been Justified by stating that such licensing deals for copyrighted contents of SCIPL generate income/ revenue for SCIPL

135. In respect of the impugned transaction, the appellant has not been able to furnish any evidence of any services having been rendered by M/s Jask Exports Pvt. Ltd. (M/s Jask). M/s Jask has no expertise in dealing with copyright matters. Apart from the appellant, no other person has received any such service from M/s Jask. The appellant at no point of time either during the course of assessment proceedings or investigation proceedings has been able to furnish any evidence to prove that any services were actually rendered by M/s Jask to the appellant. The key persons of M/s Jask did not co-operate in the investigation proceedings and could not establish their bonafide of rendering any services to the appellant.

136. Copyright is a highly specialized field of law. Advisory services for copyrights are highly technical and cannot be rendered by persons other than those qualified to do it. The appellant has not been able to furnish even the name of the employee of the company who interacted with the appellant for the advisory function. Advisory functions are generally carried out formally. The advice rendered is intimated on paper. No such evidence of advice rendered by M/s Jask has been furnished. No email between the appellant and M/s Jask has been furnished to show that M/s Jask actually rendered any service to the appellant.the accounts of M/s Jask do not reveal any other activity.

137. If M/s Jask was actually involved in rendering advisory services in copyright matters then it would be having other clients also. However, it could not be established that they had

138. Therefore, the claim of expenses amounting to Rs. 54,36,000/- is not allowable, since the appellant failed to substantiate its claim with evidence/material to show that the amount paid was ulitised for the purpose of its business. In view of the above, the disallowance of Rs. 54,36,000/- made by the Assessing Officer is upheld.

139. Coming to the item of expenditure of Rs. 33,50,000/- in the nature of digital conversion charges which is appearing at Sl. No. 1 to 4 in the above table. The said amounts have been paid to M/s C-Cube Technologies Pvt. Ltd., CTO Sarvshiksha Institute Pvt. Ltd., Sirohi Infotech Pvt. Ltd. and Endeceed Global Solutions Pvt. Ltd. The explanation of the appellant to justify the expenditure is that the services rendered by these entities involved conversion of metadata of sound recordings from physical to digital.

140. Regarding the work done by companies/entities for conversion of metadata from physical to digital it has been explained by the appellant that such conversion entails 2 specific tasks (1) conversion of sound recording i.e. audio song from physical format to digital format, (ii) conversion of metadata from physical mode to digital mode i.e. electronic format.

141. In respect of the statement of Sh. Sachin Chauhan referred to in the assessment order to argue that at the time of search it was admitted by him that entire work regarding conversion from physical to digital was done it has been argued by the appellant that reference was being made by him to the work (i) above l.e. conversion of sound recording .e. audio song from physical format to digital format. The work at (ii) 1.e. conversion of metadata from physical mode to digital mode i.e. electronic format was not done in house by SCIPL. This task was out sourced to the above referred companies/entities.

142. The four companies involved in the transaction are as under:-

1. *M/s C-Cube Technologies Pvt. Ltd.*
2. *M/s CTO Sarvshiksha Institute Pvt. Ltd.*
3. *M/s Sirohi Infotech Pvt. Ltd.*
4. *M/s Endeceed Global Solutions Pvt. Ltd.*

143. The work of conversion of metadata from physical to digital is highly laborious. It entails involvement of manpower and use of computers. The four companies involved in the transaction do not have any manpower or computers to do the impugned work for the appellant.

144. None of the above four companies are engaged in the business of conversion of metadata from physical to digital format. None of the four companies have any experience in the field of conversion. None of the four companies had any employee who was an expert in the field. The director of none of the four companies had any experience in the field. If the four companies are actually involved in doing conversion work, in that case apart from the appellant, there would be many other clients of the companies. However, apart from the appellant, the four companies have not received any payment for the work of conversion of data as claimed to have been done for the appellant.

145. None of the four companies involved in the transaction could appear and explain before the Assessing Officer about the ability of the companies in carrying out the Impugned work. The appellant also could not furnish any convincing document to prove that the above four companies were both capable and has actually carried out conversion work for the appellant. The appellant has heavily relied upon the bills and payments as evidence. In order to prove that the work was done, it is important to establish that the four companies were capable of rendering the services and also that they have actually done the work as claimed..

146. From the above details, it can be seen that the four companies received payment of Rs.33,50,000/- in aggregate. All these four companies were controlled by Shri Rohit Tandon and his son Shri Varun Tandon, Advocates. It means that all the four companies must be having expertise independently in executing the conversion work. However, that is not the case. No company has any expertise whatsoever in executing the alleged work. It is not a case wherein the appellant has outsourced work to one company which had the expertise.

147. The appellant company is market leader in music industry. It had its own expertise and manpower in conversion work. A market leader would not rely on new and novice companies for such technical work when he himself has the requisite expertise available and actually involved in the work. As a market leader, the appellant will always look for the best in the field of conversion from physical to digital metadata. Thus, even on the ground of preponderance of probability, the appellant has no case for claim of expenditure.

148. The appellant got sufficient opportunity during the course of assessment proceedings and during the course of investigation proceedings before the DDIT to establish its claim of work having been done. At no point of time, the appellant was able to prove the genuineness of the claim.

149. In view of the above discussion, the action of the Assessing Officer in disallowing of claim of expenditure to the extent of Rs.32,50,000/- is upheld, since the appellant failed to substantiate its claim with evidence/material to show that the conversion work was done and ulitised for the purpose of its business.

150. In view of the above discussion, the addition to the tune of Rs. 1,20,36,000/- out of Rs.1,26,36,000/- is upheld and the amount of Rs. 6,00,000/- being excess disallowance is hereby deleted. Consequently, ground no.5 is partly allowed.

8.16 The CIT (A) concluded that M/s Sagal International Pvt Ltd failed to demonstrate its capability to render commission services and had no clients other than SCIPL. SCIPL could not provide evidence, such as correspondence or contracts, to substantiate the services rendered by M/s Sagal. Consequently, the commission expense was disallowed by AO was upheld for lack of business purpose. The CIT(A) upheld the addition but reduced it by Rs. 6,00,000, revising the commission to Rs. 32,50,000 (5% of Rs. 6,50,00,000 job work amount) from the previously assessed amount of Rs. 38,50,000.

8.17 The appellant claimed a deduction of Rs. 54,36,000 as referral commission paid to M/s Jask Exports Pvt. Ltd. for business advisory services related to licensing deals with Disney Broadcasting (India) Ltd. (Rs. 7,00,00,000) and Pioneer Channel Factory Pvt. Ltd. (Rs. 3,87,20,000) at 5% commission. However, the appellant failed to provide evidence of services rendered by M/s

Jask, which lacks expertise in copyright matters and has no other clients besides the appellant. No correspondence, agreements, or records of advisory services were furnished, and M/s Jask's key persons did not cooperate in investigations. Copyright advisory is a specialized field requiring qualified expertise and the absence of evidence, such as emails or documentation, undermines the claim. The lack of other clients for M/s Jask further weakens the claim's credibility. Consequently, disallowance of Rs. 54,36,000 was upheld.

8.19 Further expenditure of Rs. 33,50,000/- was paid to four companies—M/s C-Cube Technologies Pvt. Ltd., M/s CTO Sarvshiksha Institute Pvt. Ltd., M/s Sirohi Infotech Pvt. Ltd., and M/s Endeceed Global Solutions Pvt. Ltd. for digital conversion services, specifically metadata conversion from physical to digital format. The conversion process involves two tasks: (i) converting audio songs from physical to digital format, and (ii) converting metadata from physical to electronic format. The appellant clarified that only the audio conversion was done in-house as confirmed in statement of Sachin Chauhan, while metadata conversion was outsourced to the four companies. The four companies lack the necessary manpower, computers, expertise, or experience in metadata conversion, and none are engaged in this business. They also had no other clients for such work besides the appellant.

8.20 The companies, controlled by Shri Rohit Tandon and his son Shri Varun Tandon, could not demonstrate their capability or provide evidence of performing

the claimed conversion work. The appellant, a market leader in the music industry with its own expertise and manpower, would unlikely outsource such technical work to inexperienced companies, undermining the plausibility of their claim. Despite opportunities during assessment and investigation proceedings, the appellant failed to substantiate the genuineness of the expenditure or prove that the conversion work was performed and utilized for business purposes.

8.21 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that that the Ld.AO has disallowed the impugned amount and added to the total income of the assessee is premised on the fact that based on information extracted from the data seized during search proceedings at SCIPL and Rohit Tandon Group, it was observed that companies belonging to Rohit Tandon (CTO Sarviksha Institute Pvt Ltd, C Cube Technologies Pvt Ltd, Sagal International Pvt Ltd, Endecced Global Solutions Pvt Ltd, Karni Enterprises Pvt Ltd, Sirohi Infotech Pvt Ltd, Jask Exports Pvt Ltd) are involved in providing accommodation entries in the form of Bogus expenses to SCIPL.

8.22 In respect of transaction with M/s Sagal International Pvt Ltd, Ld. Counsel for the assessee highlighted that the AO has erroneously added Rs. 38,50,000/- instead of Rs. 32,50,000/- to the total income of appellant company being 5% of job work amount of Rs. 6,50,00,000/-. On verification of this fact it is seen that

the actual expenditure incurred was only Rs. 32,50,000/- and the AO had disallowed Rs. 38,50,000/-. In view of the same the deletion of Rs. 6,00,000/- by CIT(A) was on correct facts and need not be disturbed.

8.23 The observation made by the AO that expenses pertaining to M/s C-Cube Technologies Pvt. Ltd. are booked as "legal and professional charges" but the same are related to metadata conversion to digital data is rejected as these expenses were aligned with the nature of services rendered as the same pertain to professional services being engaged for conversion of metadata to digital data. Moreover, if the genuineness of the expense is established then it is not material that underwhich the same expense has been booked. The important thing to decide is the genuineness of the expense and its business expediency, which in the present case has been established since the assessee has a vast repertoire of music albums and videos and the expense were incurred for conversion of analog/metadata to digital data.

8.24 It is observed that the assessee's printing unit is in Noida, which is underutilized due to declining physical music sales, the same was used for job work purposes by the assessee to generate revenue. M/s Sagal International Pvt. Ltd. was paid a 5% commission (Rs. 32,50,000/-) for securing printing orders worth Rs. 6,50,00,000/- from three parties. Documentary evidence (invoices, ledger accounts, and order summaries) substantiates the execution of these orders

and justifies the commission expense. The A.O.'s inference that Sagal lacked printing facilities is irrelevant, as it was only a commission agent and was not required to provide printing services but just facilitated in securing printing orders.

8.25 We observe that Rs. 54,36,000/- was paid to M/s Jask Exports Pvt. Ltd. for advisory services in licensing deals with Disney Broadcasting (India) Ltd. (Rs. 7,00,00,000/-) and Pioneer Channel Factory Pvt. Ltd. (Rs. 3,87,20,000/-), generating Rs. 10,87,20,000/- in licensing income. The assessee had furnished agreements with Disney Broadcasting (India) Ltd and Pioneer Channel Factory Pvt. Ltd to justify the expenses and it is seen that the AO had not made any enquiry from Disney Broadcasting (India) Ltd and Pioneer Channel Factory Pvt. Ltd to verify the genuineness of the expenditure. The assessee had furnished the bills, agreements deducted TDS and made payments through banking channels to establish its claim. The Ld. AO had brought no material on record to refute the claim of expenses and the disallowance was made on surmises and conjectures.

8.26 It is seen that the Ld. AO relied on Sachin Chauhan's statement, that SCIPL conducted all analog-to-digital conversions in-house without understanding the various forms of conversion done by SCIPL in its organisation. The Ld counsel has explained that Sachin Chauhan's statement referred only to audio digitization, while metadata conversion was outsourced to four Rohit Tandon Group entities. This fact was not verified either by the AO or by the

CIT(A). The assessee had infact furnished the details of converted data in pendrive before the AO and CIT(A) which was not verified or commented upon by both. This data submitted was evidencing metadata conversion done by Rohit Tandon Group of companies. This data was not cross checked by the AO or CIT(A) with Rohit Tandon Group of Companies to prove the work's nature and volume. Further certificate from CTO Sarvshiksha on record supporting the legitimacy of these transactions is a valid document which was not cross verified.

8.27 It is observed that documentary evidence including printing orders, licensing agreements, and metadata files substantiates the expenses. The AO and CIT(A) failed to verify these evidences, and the absence of any incriminating material found during search on this aspect undermines the disallowance. The low turnover of the service providers is irrelevant, as the assessee had provided evidence of services rendered.

8.28 We have examined the documentary evidence on record (invoices, agreements, metadata files) to verify the genuineness of the expenses. There is no dispute regarding the business expediency of these expenses. There is sufficient evidence to establish the genuineness of the expenditure. Having regard to the facts not been contradicted either by the AO or by the Ld. CIT(A) computation of disallowance of Rs. 1,20,36,000 on this ground by the CIT(A) is not substantiated and thus, deleted. The order of the CIT(A) in deleting disallowance of Rs. 6,00,000/- due calculation error is confirmed. As a result the appeal of the

assessee on this ground is allowed and the appeal of revenue on this ground is dismissed.

9. Department has challenged the deletion of additions made on account of disallowance of legal and professional expenses paid to Rohit Tandon group as bogus. Details of the expenses are tabulated as under:

Assessment Year	Expenses Incurred
2013-14	1,50,00,000
2014-15	3,10,00,000
2015-16	3,95,00,000
2016-17	3,20,00,000
2017-18	80,00,000

9.1 The revenue raised this common issue regarding addition on account of disallowance of legal and professional service from Rohit Tandon group considering them as bogus expense in order to avoid payment of taxes in India, for Assessment Years 2013-14, 2014-15, 2015-16, 2016-17 and AY 2017-18 (ITA Nos. 2511/DEL/2023, 2512/DEL/2023, 2702/DEL/2023, 2756/DEL/2023 and 272/DEL/2024). The decision for the assessee's appeals for Assessment Years 2013-14, will be applicable for AY 2014-15, 2015-16, 2016-17 and 2017-18, as the issues are identical and no new circumstances exist.

9.2 Brief facts of the case are that the search action was conducted on Rohit Tandon and his Group of companies and the documents seized along with statements recorded according to the Revenue clearly reveals that Rohit Tandon

was involved in providing accommodation entries in the form of bogus legal and professional expenses to SCIPL. The retainer ship fees paid to Varun Tandon, Rohit Tandon & Co., and T & T Law were deemed exorbitant and potentially bogus, as typical legal consultancy fees are Rs. 2-2.5 lakh, while payments like Rs. 90 lakh (received 25/10/2012 against seven bills totalling Rs. 1 crore dated 16/10/2012) and Rs. 1.62 crore (received 07/05/2013 against twelve Rs. 15 lakh bills dated 04/04/2013) were made, often for entire years in advance. For FY 2013-14, Rs. 1.8 crore was credited on 07/05/2013, and Rs. 50 lakh quarterly payments were made in FY 2014-15 and April-June 2015-16, with an additional Rs. 50 lakh for FY 2013-14 credited on 01/05/2014, suggesting accommodation entries among Rohit Tandon Group entities as alleged. Despite multiple summons, neither Sh. Rohit Tandon, its director or Sh. Bhushan Kumar, or any employee of SCIPL appeared for examination or provided details of services, such as list of court cases, appearance in court, judgments taken, or legal documents, beyond bills for confirmations for credibility of the expenses incurred.

9.3 The main arguments, contentions, reasons for making the disallowance summarized are as under:

(i) The legal contention raised by the assessee was rejected by holding that section 153A of the Act mandates the assessing officer to assess or reassess "total income that includes disclosed as well as undisclosed income.

(ii) The search action on Rohit Tandon Group clearly revealed that Sh. Rohit Tandon was involved in adjusting its unaccounted cash by taking accommodation entries of income nature from various parties. The transactions entered into by SCIPL with various Rohit Tandon Group entities are in the nature of accommodation entries where SCIPL has claimed bogus expenses and received cash in lieu of the cheques given to Rohit Tandon Group entities.

(iii) The claim being made by SCIPL that the legal expenses Incurred are genuine is not backed by concrete material or evidence. There is no proof of actual rendition of any legal services. Simply furnishing bills and invoices is not sufficient for claim of expenditure.

(iv) During the course of search on SCIPL and during post search investigations it has been noticed that accommodation entries in the form of bogus legal and professional expenses has been provided by Rohit Tandon Group as the bills raised have been found non-genuine.

(v) Further, payments received in the hands of Rohit Tandon, were found to be exorbitant and thus bogus.

9.4 The additions so made were deleted by the CIT(A) on the facts and circumstances and concluding that there were sufficient explanation and evidence available on record in substantiation of claim of legal and professional expenses by the assessee company and the conclusive findings of the CIT(A) deserves to be reproduced hereinbelow for further analysis and determination of the grounds. The relevant paras for A.Y. 2013-14 are reproduced below:-

"181. The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground No. 5, the appellant has contended that the A.O erred in disallowing the legal and professional expenses amounting to Rs. 1,50,00,000/- incurred by the appellant as not genuine by holding the same to be bogus expenses.

182. In the written submissions the appellant has argued that the legal and professional expenses amounting to Rs. 1,50,00,000/- are genuine in nature. In support of the same, the appellant has provided copies of bills raised by M/s Rohit Tandon & Co. The summary of bills along with description of services rendered is tabulated below :-

S.No	***Date of Invoice***	***Nature of services provided and amount raised for the services***	***Amount (Rs.)***
1.	*16.10.2012*	*Professional fee for services rendered in connection with detailed analysis and legal opinion rendered on the amendments made in section 16, 17, 18, 19, 31(1)(b), 31D & 33 of the Copyright Act vide Copyright Amendment Bill, 2012, its impact retrospective and prospective.*	*15,00,000*
2.	*16.10.2012*	*Towards consolidated professional fee and expenses incurred for services rendered in connection with representing the matter CCI No. 40 of 2011 pending before DG Investigation, Competition Commission of India.*	*20,00,000*
3.	*16.10.2012*	*Towards retainership fee for matters fixed before the Copyright Board for the periods 01.04.2012 to 30.06.2012 and 01.07.2012 to 30.09.2012 @Rs.10,00,000/- per quarter*	*20,00,000*
4.	*16.10.2012*	*Towards preparation of rejoinder affidavit, research and conferences in the matter writ petition no. 6255/2010 titled SCIPL Vs. UOI in Delhi HC*	*7,50,000*
5.	*16.10.2012*	*Towards drafting of special leave petition against the order dated 08.05.2012 passed by Division Bench of Delhi High Court in FAO(OS) No. 423-424 of 2011 in SCIPL Vs. IPRS*	*7,50,000*
6.	*16.10.2012*	*Towards retainership fee for matters fixed before the Copyright Board for the quarter from*	*10,00,000*

		01.10.2012 to 31.12.2012	
7.	*16.10.2012*	*Towards professional fee for drafting, vetting and finalizing detailed written submissions and final arguments as well as holding several conferences, discussions and briefings with company officials and counsels in Company Application No. 167 of 1999 titled Gopal Kishen Vs. Tony Electronics Ltd. pending before Delhi High Court*	*20,00,000*
8.	*16.03.2013*	*Towards retainership fee for matters fixed before the Copyright Board for the periods 01.01.2013 to 31.03.2013*	*10,00,000*
9.	*16.03.2013*	*Towards professional fee for drafting and finalising the writ petition to be filed before Supreme Court of India challenging the validity of sections 31(1)(b) & 31D of the Copyright Act, 1957*	*20,00,000*
10.	*16.03.2013*	*Towards professional fee for drafting of Economic Analysis Report in the case of H.T. Media Ltd. pending before the Competition Commission of India*	*20,00,000*
		Total	***1,50,00,000***

183 To prove the genuineness of the Legal & Professional expenses paid to Rohit Tandon there are three ingredients, firstly the need for availing services, secondly the actual rendition of services by M/s Rohit Tandon & Co. and utilisation of such services by the appellant in the litigation matters pending before various forums and lastly consideration paid by the appellant to Rohit Tandon.

184. In the written submissions filed by the appellant it has been brought out that SCIPL, being in the business of acquisition of sound recordings i.e. music and thereafter its commercial exploitation through physical and digital modes, it is of paramount importance for the appellant to protect the Copyright in its repertoire of sound recordings. The appellant has explained the need for availing legal and professional services by explaining that during the past many years Super Cassettes Industries Limited (now Super Cassettes Industries Pvt. Ltd.) a.k.a. T-Series has been involved in various litigations including but not limited to litigations related to dispute in the promoter's family members with respect to ownership of various companies/properties of T-Series, Litigation with FM Radio stations, hearings before Competition Commission of India, writs challenging certain provisions of the Copyrights Act (as amended in 2012) etc. T-Series continued to consult various law firms, senior advocates and

legal experts including Sh. Rohit Tandon & Sh. Varun Tandon and payments thereof were made to Sh. Rohit Tandon & Sh. Varun Tandon either directly in their name or to their law firm T&T Law or sole proprietorship Rohit Tandon & Co. as per the bills raised by them. As the volume of litigation is high T-Series always found itself short of legal experts and thus Sh. Rohit Tandon was hired on yearly retainer to advise T-Series on all these legal matters on regular basis and rendered his expert opinion in various legal conferences with senior counsels, drafting of replies, suits, writs etc. The narration on the professional bills raised is self-explanatory. The appellant has also furnished copies of various judgments/orders, Writs, e-mail correspondence, opinions, reports, documents etc which have professional contribution and inputs from Rohit Tandon and his associates. The appellant has further explained that in addition, their professional services were extensively used on day to day basis on diverse legal issues, such as, vetting and finalisation of employment/service contracts, film production agreements, copyright acquisition agreements, licensing agreements, vetting of termination notices, - including drafting and vetting of related agreements and contracts, seeking advice on various fiscal enactments, FEMA regulations, etc; seeking general legal advice on pending and prospective arbitration disputes and litigations pending and envisaged in courts and other legal foras, etc.

185. Coming to the second aspect which is actual rendition of services by M/s Rohit Tandon & Co. and the utilisation of such services by the appellant. The appellant has submitted the professional work done in 3 Index Files running into 1476 pages filed along with the paper book and submitted that in support of the actual rendition of legal and professional services by Rohit Tandon, Rohit Tandon & Co., Varun Tandon and T&T Law Firm documents referred above were duly filed in the assessment proceedings by way of a separate folder running into 1476 pages. The details of the documents filed showing the actual rendition of services by Rohit Tandon, Rohit Tandon & Co., Varun Tandon and T&T Law Firm and briefly explaining the contents of such documents is tabulated below :-

Details of evidence/material regarding professional services rendered by Rohit Tandon, Varun Tandon and T & T Law during various assessment years to SCIPL

File No.	***S.No***	***Particular***	***Page No***
Volume I	*1*	*Copy of legal opinion of Rohit Tandon dated July 30 2012 post Copyright Act Amendment in June 2012 on various section of the said Amendment. The opinion contains five discussions in response to queries raised by SCIPL (a company) regarding their position and legal strategies with respect to their existing repertoire of rights and future acquisitions of rights. This document provides a comprehensive review of the changes brought about by the amendment and the legal implications for SCIPL. It is an important tool for SCIPL to understand the impact of the amendment on their business operations and to make informed decisions regarding their legal strategies going forward.*	*1-20*
	2	*The "Copy of Mail dated September 29, 2013 from Rohit Tandon" a comprehensive document that provides a summary of a meeting between T&T Law and T-Series. The meeting was focused on addressing various issues related to a case being heard by the Competition Commission of India (CCI), Case No. 40-2011. This mail, written by Rohit Tandon, provides a clear outline of the course of action to be taken by him in his capacity as a legal representative for SCIPL in this matter.*	*21-23*
	3	*The "Copy of Trail Mails between T&T Law and SCIPL between November 15, 2012 and November 20, 2012" a collection of emails exchanged between T&T Law and SCIPL regarding the HT Media case. This mail trail provides a comprehensive record of the discussions and negotiations that took place between the parties during this period. The document also includes a copy of a relevant case law from the Competitive Commission of South Africa, which provides valuable context and guidance for the parties involved in the HT Media case.*	*24-66*
	4	*Copies of comprehensive compilation of relevant case laws filed by Sh. Rohit Tandon/Sh. Varun Tandon, (partners of the law firm T&T Law) to the Competition Commission of India on behalf of their client, SCIPL On November 15th, 2012,*	*67-417*
	5	*Copy of First Royalty Order dated 19th November 2002 passed by the Copyright Board at Hyderabad*	*418-452*

Volume II	*6*	*Copy of Second Royalty Order dated 25th August, 2010 passed by Copyright Board at Hyderabad. This order has a direct impact on the rights of Super Cassettes Industries Ltd (SCIPL), even though SCIPL was not a party before the board during the proceedings leading to the issuance of this order.*	*453-510*
	7	*Copy of Writ Petition no 6225 of 2010 filed on 13 September, 2010 alongwith supporting documents filed by Super Cassettes Industries Ltd against impunged order dated 25 August, 2010 passed by Hon'ble Copyright Board along with supporting documents, which are likely to include evidence and arguments in support of their claims against the impugned order.*	*511-843*
	8	*Copy of Delhi High Court Order dated 15th September, 2010 granting a stay on the enforcement of the Second Royalty Order against SCIPL.*	*844-846*
	9	*Copy of Director General's Report dated 17th September, 2012 pertains to complaint filed by HT Media against Super Cassettes Industries Limited before the Competition Commission of India*	*847-1035*
Volume III	*10*	*Copy of Economic Analysis of CCI Report dated 04th April, 2013 stating the findings on the report of Director General of the Competition Commission of India dated 17th September , 2012*	*1036-1057*
	11	*Copy of final order dated 1st October 2014 passed by the Competition Commission of India regarding the complaint filed by HT Media Limited*	*1058-1150*
	12	*Copy Chart compiling the various applications for compulsory licensing under Section 31(1)(b) of the Indian Copyright Act, filed by FM Radio Stations against Super Cassettes Industries Limited.*	*1151-1158*
	13	*Copy of Order dated 4th May, 2012 passed by the Hon'ble Supreme Court of India in regards to Special Leave Petition (SLP) filed by Super Cassettes Industries Limited.*	*1159-1174*
	14	*Copies of Compilation of various decisions passed by Indian High Courts around 2010-2011 regarding the requirement of separate licenses for broadcasting songs on FM Radio Stations, including CS(OS) 1185/2006 and I.A Nos. 6486, 6487, 7027/2006 and CS(OS) 1996/2009 and IA no. 13692/2009, decided on 28th July, 2011*	*1175-1208*
	15	*Copy of writ filed on 21 March, 2013 before Hon'ble Delhi High Court challenging the provisions of the Copyright Act Amendments being ultra vires of Constitution of India.*	*1209- 1436*

	16	*Copy of reply in FIR no.290/02 under P.S.Okhla Indl Area, Phase - 1, New Delhi in family settlement dispute of promoters and promoter's companies Ms/ Super Cassettes Industries Ltd, M/s Tony Electronics Ltd & Ms/ Super Electronics*	*1437-1476*

186. From the perusal of the assessment order it is seen that the assessing officer has failed to address the above documents/evidence in the assessment order and made the disallowance only on presumptions, surmises and conjectures.

187. Thus, there exists enough evidence regarding actual rendition of legal & professional services and its utilisation in the operations and business of the appellant. The note explaining the various litigations, disputes etc being faced by the appellant company, the professional & legal services required including advisory services as filed by the appellant during the assessment proceedings as well as the present proceedings has been reproduced in the earlier part of this order and hence the same is not being repeated. The professional services provided by Rohit Tandon, M/s Rohit Tandon & Co., Varun Tandon, T&T Law Firm were utilised by the appellant in the course of litigation pending before, Supreme Court, Competition Commission of India, family disputes with Gopal Kishen and the CopyRight Board. The documents filed by the appellant as tabulated above establish the fact that appellant company was engaged in litigation at various forums. Specific professional and legal services were rendered in these litigations for which invoices were raised. The description of services mentioned in these invoices is further backed by specific work done in the litigation matters. Thus, there is enough evidence for actual rendition of services. As opposed to the same the entire disallowance made by the A.O. is based upon information received from the Investigation Wing, pursuant to search action on Super Cassettes Industries Pvt. Ltd. (SCIPL) on 29.11.2018, that the appellant company i.e. SCIPL was engaged in the malpractice of taking accommodation entry in the form of bogus expenses from M/s Rohit Tandon & Co. However, in support of the information so received from the Investigation Wing, there is a lack of any material or evidence.

188. It is also pertinent to note that during the course of search action on Rohit Tandon Group on 10.12.2016, statement of Rohit Tandon was recorded u/s 132(4). Relevant portion of this statement has been reproduced in the assessment order. In response to a specific question regarding the names of clients to whom legal & professional services were being provided, Rohit Tandon in its answer specifically included the name of Super Cassettes Industries Pvt. Ltd. which further confirms that there is actual rendition of services by Rohit Tandon and his associates. The relevant portion of the statement is as under :-

> *"Q10.Please give details of entities from which you are receiving professional receipts?*
>
> *Ans. I receive professional receipts from:*
> *1. T&T Law*
> *2. Rohit Tandon & Co.*
>
> *Q11. Please give details of your major projects in the above firms from which you are earning professional receipts in the last one year?*
>
> *Ans.* ***T & T Law:***
> *1. National Insurance Company*
> *2. General Insurance Council*
> *3. New India Insurance Council*
> *4. Oriental Insurance*
> *5. ISSCO-TOKIO GIC*
> *6. GIPSA*
> *7. Tenon Group*
> ***Rohit Tandon & co.***
> *1. Super Cassettes*
> *2. Outsourced work from bigger law firms like Luthra & Luthra and more."*

189. As regards allegation of exorbitant amounts being charged is concerned it is submitted by the appellant that there is no bench mark for

professional services. There are different amounts being charged by different professional for providing same services. Thus, charging of a higher amount cannot be a criterion to term legal expenditure as bogus especially overlooking the elaborate material and evidence filed at the assessment stage in substantiation of actual rendition of legal and professional services and its utilisation in the legal disputes of SCIPL. Rohit Tandon, M/s Rohit Tandon & Co., Varun Tandon and T&T Law have raised bills on the basis of negotiated amount with the appellant and the appellant through proper payment channels has paid the amount raised and has also paid TDS along with service tax. It is also noted that there is no evidence or material on record to allege or suggest that the amounts paid have come back to the appellant in the form of cash. Another aspect to be considered is that for payment towards professional services, there is no fixed criteria or benchmark. For rendering the same services two different individuals from the same profession may charge different fees depending on their experience, expertise and skill set. Thus, the quantum of professional fees paid to a professional cannot be questioned on the ground that the same is excessive.

190. Regarding the observation made in the assessment order that professional invoices have been raised on single date for the whole year, it has been explained by the appellant that the professional work is performed by the advocates from time to time. The professional work performed would include furnishing of legal opinion, vetting of contracts, attending to copyright board matters, Competition Commission of India matters, filing of petitions in various courts etc. However as per mutual convenience at times the professional invoices are raised for a particular client at one instance. I am in agreement with the explanation of the appellant that raising of bunch of invoices for different professional services on a single date is not material in determining the genuinity and business expedience of the expenditure, what is material is the actual rendition of services and its utilisation in the business of the appellant.

191. As regards the failure of the appellant to produce Sh. Rohit Tandon before the A.O., it has been explained that the appellant has not engaged Sh. Rohit Tandon since April 2016 and is not in touch with him. The appellant has also explained that it has no control over producing him

before the A.O, it is beyond its powers to bring Sh. Rohit Tandon before the A.O, as the appellant only engaged him for professional purposes and the interaction was nothing but a mere professional transaction. The appellant has contended that failure to produce Sh. Rohit Tandon before the A.O should not automatically lead to a conclusion that the expenses incurred by the appellant are bogus in nature. This contention of the appellant appears to be plausible.

192. The appellant also placed reliance on the order dated 27.01.2022 passed by CIT(A)-23, Delhi for A.Y. 2012-13 (Copy enclosed at ***Page 140 to 171 of P/B Vol.II****)in appellant's own case where the disallowance of legal & professional expenses of Rohit Tandon was deleted by holding the same to be genuine and driven by business expediency on similar facts. It is noted that similar disallowance of legal and professional expenses pertaining to Rohit Tandon & Co. was deleted by holding as under :-*

> *"In view of the above discussion, it is found that the legal & professional expenses incurred by the appellant are not in the nature of bogus/sham transactions. The appellant has furnished necessary and sufficient evidences such as bills raised, deposit of TDS along with payment of service tax, evidence of services having been rendered. Hence, the disallowance of Rs. 44,67,150/- on account of Legal & Professional charges paid to M/s Rohit Tandon & Co. is hereby deleted."*

193. In view of the above discussion, it is held that the legal and professional expenses incurred and claimed by the appellant are not bogus, the appellant has provided substantiating evidence such as bills raised on which TDS has been deducted and service tax has been deposited. Further, evidence (tabulated in foregoing paras) has been furnished to evidence the actual rendition of legal and professional services coupled with the inability of the AO to counter the said evidence. Thus, the disallowance is merely based on presumptions, surmises and inferences. No direct evidence was found either in the search action dated 10.12.2016 on Rohit Tandon Group or the search action dated 29.11.2018 on the appellant to hold the legal and professional expenses as accommodation entries. Hence, the

disallowance of Rs. 1,50,00,000/- on account of Legal & Professional charges is hereby deleted. Consequently Ground No. 5 is ***Allowed."***

9.5 The Ld. Counsel of the assessee further drew our attention towards the fact that details of services provided by Rohit Tandon Group running into 1476 pages containing of legal opinion, emails, case laws compilation, writ petition drafted, suits etc. were submitted before the Ld. AO and the Ld. CIT(A) and the same has been duly appreciated by the Ld. CIT(A) in reaching conclusion that services were provided by Rohit Tandon Group to the appellant company and the same cannot be doubted and the Ld. AO in the order has not addressed this particular aspect of the matter. The Ld Counsle argued that SCIPL has been involved in various litigations but not limited to litigations related to dispute in the promoter's family members with respect to ownership of various companies/properties of T-Series, Litigation with FM Radio stations, hearings before Competition Commission of India, writs challenging certain provisions of the Copyrights Act (as amended in 2012) etc. T-Series continued to consult various law firms, senior advocates and legal experts including Sh. Rohit Tandon & Sh. Varun Tandon and payments thereof were made to Sh. Rohit Tandon & Sh. Varun Tandon either directly in their name or to their law firm T&T Law or sole proprietorship Rohit Tandon & Co. as per the bills raised by them. As the volume of litigation is high T-Series always found itself short of legal experts and thus Sh. Varun Tandon was hired on yearly retainer to advise T-Series on all these

legal matters on regular basis and rendered his expert opinion in various legal conferences with senior counsels, drafting of replies, suits, writs etc. The narration on the bills is self-explanatory, however, copies of various judgments/orders, Writs, e-mail correspondence, opinions, reports etc are appended herewith for ready reference. In addition, their professional services were extensively used on day to day basis on diverse legal issues, such as, vetting and finalisation of employment/service contracts, film production agreements, copyright acquisition agreements, licensing agreements, vetting of termination notices, - including drafting and vetting of related agreements and contracts, seeking advice on various fiscal enactments, FEMA regulations, etc; seeking general legal advice on pending and prospective arbitration disputes and litigations pending and envisaged in courts and other legal forams etc.

9.6 The Ld Counsel also stated that appellant also placed reliance on the order dated 27.01.2022 passed by CIT(A)-23, Delhi for A.Y. 2012-13 (Copy enclosed at Page 129 to 160 of P/B Vol. II) for AY 2012-13 in appellant's own case wherein the disallowance of legal & professional expenses of Rohit Tandon was deleted by CIT(A) 23 vide order dated 27.01.2022 by holding the same to be genuine and driven by business expediency on similar facts. The Ld. counsel also drew our attention to the fact that Rohit Tandon, Rohit Tandon & Co and T&T Law Firm have furnished certificate certifying that their assessments were finalised in scrutiny assessment proceedings by DCIT, Central Circle-2, Delhi for

the assessment years under consideration and that no adverse inferences have been drawn by the assessing authorities in respect of such transactions with SCIPL and the same was furnished before the Ld. CIT(A) along with the assessment order for Assessment Year 2014-15.

9.7 Further the Ld. Counsel of the assessee submitted that Sh. Rohit Tandon in his statement, admitted the fact that services were provided to T series group. Once the rendition of services provided has been established, the amount of fees charged cannot be disputed and the claim of the Ld. AO that exorbitant amount has been charged has no basis and there is nothing on record to establish that cash was received back by the appellant.

9.8 Further the Ld. Counsel of the assessee highlighted that no Incriminating material was found during search and the addition was made purely based on surmises and conjecture. Since this was an unabated assessment year as the original assessment under section 143(3) was made vide order dated 31/03/2016. This fact has been mentioned by the AO in the assessment.

9.9 We have heard the rival submissions made by the respective parties and we have pursued the materials available on record. Documents including copies of invoices having narration in respect of type of service rendered were completely ignored by the Ld. AO. Further 3 index files running into 1476 pages containing evidence regarding professional services rendered by Rohit Tandon Group of

Companies which are briefly numerated as under were submitted by the appellant during assessment proceedings:

A. Copies of legal opinions taken.
B. Copy of Emails between SCIPL and T&T Law Firm in respect of Case before Competition Commission of India having case No. 40-2011, Legal case laws references.
C. Copy of compilation of case laws file before CCI by Rohit Tandon group of companies.
D. Copy of royalty orders passed by CCI Hyderabad.
E. Copy of writ petition filed by Rohit Tandon group of companies on behalf of SCIPL.

Copy of final order passed by CCI against complaint of HT Media Ltd.

F. Copy of compilation of various decisions regarding requirement of separate licensing for broadcasting songs.
G. Copy of Writ filed before Delhi High Court challenging the provisions of copyright act being ultravires of constitution of India.
H. Copy of reply filed in family settlement dispute of promoters.

9.10 We find that the above-mentioned list of documents submitted during the assessment proceedings were not considered by the Ld. AO in the assessment order and disallowance was made on the basis of presumptions, surmises and conjectures

9.11 Further Ld. Counsel for the assessee contended that in the statement recorded during the search on Rohit Tandon Group of companies, Rohit Tandon himself admitted provision of services to SCIPL which is not contradicted by the DR. The Ld. AR submitted thatcharging of exorbitant amounts cannot be a criteria to term legal expenditure as bogus overlooking the elaborate material

evidences filed at the assessment stage in substantiation of actual rendition of legal services. It is also evident that there is no evidence or material on record to allege or suggest that the amounts have come back to the appellant in form of cash.

9.12 Regarding AO observation that professional invoices were issued on a single date for the entire year, Ld. Counsel for the assessee submitted that the professional services were rendered by advocates periodically as per the requirements of the case. The issuance of multiple invoices for various professional services on a single date, as a matter of mutual convenience, does not constitute a material factor in assessing the genuineness or business expediency of the expenditure. What is pertinent and determinative is the actual rendition of services and their utilization in furtherance of the appellant's business activities.

9.13 Before the CIT(A) and AO detailed annexures of services provided by Rohit Tandon Group to SCIPL running into 1476 pages (3 Volumes) were furnished. The AO has not pointed out any defect / discrepancy in the same and the Ld. CIT(A) duly appreciated the detailed annexures of service provided / furnished in reaching the conclusion that actual service were provided by Rohit Tandon Group to the appellant company and the same cannot be doubted and this fact was not addressed by the Ld. AO in the assessment order.

9.14 Thus, on the basis of the factual matrix of the case and materials and evidences on record the CIT(A) has rightly deleted this addition on merits in Assessment Years 2013-14 to 2017-18 and no interference is required on the finding arrived at by CIT(A).

9.15 It is observed that in the appellate orders for Assessment Years 2013-14 till 2015-16 that even though the addition has been deleted on merits the same needs to be deleted on legality also and therefore, it was submitted that from AY 2013-14 to AY 2015-16 assessments were already completed much before the date of search and therefore, these assessment years were unabated years. Since no incriminating material was found during course of search, the addition made was liable to be deleted in view of the judgement of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla 61 Taxmann.com 421 which was upheld by the Supreme Court in the case of Pr. CIT Vs Abhishar Buildwell Pvt Ltd vide order dated 24.04.2022, as argued by the Ld. AR is found to be acceptable.

9.17 Therefore, taking into consideration the entire aspect of the matter the revenue's ground of appeal for AY 2013-14 to AY 2017-18 are treated as dismissed.

10. Under these grounds of appeal the revenue and the assessee company has challenged the addition made on account of advertisement expenses incurred through Sadhna Group of Companies. Both the assessee and the revenue raised this common issued regarding addition on account of disallowance of

advertisement expense from Sadhna Group considering them as bogus expense in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2016-17, 2017-18, 2018-19 and AY 2019-20 (ITA Nos. 2714/DEL/2023, 7/DEL/2024, 51/DEL/2024 and 271/DEL/2024) for the assessee and Assessment Year 2014-15 and 2015-16 (2512/DEL/2023 and 2702/DEL/2023) for the department. The decision for the department appeals for Assessment Years 2014-15, will be applicable for AY 2015-16 as the same are dealt with on legality basis and the decision for the assessee appeal in AY 2016-17 will be applicable for AY 2017-18, 2018-19 and 2019-20 as the issues are identical and no new circumstances exist.

10.1 The brief facts in regard to the issue are that SCIPL is engaged in the activity of procuring and selling music and also engaged in production of films. In order to promote a particular audio song or album it is required to popularise the said sound recording. One of the means of promoting the song is to run paid promotions of the song on satellite TV channels. Similarly, in the case of films paid promotions containing teaser/trailer of the film are telecast of satellite TV channels for promoting the film. It is in this context and background that promotion and advertisement expenses were incurred through Sadhna Group of satellite TV channels. SCIPL made payments to various companies of Sadhna Group in this regard i.e. Sadhna Media Pvt. Ltd., Ishwar Broadcasting Pvt. Ltd.,

Naman Broadcasting Pvt. Ltd., Sharp Eye Advertising Pvt. Ltd., Varun Media Pvt. Ltd., Sadhna Broadcast Ltd., Chirau Broadcast Network Ltd.

10.2 During the course of assessment proceedings the AO recorded statements u/s 131(1A) of Sh. Gaurav Gupta (Director in Sadhna Group Company) who is son of Sh. Rakesh Gupta (owner and MD of Sadhna Group). In his statement Sh. Gaurav Gupta stated that there are no written agreements with SCIPL regarding services provided by Sadhna Group of Companies.

10.3 Further in response to question as to how the content was delivered and the proof of running the content he replied that the content is received on pen drive or CD and hard disks and the same is shown on TV Channels of Sadhna Group and is kept in Temporary memory of the logger/server for approx. 3 months and then it is overwritten by new content. Hence, they did not have any proof of content on their TV Channels.

10.4 The AO has mentioned that summons were issued to various entities and officers of Sadhna Group on 13.02.2021 to record their statement but no compliance has been made till July 2021. Further summons were issued on 20.07.2021 but without any result.

10.5 The AO further observed that in the case of Naman Broadcasting and Telecommunications Pvt Ltd, Sadhna Media Pvt Ltd and Ishwar Broadcasting Pvt Ltd instead of attending the office a request was received to record the statement

virtually due to Covid 19 situation in Delhi and it was mentioned that the desired documents will be furnished. However, this was denied, and another summons was issued asking them to attend physically. In response to the same Sh. Arpan Gupta, one of the Directors appeared. However, he was not able to answer the questions properly and after some time sought a further 15 days as he was unprepared and left.

10.6 The AO contended that during search it was found that SCIPL does not maintain detailed bills and vouchers, any work order or any agreement for the huge payments being made under the garb to Sadhna Group of Companies. SCIPL were not able to produce business agreement, email correspondence etc. Further, the statements recorded u/s 132(4) of the directors and accountants of the company at the time of search proved that the bills raised were bogus.

10.7 A table has been reproduced in the Assessment order and it has been mentioned that the table shows films in which bogus publicity expenses have been booked and only bogus bills with minimal specification of the content were found in the name of group entities.

10.8 The Ld. AO Further stated that multiple summons were issued to the Director Sh. Gaurav Gupta, Sh. Rakesh Gupta and Principal Officers of Sadhna Group for recording their statement in respect of expenses incurred by SCIPL through Sadhna Group but none of them appeared.

10.9 The Ld. AO stated that invoices and telecast certificates related to Sadhna Group of Companies have been produced by the assessee and some sample invoices and telecast certificates have been reproduced in the assessment order. On analysis of Telecast certificate, of Film Roy it has been observed that the frequency of booking slot is within gap of every 15 minutes and the duration of slot for telecasting contents of SCIPL is 30 Seconds and hence it is difficult to believe that whole of the day same advertisement for same content of SCIPL has been telecasted repeatedly for the periodic interval of every 15 minutes. Further Ishwar TV channel is the foremost premier Astrology and devotional Channel in which the assessee claimed telecasting the promos of entertainment movies is difficult to comprehend. The assessee did not produce any other evidence. Like video stream. Further on analysis of another telecast certificate of songs it has been observed that the frequency of booking slot is within very small gaps of minutes and the duration of slot for telecasting contents of SCIPL is 60 Seconds and hence it is difficult to believe that whole of the day same advertisement for same content of SCIPL has been telecasted repeatedly. From telecast certificate is emerges that assessee is found to be claiming that promos of songs have been advertised on this channel sadhna adhyatmic channel which is a spiritual and religious channel. The claim of the assessee that songs promos were advertised on this devotional channel is difficult to comprehend. The assessee did not produce any other evidence, like video stream.

10.10 Based on the above observations drawn by the Assessing Officer the additions were made to the total income of appellant company.

10.11 The additions so made for AY 2014-15 and AY 2015-16 were deleted by the CIT (A) on the facts and further concluded that assessments for AY 2014-15 and AY 2015-16 were already completed much before the date of search and therefore, theses assessment years were unabated assessments. Since no incriminating material was found during course of search the addition made was liable to be deleted in view of the judgement of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla 61 Taxmann.com 421 which was upheld by the Hon'ble Supreme Court in the case of Pr CIT Vs Abhishar Buildwell Pvt Ltd vide order dated 24.04.2022; relevant paras of the appeal order for AY 2014-15 are reproduced as under:

> *"242. I have carefully considered the contents of the assessment order and the written submissions of the appellant. The dispute involved in this ground of appeal is with regard to the advertisement expenses aggregating Rs. 5,07,55,500/- incurred by the appellant through Sadhna Channel group of companies. The said expenditure has been disallowed by the assessing officer on the basis of various discrepancies and infirmities discussed in the assessment order.*
>
> *243. The preliminary legal contention raised by the appellant that in the absence of any incriminating material having been found during search, no addition can be made in a completed assessment is first taken up for adjudication.*
>
> *244. While adjudicating similar plea raised by the appellant, it is already discussed in detail under earlier grounds of appeal that assessment year*

under appeal is a completed assessment. From the examination of the assessment order, it is apparent that no incriminating material was found during the course of search action on 29.11.2018 on the appellant qua the aforesaid disallowance. The disallowance is primarily based on the argument that appellant failed to furnish any material/evidence in support of claim of advertisement expenditure incurred through Sadhna Group of Companies. The appellant has placed reliance on the ratio of the decision of Hon'ble Delhi High Court in the case of Pr.CIT Vs. Kabul Chawla 61 Taxmann.com 421. This decision of Hon'ble Delhi High Court came up for consideration of the Hon'ble Supreme Court in the case of Pr.CIT VS. Abhisar Buildwell Pvt. Ltd. in Civil Appeal No. 6580 of 2021 and other connected appeals. The apex court vide its order dated 24.04.2022 has upheld the above referred order of Delhi High Court. The relevant portion of the order of the Hon'ble Supreme Court has been reproduced in detail while adjudicating Ground No. 3 of the present appeal. The ratio laid down by the apex court is reproduced below:-

> *14. In view of the above and for the reasons stated above, it is concluded as under:*
>
> > *ix) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
> >
> > *x) All pending assessments/reassessments shall stand abated;*
> >
> > *xi) 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*
> >
> > *xii) 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 Section 147/148 of the Act,subject to fulfilment of the condition we envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

245. Further, a letter dated 16.05. 2023 was addressed to the Assessing Officer (DCIT, Central Circle-3, New Delhi) requiring to bring to the notice incriminating evidence, if any, found during search action on SCTPL. In response to the same, the Assessing Officer has sent a letter dated 13.06 2023. Ongoing through the contents of the said letter the observations made therein are summarised as under

i. Books of accounts were seized from the premises of SCIPL and these become incriminating in nature when seen in the light of statements recorded during search and other findings during post search investigations.

ii. During the search it was found that SCIPL does not maintain detailed bills and vouchers, work order, e-mail correspondence or any agreement for advertisement expenses paid to Sadhna Group of companies. These aspects have been covered in the statements recorded u/s 132(4) of the directors and accountants of the company.

iii. During Post search investigation statement were recorded u/s 131(1A) of the Act of Shri Gaurav Gupta (Director in Sadhna Group) s/o Shri Rakesh Gupta (Owner and Managing Director of Sadhna Group). While explaining the modus operandi and business model of Sadhna Group, it was explained by him that clients give orders through e-mails or release orders (RO) and advertisement is telecast on TV channels after appropriate price negotiation. He further stated that usually written agreements or release orders are sent by clients elaborating terms and conditions and also submitted a sample RO between Sadhana Media Pvt. Ltd. and M/s Dharmpal Satyapal Group.

iv. The requisite incriminating evidences in the form of statement of Shri Gaurav Gupta. Sample invoices/bills, ledger account and sample release orders have been attached to the above referred letter of the Assessing Officer.

246. From the above summarized contents, it is apparent that there is no incriminating material which was found during search as regards the above addition. Although, this was also clear from an examination of the assessment order, the above referred letter of the Assessing Officer further confirms this fact. Regular Books of accounts found during search cannot be termed as incriminating material. Further, if substantiating evidences in the form of e-mail correspondence, work order or agreement has not been maintained in support of an expenditure, such non-maintenance of records cannot be termed as incriminating material. Further, the statement regarding during post search investigation is also not incriminating material especially in the light of the fact that none of the parties have denied the genuineness of transaction in their respective statements. Therefore, it is found that there is no incriminating material found during search regarding this addition.

247. Books of accounts cannot be incriminating material and the same has been held in the following cases.

248. In the case of Micro Ankur Developers vs DCIT ITA No.1046 to 1050/MUM/2019, ITAT, Mumbai vide its order dated 02.09.2022 held that regular books of accounts cannot be treated as "incriminating material", unless the revenue makes out a case with corroborative evidence that the transaction reflected in the books of accounts did not represent the true state of affairs. In para 16, it was held:-

> *"In view of the above, we are of the considered view that the regular books of accounts maintained by the assessee in tally software, now being referred by the revenue, to justify the addition did not constitute incriminating material unearthed during the search."*

249. Further, the Hon'ble Delhi High Court in the case of Pr. CIT, Central-2, New Delhi vs. Param Dairy Ltd. in ITA No.37/2021 & 41/2021, vide para 5 of its order dated 15.02.2021 have held as under:-

> *"We have considered the aforesaid contentions and are of the view that no substantial question of law arises, as the matter is*

squarely covered by Kabul Chawla supra, which has been correctly applied to the facts of the case by the ITAT. The ITAT, in the impugned order has held that in the audited report filed by the assessee along with the report, cash book, ledger, bank book etc. were mentioned; that the respondent assessee was maintaining books on TALLY Accounting Software which was seized during the search and was being treated as incriminating material; however, regular books of account of the assessee, by no stretch of imagination, could be treated as incriminating material to form basis of framing assessment under Section 153A read with Section 143(3) of the Act."

250. Further, even the statement does not form part of incriminating material and the same has been held in the following cases:-

1. Ajay Gupta Vs. DCIT 81 Taxmann.com 462 (Del-ITAT)

Para 7- No addition can be made or sustained simply on the basis of statement recorded at the time of search, for which no corroborative material is found. In order to make a genuine and legally sustainable addition on the basis of surrender during search, it is sine qua non that some incriminating material must have been found to correlate the undisclosed income with such statement. Thus, where surrender made by the assessee's elder brother on his behalf on account of commission income was not backed by any material/evidence indicating the involvement of the assessee in the agency business, no addition could be made to the assessee's income on basis of such surrender.

2. CIT Vs. Harjeev Aggarwal 70 taxmann.com 95 (Del)

A statement recorded under section 132(4) can form basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search

3. CIT Vs. Sunil Aggarwal 64 Taxmann.com 107 (Del)

Where assessee during search conducted under section 132 made admission that a sum of Rs. 86 lakhs seized from his employee belonged to him and it represented undisclosed income and subsequently he retracted above admission and offered an explanation that said amount was

verifiable from records and books of account and Assessing Officer did not accept explanation and added said amount in income as unexplained cash credit, impugned addition was not justified

251. Therefore, the argument of the Assessing Officer that books of accounts and statements during the search and during the post search forms part of incriminating material is not acceptable. It is held that the Assessing Officer was not correct in initiating proceedings u/s 153A of the Act on the impugned issue.

252. In view of the above respectfully following the above order of Hon'ble Supreme Court the impugned disallowance of Rs. 5,07,55,500/-is hereby deleted since the disallowance is not based on any incriminating material found during the search of the appellant. Consequently Ground No. 6 is allowed."

10.12 The Ld. Counsel of the assessee submitted that no Incriminating material was found during search and the addition was made purely on the basis of surmises and conjecture. Since this was an unabated assessment year as the original assessment under section 143(3) was made vide order dated 31/03/2016. This fact has been mentioned by the AO in the assessment. Hence any addition/ disallowance has to be made only on the basis of incriminating material found during search whereas no incriminating material was referred while making addition by the Ld. AO. The same observations are made by the CIT (A) in the appellate order.

10.13 We have carefully considered the submissions made by the respective parties for AY 2014-15 to AY 2015-16 and thoroughly examined the relevant materials on record. The Assessing Officer (AO) disallowed the impugned amount and added the same in the hands of the assessee as bogus. However, as

evident from the summarized content and the assessment order, no incriminating material was found during the search to justify this addition.

10.14 This fact is further corroborated by the AO's letter dated 13.06.2023, issued in response to the assessee's request vide letter dated 16.05.2023, which sought details of any incriminating documents unearthed during the search. As per the reply of the Ld. AO the statement of Shri Gaurav Gupta of Sadhna Group, Sample invoices/bills, ledger account and sample release orders were considered as incriminating by the AO while making this addition

10.15 From the above it is clearly evident that no incriminating material was found relating to this addition made. As per the Ld. AO sample invoices/bills ledger account and sample release orders were considered as incriminating. All these as are part of regular books of accounts cannot be considered as incriminating. Further the statement of Gaurav Gupta of Sadhna Group was considered as incriminating. We find that the statement was recorded during the course of assessment proceedings of the assessee and hence on this score alone the same cannot be considered as incriminating. Further the extract of statement reproduced in the assessment order on a plain reading of the same does not suggest at all to be considered as incriminating, since nothing has been stated in the statement indicating the expenses having being not genuine.

10.16 Upon careful consideration of the facts and circumstances of the case, the CIT(A) holds that no incriminating material was unearthed during the search proceedings during AY 2014-15. The additions made by the Assessing Officer were solely based on surmises and conjectures, lacking any substantive evidence. Furthermore, the additions pertain to unabated assessment years, as the original assessment under Section 143(3) of the Income Tax Act, 1961, was completed prior to the date of the search, i.e., 28th November 2018.

10.17 For the aforementioned reasons assigned by the Ld. CIT(A) the additions so made in AY 2014-15 and AY 2015-16 deleted by CIT (A) are upheld relying on the judgement of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla reported in 61 Taxmann.com 421 which was upheld by the Hon'ble Supreme Court in the case of Pr CIT Vs Abhishar Buildwell Pvt Ltd by and under the order dated 24.04.2022 in view of the fact that assessment U/s 143(3) for AY 2014-15 to AY 2015-16 was completed much before the date of search i.e. 28.11.2018 and therefore, the said assessment is completed assessment. Therefore, this ground of appeal of revenue for AY 2014-15 and 2015-16 is dismissed.

10.18 The additions so made for AY 2016-17 to AY 2019-20 were confirmed by the CIT (A) by broadly highlighting the observations made in the assessment order and denying the genuineness of expenses claimed under the head advertisement. The observations made in the CIT (A) order are summarized as

under:

1. The business expediency of the advertisement expenditure is not in dispute since the appellant company is engaged in business of selling and distribution of music and production of films. In order to promote a particular audio song or album or a film it is important to popularize the content by running paid promotion of the content on various channels. The paid promotion is not restricted to Sadhna Group Channels but also on various other satellite TV channels such as Star Network, Sony India, Zee Network MTV etc. The nature of advertisement expenditure is such that it is an essential part of the business operations of the appellant company**.** The controversy under this ground is limited to the genuineness of the expenditure and not the business expediency of the expenditure.

2. The appellant has not been able to establish the genuineness of the expenditure in view of the following :

a) No work order, written agreement, email correspondence has been furnished.

b) Sh. Gaurav Gupta (Director in Sadhna Group) stated that usually written agreements or release orders are sent by the client elaborating terms and conditions. But no such document is available in case of the assessee.

c) A film wise detail has been tabulated in the assessment order listing out the total publicity expenses of a particular film vis-à-vis advertising expenses incurred through Sadhna Group and a conclusion drawn that such expenditure of advertisement for certain films is in the nature of bogus expenses.

d) Non-compliance of summons issued to various individuals and entities of Sadhna Group

e) It is not believable that the advertisement for trailer of a commercial film is being run on a devotional channel.

3. The assessee in order to justify the impugned advertisement expenditure has filed copies of invoices and copies of log sheets giving particulars about date and time of telecast of advertisement slots run on the satellite TV Channels through Sadhna Group of Companies. However, existence of bills and payment by way of cheque is not sufficient to prove the genuineness of the expenditure. The assessee has not been able to prove that the alleged services were rendered by Sadhna Group to the appellant and the Sadhna Group has not been able to prove that services were rendered by them to appellant.

4. During course of search statements of various persons were taken and no one could establish that there was any rendition of services and during post search enquiries also it could not be established.

5. During the year the assessee has given Rs. 39 Crore to the Sadhna Group for alleged advertisement and had it been a genuine transaction the assessee would have taken all the details like channel, time slot etc for actual rendition of services and the same would have been maintained.

6. The advertisement expenditure is charged on the basis of timing (morning, day time, night time, prime time, evening and late night etc) when the advertisement is aired on channel. However, in this case there is no details about timing. It is also general practice that the rates for different time slots are different. The rates for different slots are different and the two parties generally discuss and then reach an agreement about rates charged.

7. The advertisement aired is measured in terms of 1/100th of a second. The bill raised is on the basis of exact number of micro seconds details whereof are available**.**

8. The Ld. CIT (A) relied upon the judgment of CIT vs Calcutta Agency Ltd 19 ITR 191, wherein it was held that the onus of proving necessary facts in order to avail the deduction u/s 37(1) is on the assessee and if the assessee fails to establish the same then the claim of deduction is not admissible. Further the CIT(A) also relied upon Andhra Pradesh High Court in the case of CIT Vs Transport Corporation of India 256 ITR 701 and in the case of CIT Vs Imperial Chemical Industries (I) Pvt Ltd 74 ITR 17 (Para 229 Page 116 and 117)

10.19 Relevant paras of the appeal order for AY 2016-17 are reproduced as under:

"218. I have carefully considered the contents of the assessment order and the written submissions of the appellant. The dispute involved in this ground of appeal is with regard to the advertisement expenses aggregating Rs. 39,00,00,000/- incurred by the appellant through Sadhna Channel group of companies. The said expenditure has been disallowed by the assessing officer on the basis of various discrepancies and infirmities discussed in the assessment order.

219. As regards the argument of the appellant was that there was no material found during the search, therefore, no addition could have been made by the Assessing Officer in proceedings u/s 153A, the same is not valid for the assessment year under consideration. For the assessment year under consideration scrutiny assessment proceedings u/s 143(3) of the Act were initiated but were not completed till the date of search. Since the assessment proceedings remained uncompleted the present assessment year is abated assessment year as per provisions of section 153A of the Act. The assessment for an abated assessment year is not dependent upon discovery of any incriminating material found during search and therefore this argument of the appellant is not acceptable.

220. As regards the business expediency of the advertisement expenditure there is no dispute. It is an uncontroverted fact that the appellant company

is engaged in the business of selling and distribution of music and production of films. In order to promote a particular audio song or album or a film it is important to popularise the content by running paid promotions of the content on various satellite TV channels. It is also noted that the paid promotion through satellite TV channels is not restricted to Sadhna Group of companies alone but is telecast on various satellite TV channels such as Star Network, Sony India, Zee Network, MTV etc. The nature of advertisement expenses is such that it is an essential part of the business operations of the appellant company. In fact, the total quantum of advertisement expenses claimed in the P&L Account are much more than the disallowance made in the assessment order.

221. However, in the present case the advertisement expenses incurred through Sadhna Group of companies have been questioned by the Assessing Officer by contending that these expenses are of bogus nature. Therefore, the controversy under this ground of appeal is limited to the genuineness of expenditure and not the business expediency of the expenditure.

222. Regarding the genuineness of the expenditure I am in agreement with the findings discussed in the assessment order. The appellant has been unable to comprehensively establish the genuineness of the advertisement expenditure incurred through Sadhna Group entities in view of the following :-

i) M/s SCIPL was not able to furnish any work order, written agreement, email correspondence in support of the advertisement expenses being claimed;

ii) Shri Gaurav Gupta (Director in Sadhna Group of companies) stated in his statement that usually written agreements or release orders are sent by other clients elaborating the terms and conditions. Whereas no such written agreement or release orders are available in the case of SCIPL. A sample release order dated 05.10.2014 issued by M/s Dharampal Satyapal to Sadhna Media Pvt. Ltd. has been reproduced in the assessment order.

iii)A film-wise detail has been tabulated in the assessment order listing out the total publicity expenses for a particular film vis-à-vis advertisement expenses incurred through Sadhna Group of Companies

and a conclusion has been drawn that such high expenditure of advertisement for certain films is in the nature of bogus expenses.

iv) Non-compliance to summons issued to various individuals and entities of Sadhna Group of entities.

v) It is also not believable that the advertisement for trailer of commercial feature film is being run on devotional satellite channels.

223. On the other hand, in order to justify the impugned advertisement expenses the appellant company, has filed the copies of invoices and copies of log sheets giving particulars about the date and time of telecast of advertisement slots run on the satellite TV channels through Sadhna Group of companies. However, existence of bills and payment by way of cheque is not sufficient to prove the genuineness of the expense. Only those expenses are allowable which has been incurred during the normal course of business. At no point of time, the appellant has been able to prove that alleged services were rendered by Sadhna Group to the appellant. The Sadhna Group has also not been able to prove that services were rendered by them to the appellant.

224. During the course of search, statements of various persons were taken. No one could establish in any manner whatsoever that there was any rendition of services as claimed. During the post search enquiries and during the course of assessment proceedings also, the appellant could not establish that services were rendered.

225. The appellant has given Rs.39,00,00,000/- to the Sadhna Group for alleged advertisement. Had it been a genuine transaction, the appellant will take all the details of actual rendition of service. The details like channel, time, slot etc. Would be maintained by the appellant in order to verify that the services that actually rendered. In order to keep accounts also, such details would be required because the appellant will not pay any amount that has been raised by the Sadhna Group without proper verification.

226. The advertisement expense is charged on the basis of timing (morning, day time, night time, prime time, evening, late night etc.) when the advertisement is aired on the channel. However, in this case there is no detail about the timings. It is also a general practice of the trade that the rates for different time slots are different. The two parties generally discuss

and then reach an agreement about the rates charged. In the instant case, there are no such evidences available either the Sadhna Group or with the appellant.

227. The advertisement aired is measured in terms of 1/100th of second. The bill raised is on the basis of exact number of micro seconds. In the case of the appellant, there are no such details.

228. All the above facts clearly establish that actually there was no rendition of service and the appellant took accommodation entry from Sadhna Group of companies.

229. In the absence of any evidence and in light of the decision of the Hon'ble Supreme Court in the case of CIT vs. Calcutta Agency Ltd. 19 ITR 191 wherein it was held that the onus of proving necessary facts in order to avail the deduction u/s.37(1) is on the assessee, If the assessee fails to establish the facts necessary to support his claim for deduction, the claim for deduction is not admissible. Onus lies on the assessee to prove the veracity of the expenses claimed by it. Reliance is also placed on the decision of Andhra Pradesh High Court in the case of CIT vs Transport Corporation of India Ltd. 256 ITR 701, and on the case of CIT vs Imperial Chemical Industries (I) P Ltd. 74 ITR 17. In many subsequent decisions, these principles have been applied.

230. Upon evaluating the findings discussed in the assessment order and the submissions of the appellant I am inclined to agree with the assessing officer that there is lack of enough material on record to justify the advertisement expenses of Rs. 39,00,00,000/- incurred by the appellant through Sadhna Group of entities. Thus, the appellant has no case for claim of expenditure. Hence, the disallowance of Rs. 39,00,00,000/- pertaining to advertisement expenses is upheld and this ground of appeal is dismissed. Ground no. 7 is dismissed."

10.20 The Ld. Counsel of the assessee submitted that SCIPL is engaged in the activity of procuring and selling music and also engaged in production of films. In order to promote a particular audio song or album it is required to popularise the said sound recording. One of the means of promoting the song is to run paid

promotions of the song on satellite TV channels. Similarly, in the case of films paid promotions containing teaser/trailer of the film are telecast of satellite TV channels for promoting the film. It is in this context and background that promotion and advertisement expenses were incurred through Sadhna Group of satellite TV channels. SCIPL made payments to various companies of Sadhna Group in this regard viz. Sadhna Media Pvt. Ltd., Ishwar Broadcasting Pvt. Ltd., Naman Broadcasting Pvt. Ltd., Sharp Eye Advertising Pvt. Ltd., Varun Media Pvt. Ltd., Sadhna Broadcast Ltd., Chirau Broadcast Network Ltd.

10.21 The Ld. Counsel of the assessee submitted that the advertisement and promotion department of the assessee was at that time handled by Sh. Vinod Bhanushali and his team. This department finalises the amount of promotion and publicity of a song or a film to be done and through which channels. Once these logistics are finalised, the team of the assessee used to get in touch with Sh. Arpan Gupta and his team in Sadhna Group for actual telecast of advertisements. In view of past relations and good rapport between the two teams release orders for telecast of advertisements was done orally though phone. After the telecast of advertisement, the log sheets showing date and time of telecast and the particulars of satellite TV channel were submitted by Sadhna Group alongwith invoice and in turn payment was released by SCIPL.

10.22 As regards the observation made in the assessment order and relied upon by the CIT (A) about the statement of Shri Guarav Gupta, Director in one of the

Sadhna Group of Companies, the Ld. Counsel of the assessee submitted that the same is of innocuous nature as nowhere in the statement he has admitted that transaction with SCIPL are bogus. On the contrary, he has confirmed that the transactions with SCIPL are genuine. It is merely elaborated in his statement that regarding the transactions with SCIPL there are no written agreements. Regarding the proof of telecast he has specified in the statement that "advertisement content" is received in pen-drive, CDs and hard disk. The content so received is kept in temporary memory of the server for approx. three months and then it is overwritten by new content. The Ld. Counsel of the assessee draws our attention towards the provisions of Cable Television Networks (Regulation) Act, 1995 read with Rule 21(3) of Cable Television Networks Amendment Rules, 2021 where it is a mandatory requirement for broadcasters and advertisers in India to retain content, including advertisements, for a period of 90 days from the date of transmission This record must be maintained in a manner that allows for easy access and inspection by the authorized officers of the Ministry of Information and Broadcasting (MIB) to ensure compliance with the Programme Code and Advertising Code prescribed under the Act. Hence as per the directive of the MIB and provisions of Cable Television Networks (Regulation) Act, 1995 read with Rule 7(11) of Cable Television Networks Rules, 1994, it is only mandatory to retain content including advertisements for a period of 90 days from the date of transmission and looking at the quantum of data and cost involved in storage of

data beyond 90 days Sh. Gaurav Gupta had replied that the data was kept in temporary memory for 90 days form the date of transmission only. Hence, the ground that the proof of running the advertisement was not furnished the reasons for the same have been explained above and the AO was not justified in making disallowance on this ground.

10.23 The Ld. Counsel of the assessee submitted that SCIPL commenced its operations as a producer of devotional music under the brand name T-Series. Similarly, Sadhna was established in 2003 as a dedicated devotional television channel and both share a congruent ethos of promoting spiritual and devotional content. The business relationship between SCIPL and Sadhna has been in existence since 2003, characterized by a continuous and consistent course of dealings. Over the years, the terms and conditions governing the broadcast of SCIPL's content on Sadhna's platform have been mutually agreed upon through established business practices and verbal understandings, reflecting the trust and mutual reliance inherent in their long-standing association.

10.24 The Ld. Counsel of the assessee further argued that inspite of making a written request the Assessing Officer did not provide a copy of statement of Shri Gaurav Gupta, relied upon in the assessment order. It is a well settled proposition of law that not allowing the assessee an opportunity to cross-examine the statement of witness, which were made the basis for assessment, is a serious flow which makes the impugned order a nullity, as it amounts to violation of principle

of natural justice. Reliance is placed upon the order of Supreme Court in the case of Andaman Timber Industries vs. CCE (SC) 62 Taxmann.com 3/52 GST 355 (SC).

10.25 Regarding the observation made in the assessment order and by CIT (A) that there is no credible evidence in support of advertisement expenses and the assessee does not maintain details, bills and vouchers, the Ld. Counsel of the assessee submitted that the assessee has furnished the copies of every invoice and the log sheets/telecast certificates forming part of the invoice before the AO and the CIT (A) and the same established the rendition of services. The log sheets/telecast certificates give the details of date and time at which the advertisement of the assessee was run on the channel and also gives the duration of advdertisement.

10.26 Regarding non-compliance of summons issued to the entities belonging to Sadhna Group of companies, it is clarified by the Ld. Counsel of the assessee the assessee company has no control over third parties and hence no adverse inferences can be drawn against the assessee company based on such non-compliance of third parties. Further the Counsel of the assessee submitted that the Assessing Officer, in the assessment order, explicitly acknowledged that Mr. Arpan Gupta, a director of M/s Naman Broadcasting & Telecommunications Pvt. Ltd., M/s Sadhna Media Pvt. Ltd., and M/s Ishwar Broadcasting Pvt. Ltd., appeared before the Assessing Officer on July 27, 2021, to provide his statement.

During this appearance, Mr. Gupta furnished his official email ID and password, thereby cooperating with the proceedings. Furthermore, Mr. Gupta responded to several questions posed by the Assessing Officer during the recording of his statement and provided the login credentials for his email account. Neither a copy of the said statement was provided nor the said statement was confronted with M/s SCIPL for verification or response. Instead, the assessment order selectively reproduces only the concluding paragraph of Mr. Gupta's statement, wherein he sought an adjournment of 15 days for the next hearing. The Assessing Officer has characterized this request for adjournment as a deliberate tactic to willfully evade compliance with the summons issued, which is an unsubstantiated and erroneous inference that fails to consider the extent of cooperation extended by Mr. Gupta during the proceedings.

10.27 Regarding the observations made in the assessment order that analysis of certain log sheets on sample basis revealed that the frequency of running the advertisement is within a very short gap of time, it is submitted and clarified by the Ld. Counsel of assessee that these are merely inferences being drawn. It needs to be appreciated that in order to popularise a content the advertisements have to be run frequently with very less gap of time so as to put it in public memory. Similarly, the observations made that the trailer of commercial feature films are being telecast on satellite channels is also without any basis as the audience for

satellite TV channels is very vast and people watching devotional channels do go out to theatre to watch feature films.

10.28 Regarding the observation made in the assessment order and by CIT(A) that in respect of certain feature films for which advertisement expenses has been claimed through Sadhna Group of companies, quantum of expenditure is very high, it is submitted by the Ld. Counsel of assessee that the same is without any meaningful basis as the quantum of advertisement expenditure for a film depends on various factors such as the budget and scale of the film, star cast, other films releasing on the same date, chances of the success of the film at box office. All such factors must be considered to evaluate the advertisement expenditure incurred for the promotion of a film rather than only comparing the cost incurred on advertisement through satellite TV channels belonging to the Sadhna Group of companies vis-à-vis other satellite channels.

10.29 Further the Ld. Counsel drew the attention of the bench to the assessment order of Sadhna Media Pvt Ltd for the assessment years 2014-15, 2016-17 and 2017-18 which were finalised under section 153A by Central Circle 32 Delhi pursuant to search action on Sadhna Group on 15.02.2017. From the perusal of the Assessment Order for these years the AO in the order has reproduced the order sheet noting of hearing on 24.12.2018 at Page No. 51 of the order in which he had asked Ld.Counsel for the assessee regarding certain cash expenses and Ld.Counsel for the assessee of Sadhna Group replied that *"regarding T-series*

payment he told that these are expenses incurred in respect of advertisement of T-series. (a) T -Series cassettes were distributed. (b) All expenses related to advertisement of T-Series and T-Series is not aware of these expenses. (v) assessee is receiving money from T-Series & DS etc. Assessee has received cash from other clients. A part of this cash was spent for T-Series cassettes etc. so that T-Series will be impressed that due to advertisement on the channels of assessee, sales of T-Series items has increased. It may be noted that assessee has taken the entire advertising income from T-Series and DS Group by way of cheque and which are duly recorded in the audited books of accounts of Sadhna Group". The AO of Sadhna Group had then come to conclusion at Para 4.3 page 53 of the assessment order that the Sadhna Group company got business of 93.46 Crore from DS and 12.90 Crore from T-Series which is duly recorded in the books of accounts. Further out of unaccounted cash generated the Sadhna Group has spent Rs. 10.83 Crore for DS and Rs. 1.95 Crore for T-Series for their advertisement in various functions which expenses have not been recorded in their books of accounts. The Ld. Counsel of the assessee based on the same argues that from the assessment order of Sadhna Media Pvt Ltd it is clearly establish that the advertisement expenses incurred by SCIPL through Sadhna Group were genuine as the AO of Sadhna Group has held that the income of Sadhna Group from T-Series was genuine and in order to gain more business from T-Series the Sadhna Group had incurred unaccounted expenses like purchasing of cassettes, CDs of T-

Series so that the Sadhna Group can get more revenue from T-Series Group. These finding were recorded by the AO of Sadhna Group pursuant to search and after examining all the material found during search.

10.30 It is also submitted by the Ld. Counsel of assessee that similar disallowance was made in the case of Dharampal Satyapal Ltd for assessment year 2016-17 in respect of advertisement expenses incurred relating to Sadhna Media P Ltd, Kamdhenu Media Pvt Ltd and Prabhatam Advertisement Pvt Ltd which are Sadhna Group Entities by treating the same as bogus and in this case part relief was allowed by the CIT (A) and part disallowance was confirmed. In this matter the Coordinate bench of ITAT Delhi vide order dated 17.01.2025 in ITA Nos 3071/D/2022 and 246/D/2023 has granted full relief to Dharampal Satyapal Ltd by deleting addition confirmed by CIT (A) and dismissing the appeal of the department against the relief allowed by CIT (A) .Since on similar facts the advertisement expenses of Dharampal Satyapal ltd for AY 2016-17 has been treated as genuine, the expenses incurred by SCIPL are also genuine and to be allowed.

10.31 Further it is highlighted by the Ld. Counsel of assessee that in case of search conducted on Sadhna Group and the assessee, no material was found to indicate that the impugned expenses were not genuine, and cash was paid by Sadhna Group to the assessee. The AO has alleged that the assessee has taken cash from Sadhna Group against these expenses for the last 6 years then in case

of search which has an element of surprise some material must have been unearthed both with Sadhna Group and the assessee company to indicate that cash was paid in lieu of these expenses. But in both the searches no such material was found. Further various statements were recorded during both the searches and no person during both the searches has given any statement to indicate that cash was paid in lieu of these expenses.

10.32 Thus as per the Ld. Counsel of the assessee the disallowance was made purely on surmises and conjectures. As discussed above in the case of Sadhna Media Pvt Ltd on of the Sadhna Group entities the AO in Order U/s 153A has held that the income earned by Sadhna Media from SCIPL in respect of Advertising was genuine and not bogus. Then drawing corollary from the same the same cannot be held as bogus in the hands of the assessee company.

10.33 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that that the Ld. AO has disallowed the impugned amount and added to the total income of the assessee for AY 2016-17 alleging that advertisement expenses claimed from Sadhna Group of companies are bogus in nature premised on the observation that SCIPL does not maintain detailed bills and vouchers, work order, e-mail correspondence or any agreement for advertisement expenses paid to Sadhna Group of companies and on unsatisfactory reply received from

statement recorded of Shri Gaurav Gupta (Director in Sadhna Group) s/o Shri Rakesh Gupta (Owner and Managing Director of Sadhna Group).

10.34 At the outset it is seen that this disallowance has been made by the AO on the presumption that no services were provided by Sadhna Group and they had raised bogus bills on the assessee and the assessee received back the bill amount in cash. To verify the genuineness of the expenses claimed the following ingredients are to be satisfied:

1. Business Expediency
2. Proof of the service provided
3. Payment made against service provided.
4. Compliance with statutory requirements.

10.35 Now if the business expediency is examined then the CIT(A) in the appellate order has himself mentioned that the business expediency of the advertisement expenditure is not in dispute since the appellant company is engaged in business of selling and distribution of music and production of films. In order to promote a particular audio song or album or a film it is important to popularize the content by running paid promotion of the content on various channels. The paid promotion is not restricted to Sadhna Group Channels but also on various other satellite TV channels such as Star Network, Sony India, Zee Network MTV etc. The nature of advertising expenditure is such that it is an essential part of the business operations of the appellant company. This categorical finding by the CIT(A) establishes the business expediency of this

expenditure beyond doubt. As regards the proof of services provided, the assessee has furnished the complete bills, log sheets and telecast certificates for all the six years in support of the proof of services. The assessee had made the entire payment through Banking channels after deduction of Tax as applicable.

10.36 Now looking at the factual matrix of the case The AO and CIT(A) disallowed the advertisement expenses incurred by the assessee through Sadhna Group entities, namely Sadhna Media Pvt. Ltd., Ishwar Broadcasting Pvt. Ltd., Naman Broadcasting Pvt. Ltd., Sharp Eye Advertising Pvt. Ltd., Varun Media Pvt. Ltd., Sadhna Broadcast Ltd., and Chirau Broadcast Network Ltd., on the grounds that the transactions were not supported by written agreements, lacked credible evidence, and were allegedly bogus based on the statement of Shri Gaurav Gupta, Director of one of the Sadhna Group companies. We find the AO's observation to be factually incorrect and legally unsustainable. The assessee has submitted that its advertisement and promotion department, headed by Shri Vinod Bhanushali, finalized the logistics for telecasting advertisements, and release orders were communicated orally to Shri Arpan Gupta of the Sadhna Group due to established business relations. Post-telecast, the Sadhna Group provided log sheets and invoices, which were duly acted upon by the assessee for releasing payments. In support of the same the assessee had provided all the invoices and log sheets / telecast certificates before the AO and CIT(A). The AO has observed in the order that the assessee does not maintain detailed bills and

vouchers. However, it has been argued that the entire bills log sheets/telecast certifcate for the entire expenditure of all the six years (AY 2014-15 till 2019-20) were furnished before the AO. In view of this fact it emerges that the AO during the course of assessment proceedings has not considered the evidence produced by the assessee and made a statement in the order that detailed bills and vouchers are not maintained which is without any basis.

10.37 The absence of written agreements does not ipso facto render the transactions invalid, as business practices often rely on trust and oral arrangements, particularly in long-standing relationships. It is observed that Super Cassettes Industries Private Limited (SCIPL), operating under the brand T-Series, began primarily as a producer of devotional music. Similarly, Sadhna, launched in 2003 as a dedicated devotional television channel, shares aligned ethos of promoting spiritual and devotional content. The business relationship between SCIPL and Sadhna, established in 2003, has been marked by a consistent and continuous course of dealings. The terms governing the broadcast of SCIPL's content on Sadhna's platform have been mutually agreed upon through established business practices and verbal understandings, demonstrating the trust and mutual reliance inherent in their long-standing association. It is not trite law that a written agreement is a must in every case. Lastly the assessee has furnished copies of invoices and log sheets/telecast certificates, which sufficiently establish

the rendition of services. The AO's reliance on the absence of written agreements is, therefore, misplaced and does not negate the genuineness of the transactions.

10.38 The AO and CIT (A) relied on the statement of Shri Gaurav Gupta to allege that the transactions were bogus. It was further noted that no records of SCIPL's advertisement content were available with the Sadhna Group.
We find the reliance on Shri Gaurav Gupta's statement to be misconceived. The assessee has rightly pointed out that Shri Gaurav Gupta, in his statement, confirmed the genuineness of transactions with SCIPL and clarified that advertisement content was received via pen drives, CDs, or hard disks, stored temporarily for approximately three months, and then overwritten as per industry practice. This is consistent with the provisions of the Cable Television Networks (Regulation) Act, 1995 read with Rule 21(3) of the Cable Television Networks Amendment Rules, 2021, which mandate retention of advertisement content for only 90 days. The AO's expectation of perpetual retention of such content is unreasonable and contrary to statutory requirements. Furthermore, the AO's failure to provide the assessee with a copy of Shri Gaurav Gupta's statement or an opportunity for cross-examination constitutes a serious violation of the principles of natural justice, as held by the Hon'ble Supreme Court in Andaman Timber Industries vs. CCE [62 Taxmann.com 3]. Consequently, the statement cannot be used to discredit the assessee's claim.

10.39 We finds that the Assessing Officer (AO) erred in drawing adverse inferences against the assessee, based on the alleged non-compliance of third-party entities belonging to the Sadhna Group with summons issued under the Income Tax Act. The assessee has no control over these third parties, and such non-compliance cannot justify adverse inferences against it. The assessee discharged its primary onus by furnishing invoices, log sheets, and telecast certificates, which substantiate the rendition of services and the genuineness of the expenses. The AO's reliance on the non-cooperation of third parties is unjustified. Furthermore, we notes that Mr. Arpan Gupta, a director of M/s Naman Broadcasting & Telecommunications Pvt. Ltd., M/s Sadhna Media Pvt. Ltd., and M/s Ishwar Broadcasting Pvt. Ltd., appeared before the AO on July 27, 2021, cooperated by providing his official email ID and password, and responded to several questions during the recording of his statement which is admitted by the AO in the assessment order. The AO's failure to provide a copy of Mr. Gupta's statement to SCIPL for verification or response, coupled with the selective reproduction of only the concluding paragraph where Mr. Arpan Gupta sought a 15-day adjournment mischaracterizes his cooperation as willful evasion. We holds that the AO's inference is unsubstantiated, erroneous, and fails to account for the extent of cooperation extended by Mr. Gupta during the proceedings.

10.40 The AO observed that the frequency of advertisements was unusually high with short gaps and that telecasting trailers of commercial feature films on devotional satellite channels was inappropriate. We find the AO's observation to be based on mere assumptions without any cogent evidence. The assessee has clarified that frequent telecasting with short gaps is a standard industry practice to ensure content remains in public memory, particularly for promoting songs or films. Further, the assumption that trailers of commercial films are unsuitable for devotional channels ignores the diverse viewership of satellite TV channels, which often includes audiences who patronize theaters for feature films. The AO's inference lacks any evidential basis and cannot justify the disallowance.

10.41 The AO and CIT (A) contended that the quantum of advertisement expenditure for certain films was disproportionately high compared to other channels. We find this observation to be devoid of merit. The assessee has explained that advertisement expenditure depends on multiple factors, including the film's budget, star cast, competing releases, and anticipated box office performance. The AO's comparison of expenses incurred through Sadhna Group channels with other channels, without considering these factors, is arbitrary and lacks a rational basis. The assessee's submissions, supported by invoices and log sheets, adequately justify the quantum of expenditure. It is the assessee companies prerogative to decide the publicity budget of its films and the AO cannot dictate the quantum of advertisement of a particular film.

10.42 The Ld. Counsel of the assessee relied on the assessment order of Sadhna Media Pvt. Ltd., where unaccounted expenses were allegedly incurred to secure business from SCIPL and others. The assessment order of Sadhna Media Pvt. Ltd. for AY 2014-15, 2016-17, and 2017-18, passed under Section 153A, clearly records that the income of Rs. 12.90 crore from SCIPL was genuine and duly accounted for in the books of Sadhna Media. The expenses are matched with the expenses claimed by SCIPL in its books of accounts. The AO of Sadhna Media further noted that unaccounted expenses of Rs. 1.95 crore were incurred to secure additional business from SCIPL, which were allowed as business expenses. These findings, based on a search conducted on the Sadhna Group, unequivocally establish the genuineness of the transactions with SCIPL. Hence, this clearly establishes the genuineness of transaction based upon categorical finding given by the AO of Sadhna Media that the income earned by Sadhna Media from the assessee was entirely genuine and infact Sadhna Media had incurred expenditure in cash to boost its advertising income from the assessee company. The AO's disallowance in the assessee's case, despite these findings, is contradictory and unsustainable. This fact itself highlights that the addition made by the AO for six years on this count was without any basis and material on record but based on surmises and conjectures.

10.43 The Ld Counsel of the assessee relied upon the decision of the coordinate bench in the case of Dharampal Satyapal Ltd. [ITA Nos. 3071/D/2022 and

246/D/2023, dated 17.01.2025], where similar advertisement expenses incurred through Sadhna Group entities for AY 2016-17 were held to be genuine, and the disallowance was deleted. We find that the facts of the present case are pari materia with those in Dharampal Satyapal Ltd. This decision to allow the advertisement expenses as genuine applies squarely to the present assessee's case.

10.44 The AO alleged that the assessee received cash from the Sadhna Group against these expenses, rendering them bogus. We note that no incriminating material was found during searches conducted on both the assessee and the Sadhna Group to suggest that cash was paid or received in lieu of these expenses. In fact the Ld Counsel has argued that in case of search conducted in the case of Sadhna Group and the assessee no material was found to indicate that the impugned expenses were not genuine, and cash was paid by Sadhna Group to the assessee. As per the argument of the Ld Counsel the AO has alleged that the assessee has taken cash from Sadhna Group against these expenses for the last 6 years then in case of search which has an element of surprise some material must have been unearthed both in case of Sadhna Group search and the assessee to indicate that cash was paid in lieu of these expenses. But in both the searches no such material was found. Further various statements were recorded during both the searches and no person during both the searches has given any statement to indicate that cash was paid in lieu of these expenses. The absence of any corroborative evidence, coupled with the lack of statements indicating such

transactions, renders the AO's allegation baseless and speculative. The Search on Sadhna Group was in the year 2017 and after the search also the assessee continued to make advertisement on Sadhna Channels, this itself points to the fact that it was a genuine expenditure based on business expediency. The disallowance, being based on surmises and conjectures, cannot be sustained.

10.45 The CIT (A) relied on the decisions in CIT vs. Calcutta Agency Ltd. [19 ITR 191], CIT vs. Transport Corporation of India [256 ITR 701], and CIT vs. Imperial Chemical Industries (I) Pvt. Ltd. [74 ITR 17] to uphold the disallowance.

We find these case laws to be distinguishable and inapplicable. In Calcutta Agency Ltd., the disallowance was upheld due to the failure to establish business expediency, whereas in the present case, the CIT(A) has not disputed the business expediency of the expenses. In Transport Corporation of India, the disallowance was based on the assessee's failure to disclose details of secret commissions, whereas the assessee here has furnished invoices, log sheets, and telecast certificates, establishing the identity and genuineness of the expenses. Similarly, in Imperial Chemical Industries, the issue was business expediency, which is not contested in this case. Thus, the reliance on these precedents is misplaced.

10.46 In view of the above findings, we hold that the disallowance of advertisement and promotion expenses incurred by the assessee through Sadhna Group and sustained by CIT(A) entities is without any basis. The assessee has

discharged its onus by providing sufficient documentary evidence, including invoices and log sheets, to substantiate the genuineness of the expenses. The AO's observations are based on assumptions, lack of corroborative evidence, and procedural lapses, such as denial of cross-examination, which violate natural justice. The findings in the assessment order of Sadhna Media Pvt. Ltd. and the Tribunal's decision in Dharampal Satyapal Ltd. further reinforce the genuineness of the transactions. Accordingly, the addition confirmed by the CIT (A) for AY 2016-17 to AY 2019-20 are deleted, and the assessee's appeal is allowed for AY 2016-17 to AY 2019-20 and the disallowance made on this count deleted.

11. Under this ground of appeal the action of assessing officer in making addition on account of disallowance of Commission expense paid to Sanjay Singhal and M/s Balaji Agencies is challenged by the assessee company. The details of the additions made are tabulated as under:

Assessment Year	**Amount of addition**
2016-17	3,79,37,675
2017-18	1,63,50,000

11.1 The assessee raised this common issue regarding addition on account of disallowance of Commission expense paid to Sanjay Singhal and M/s Balaji Agencies in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2016-17 and 2017-18 (ITA Nos. 2756/DEL/2023 and

272/DEL/2024). The decision for the assessee's appeals for Assessment Years 2016-17 will be applicable for AY 2017-18 as the issues are identical and no new circumstances exist.

11.2 Brief facts of the case are that during search proceedings, bills were found at M/s SCIPL's premises indicating payments to Sanjay Singhal as commission, claimed as expenses by SCIPL. The AO observed that Sanjay Singhal claim of facilitation of better copyright prices for SCIPL, earning Rs. 4.80 Crores in commission for AY 2016-17 and 2017-18, is incorrect due to his vague and evasive responses in his statements recorded under oath. He failed to provide details of a "close friend" who connected him to TV channels, no proof of negotiations, or a written agreement for the 5% commission from SCIPL were provided.

11.3 Further the AO made another observation that No credible evidence supports the Rs. 5,42,87,675/- commission received by Singhal and his firm, M/s Balaji Agencies, for alleged services to SCIPL. Based on this observation the AO draws the observation that Sanjay Singhal Group allegedly manipulates unaccounted income through accommodation entries, such as bogus commission income, inflated movie rights sales, and fictitious share profits.

11.4 The CIT(A) confirm the addition made in the appeal order after relying on the observations made in the assessment order. The conclusive findings of the CIT(A) deserves to be reproduced herein below for further analysis and

determination of the grounds:

> *"241. I have carefully considered the contents of the assessment order and the submissions of the Appellant. The dispute in this ground of appeal is with regard to the disallowance of Rs. 3,79,37,675/- pertaining to the commission paid to Shri Sanjay Singhal and M/s Balaji Agencies. The assessing officer has treated the said claim of expenditure as bogus which is challenged by the Appellant.*
>
> *242. The appellant during the course of appellate proceedings has tried to establish that because of efforts of Shri Sanjay Singhal, there was marginal increase in the revenue of the appellant. The appellant also relied upon the bills issued for commission and stated that the payments were made through the banking channels and therefore, the expenses were genuine. However, the appellant has not been able to furnish any evidence of any services having been rendered by Shri Sanjay Singhal or his partnership firm.*
>
> *243. Commission is paid for introducing new parties and bringing new businesses. In this case the parties with whom the appellant has entered into agreement and for which alleged commission has been paid are those parties with whom the appellant already has agreements. Therefore, prima facie, payment of commission is not genuine.*
>
> *244. If someone demands 5% as commission on the deal value/total value of contract, in that case, there would be written agreement. However, in this case there is no written agreement.*
>
> *245. If someone demands 5% of commission, in that case, the liability to ensure payment lies with the commission agent. However, in this case, there is no such liability on Shri Sanjay Singhal or his firm ensuring that there are no bad debts. There is no reason why a hefty commission of 5% of total deal value would be paid without any credit gurantee.*
>
> *246. During the course of search, statements of various persons were taken. No one could establish in any manner whatsoever that there was any rendition of services as claimed. During the post search enquiries and during the course of assessment proceedings also, the appellant could not establish that services were rendered. The relevant portion of statement of*

Shri Sanjay Singhal is reproduced in the foregoing paragraphs. If someone has actually rendered services, then he would know the persons with whom he had dealt and negotiated the deal. In the instant case, as it evident from the statement of Shri Sanjay Singhal that he does not even remember the persons with whom negotiations were made. In fact, Shri Sanjay Singhal could not establish in any manner whatsoever that he had rendered any services to the appellant.

247. Apparently, there is no formal communication or its evidence to show that there was any rendition of service by the alleged commission agent.

248. Commission is paid to someone who is an established player in the market in the given sector. In this case, while the appellant himself is an established player in TV cinema and media line, the alleged commission agent is in Ghutka and Tobacco products business. The alleged commission agent has no domain knowledge about the media and TV business. In his statement he clearly stated that he knew some TV channel through one of his friends but could not even give the name of such person. Shri Sanjay Singhal and his partnership firm were not capable of rendering the services has claimed by the appellant.

249. All the above facts clearly establish that actually there was no rendition of service and the appellant took accommodation entry from Shri Sanjay Singhal and his firm.

250. In the absence of any evidence and in light of the decision of the Hon'ble Supreme Court in the case of CIT vs. Calcutta Agency Ltd. 19 ITR 191 wherein it was held that the onus of proving necessary facts in order to avail the deduction u/s.37(1) is on the assessee, If the assessee fails to establish the facts necessary to support his claim for deduction, the claim for deduction is not admissible. Onus lies on the assessee to prove the veracity of the expenses claimed by it. Reliance is also placed on the decision of Andhra Pradesh High Court in the case of CIT vs Transport Corporation of India Ltd. 256 ITR 701, and on the case of CIT vs Imperial Chemical Industries (1) P Ltd. 74 ITR 17. In many subsequent decisions, these principles have been applied.

251. In view of the above discussion, it is held that the so called commission paid to Shri Sanjay Singhal was not out of any business

consideration but was accommodation entry taken to reduce the tax liability. Hence, the disallowance of Rs. 3,79,37,675/- is upheld and this ground of appeal is dismissed. Ground No.8 is dismissed."

11.5 The Ld. Counsel of the assessee argued that for AY 2016-17, appellant paid business advisory charges totalling Rs. 3,79,37,675 to Sh. Sanjay Singhal/Balaji Agencies for securing favorable licensing deals with satellite TV channels, resulting in incremental revenue of Rs. 11,84,31,000/-. The payments were substantiated by invoices and licensing agreements (enclosed in Paper Book Vol. I & II) with entities like Zee Entertainment, Multi Screen Media, Viacom 18 Media, GenX Entertainment, and Bennet Coleman & Co. These agreements show increased license fees and, in some cases, reduced licensed content, demonstrating the commercial benefits of Singhal's services.

11.6 Further the Ld. Counsel of assessee submitted that Sh. Sanjay Singhal leveraged his industry contacts to negotiate better terms and higher license fees for SCIPL, as evidenced by the agreements. The incremental revenue (e.g., Rs. 1.54 crores from Zee, Rs. 3.37 crores from Viacom, Rs. 6.66 crores from GenX and Bennet Coleman) justifies the payments made to him. His connections and expertise, confirmed in his post-search statement, facilitated these favorable deals, distinguishing them from other agreements where his services were not utilized.

11.7 The Ld. Counsel of the assessee further argued that the genuineness of the transactions is supported by invoices, licensing agreements, and notarized affidavits from Singhal and Balaji Agencies, confirming that their assessments for A.Y. 2016-17 by DCIT, Central Circle-8, Delhi, found no adverse issues regarding transactions with SCIPL. Further the AR highlighted that the assessment order of Sanjay Singhal (dated 31.12.2019) noted unrelated accommodation entry issues with OPG Group but made no additions or adverse inferences regarding SCIPL transactions.

11.8 It was highlighted by the Ld. Counsel of the assessee that searches were conducted on both SCIPL and Sanjay Singhal yielded no incriminating material suggesting non-genuine transactions or cash payments between them was found. The AO's disallowance of the expenditure is based on presumptions without counter-evidence. The AO failed to verify the services with the satellite TV channels or provide SCIPL an opportunity to cross-examine Singhal regarding his statement, which actually supports the genuineness of the transactions.

11.9 We have heard the rival submissions made by the respective parties and we have pursued the material available on record. The CIT(A)'s rejection of the appellant's assertions that Sanjay Singhal's purported efforts led to a marginal revenue increase and that payments were routed through banking channels, as these claims remain unsubstantiated without concrete evidence of actual services rendered is justified. Such banking transactions, while indicative of formal

routing, do not inherently prove the underlying business necessity or reality of the services, aligning with established precedents that mere payment proof is insufficient without service corroboration.

11.10 The valid skepticism arising from the fact that the commissions were ostensibly for facilitating deals with pre-existing parties rather than procuring new business, which undermines the rationale for such payouts and suggests they may not be integral to revenue generation. The absence of a formal written agreement for the unusually high 5% commission rate is highlighted as a red flag, as commercial prudence typically demands documented terms for significant expenditures, especially in arm's-length dealings. Compounding this, Singhal bore no liability for ensuring timely payments from parties or mitigating bad debts, which questions the economic substance of his role and casts further doubt on the commission's legitimacy as a bona fide business expense. The tribunal places significant weight on the sworn statements recorded during the search operations and subsequent proceedings, wherein Sanjay Singhal failed to provide specifics on negotiations, key contacts, or any tangible contributions, exhibiting a lack of recall that erodes credibility and supports an inference of non-genuineness.

11.11 We observed that Sanjay Singhal's primary involvement in the gutkha and tobacco sector, devoid of any demonstrated expertise in the media or entertainment industry relevant to SCIPL's operations, fundamentally weakens

the appellant's narrative of it acting as a competent commission agent. This mismatch in domain knowledge suggests his involvement was implausible for rendering value-adding services, reinforcing suspicions of contrived arrangements. The complete dearth of supporting documentation such as correspondence, meeting records, or performance metrics leads us, to conclude that the payments represent accommodation entries designed to artificially deflate taxable income and evade liabilities. We underscores that the onus under Section 37(1) squarely rests on the assessee to establish the expense's authenticity, necessity, and business linkage through preponderant evidence. Resultantly the appellant ground of appeal is dismissed.

12. Under this ground of appeal the addition made on the basis of Whatsapp Chat of Sh. Bhushan Kumar, Ms Sonal and others including Shiv Chanana and Beer Singh has been challenged by the department and assessee company. Details of additions made are tabulated as under:

Assessment Year	**Amount of addition**
2016-17	10,00,000 (Assessee Appeal)
2017-18	84,09,000 (Assessee Appeal) And 28,00,000 (Department Appeal)
2018-19	34,80,000 (Assessee Appeal)
2019-20	8,80,000 (Assessee Appeal) And 10,00,000 (Department Appeal)

12.1 The assessee and the Department have raised a common issue regarding additions on account of unaccounted cash received from Singers in order to avoid payment of taxes in India, which is under appeal for Assessment Years 2016-17, 2017-18, 2018-19 and 2019-20 (ITA Nos. 2756/DEL/2023, 272/DEL/2024, 273/DEL/2024 and 326/DEL/2024 for assessee), and 2017-18 and 2019-20 (ITA No. 272/DEL/2024 and 326/DEL/2024 for department.

12.2 Year-wise details of additions made are tabulated as under:

S. No	Date	Particulars	A.Y. 2016-17	A.Y. 2017-18	A.Y. 2018-19	A.Y. 2019-20
1.	28.10.2015	Receipt of cash from Shri Kumar Mangat	1,000,000			
2.	05.04.2016	Receipt of cash from Tony and Given to Shivam		1,100,000		
3.	12.04.2016	Receipt of cash on behalf of Sh. Vinod Bhanushali		8,58,000		
4.	19.06.2016	Receipt of cash from Rahul (can be Rahul Vaidya singer)		500,000		
5.	05.08.2016	Receipt of cash from Meet Brothers and Neha		821,000		
6.	09.11.2016	Receipt of cash from Meet brothers and Neha		2,000,000		
7.	19.08.2016	Receipt of cash from Shri Shrey (person in Zeegroup)		4,000,000		
8.	19.08.2016	Cash Income received from Amaal Arman		1,130,000		

		and others				
9.	06.06.2017	Receipt of cash from Neha Kakkar			980,000	
10.	11.09.2017	Unaccounted cash Expenditure – Chat with Shiv			300,000	
11.	26.09.2017	Receipt of cash from Vinod Bhanushali – Ranchi Diaries			2,500,000	
12.	02.11.2018	Receipt of cash from Neha Kakkar				880,000
13.	06.10.2018	Receipt of cash Shri Raju				1,000,000
		Total	**1,000,000**	**1,04,09,000**	**3,780,000**	**1,880,000**

12.3 The CIT (A) provided partial relief to the appellant company considering the evidences, documents, ledgers submitted during appellate proceedings. Year-wise relevant paras of the CIT(A) order are reproduced as under:

2016-17

286. The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground No. 10, the appellant has contended that the A.O was not justified in making an addition of Rs. 10,00,000/-on account of alleged unaccounted cash income received from singers/others on the basis of WhatsApp messages, in the absence of any inquiries conducted from corresponding parties and lack of corroborating material.

287. For the assessment year under consideration, the assessing officer has referred to a chat dated 28.10.2015 which originated from Sh. Santprakash and was addressed to Bhushan Kumar intimating receipt of Rs. 10 lacs from Kumar Mangat. The said chat has been reproduced in the earlier part of this order. Whereas, the appellant has submitted and clarified that the amount of Rs. 10 lacs was received from the company of Kumar Mangat namely M/s Panorama Studios Pvt. Ltd. on 28.10.2015 (actual amount received is Rs. 9,80,000/- after deduction of TDS). This amount has been received towards reimbursement for promotion of the song "Alone". In substantiation of this explanation, the appellant has filed

copy of ledger account of Panorama Studios Pvt. Ltd. in its books of accounts.

288. Since the amount of Rs. 10,00,000/- mentioned in the WhatsApp chat is duly reflected in the books of accounts of the Appellant, there is no cause for making the addition. Therefore, the addition of Rs. 10,00,000/- is hereby deleted and this ground of appeal is allowed. Ground No.10 is allowed.

2017-18

21.11 The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground No. 12, the appellant has contended that the A.O was not justified in making an addition of Rs. 10,40,900/-on account of alleged unaccounted cash income received from singers/others on the basis of WhatsApp messages, in the absence of any inquiries conducted from corresponding parties and lack of corroborating material.

21.12 For the assessment year under consideration, the assessing officer has referred various chats on different dates. The said chat has been reproduced in the earlier part of this order.

The issue to be decided in the present ground is whether a presumption can be drawn only on the basis of chats containing numerical figures without any corroborating material to reach a conclusion that unaccounted cash Income was earned by the appellant from singers.

21.13 The AO has determined unaccounted cash income from singers for various yearson the basis of whatsapp chat. It has been ascertained by him that the numerical figures appearing in the whatsapp message represent the real income of the appellant from singers i.e. Income from artist management. The AO refers the WhatsApp chat between on 05.08.2016 between Sonal and Bhushan Kumar regarding the receipts from Meet Brothers. The AO refers that cheque payment of 187000/- was reflected in the books of account therefore belleve that the cash mentioned in the chats were also received by the appellant however not recorded in the books of account.

21.14 The basis for the entire addition is the whatsapp message reproduced above. The appellant argued that the contents of the chat cannot be the

basis of any addition. However, such a contention of the appellant is baseless because the chat has been found from the phone of Shri Bhushan Kumar, the director the appellant company and Ms. Sonal, Artist Manager of the appellant company. Further, the contents of the chat has not been proved to be incorrect at any point of time by the appellant. It is also a matter of fact and record that neither of the two persons have stated that the transactions referred in the chat is incorrect or have not taken place. It is also to be noted that the chat is in respect of receipt of money by the appellant company. Therefore, the contents of the chat is considered as a valid evidence based on which addition can be made.

21.15 In the text of the chat there is clear mention of receipt of money from various persons. The document is self explanatory and the appellant has not furnished any evidence contrary to the evidence on record. The chats establish that the appellant had received monies and it was apparently not disclosed in the books maintained by the assessee. Be otherwise the onus to prove that cash transaction was recorded in the books lies on the assessee. The appellant has miserably failed to explain the same. Therefore, in principle, the Assessing Officer was justified in making the addition. In regard to the same whatsapp chat wise addition on merit are decided as under:-

A. Receipt of Cash from Tony and given to Shivam

The conversation dated 05.04.2016 between Sonal & Bhushan Kumar shows that sonal has mentioned that 11 was received from Tony and Given to Shivam and Mr. Bhushan has replied with ok. Hence this clearly establishes that 11 here means 11 lacs and the same was received from Tony and given top Shivam. The appellant has not furnished any evidence to show that this amount was received in cheque or accounted for in books of accounts. In the chat it has been clearly stated that this amount has been received from Tony. Therefore, the addition of Rs 11 lac received from Tony in cash hereby is sustained.

B. Receipt of cash on behalf of Vinod Bhanushali

This addition is related to chat sent by Mr. Beer Singh on 12/04/2016 to Mr. Bhushan Kumar wherein he has mentioned that 8.58 lacs was received on behalf of Mr. Vinod Bhanushali, to which Mr. Bhushan Kumar has replied that the same should be given to mummy. The appellant has argued that this amount has been received on behalf of

Mr. Vinod Bhanushali employee of the appellant company and the same cannot be added in the hand of the appellant company. Further from the chat it is not clear regarding the nature of this amount and who has given it. Therefore, in the absence of the same it cannot be added. In the chat it has been clearly mentioned that cash of Rs. 8.58 Lacs was received on behalf of Mr. Vinod Bhanushall and Mr. Bhushan instructed Mr. Beer Singh to give the same to his mummy. Once it has been established that cash amount has been received than the onus is on the appellant to explain and justify the same and the appellant has tried to discharge its onus by simply stating that name of the person giving the cash has not been found out by the AO. This argument put forth by the appellant will not hold good since the onus was on the appellant to prove that the cash received was not its Income and accounted for in the books of accounts. Further even if the same is received on behalf of an employee but the same was passed on to the mother of Mr. Bhushan Kumar and hence belonged to the company. Therefore the addition of Rs. 8,58,000/- made by the AO Is sustained.

C. Receipt of cash from Rahul (can be Rahul Vaidya singer) (INR 5 lakhs)

In this chat dated 19/06/2016 Sonal has informed Mr. Bhushan Kumar that 5 cash came of Rahul for feb and mar. When Mr. Bhushan asked where it is sonal Informed that it was with Mr. Shivam. IN this case cash of Rs. 5 lacs has been received from Rahul and the same has not been accounted for in the books of accounts. Therefore the addition of Rs. 5 lacs made by the AO Is sustained.

D. Receipt of cash from Meet Brothers and Neha (INR 8,21,000/-):

In this chat on 05/08/2016 Sonal Has written to Mr. Bhushan that Meet Bros money came total Rs. 1008000 out of which cheque was Rs. 187000 and cash was 821000 which was given to Susheel Ji. The AO in the order has reproduced ledger account of Meet Bros which shows receipt of 187000 on 24/08/2016. Hence based on this the AO concluded that the cash amount of Rs. 821000 has not been accounted for in the books of accounts and made addition of Rs. 821000. The appellant during appellate proceedings has not been able to substantiate that Rs. 821000 received in cash has been accounted for in the books of accounts. Hence the addition of Rs. 821000 made is sustained.

E. Receipt of cash from Meet Brothers and Neha (INR 20,00,000/-):

In this conversation Sonal has written to Mr. Bhushan on 09/11/2016 stating that Neha Kakkar amt 12L and Meet Bros amt 8L till October Month. Since the appellant is receiving artist management fees from singers the AO had made addition of Rs. 20 Lacs on the basis that Neha Kakkar and Meet Bros had given 12lacs and 8 lacs respectively to appellant company and the same has not been accounted for in books of accounts. The appellant has argued that the amounts mentioned cannot be presumed to have been received since it is not mentioned in the chat that these amounts have been received. It is seen from the chat that Sonal music manager has clearly mentioned that Neha 12 and Meet Bros 8 Lacs amount till October. This is the amount of artist management fees till October.

21.16 From the books of accounts of the appellant the appellant has furnished ledger account of Meet Bros in the boos for the Financial Year 2016-17 and as per the ledger the total fees received from Meet Bros for the financial year 2016-17 till October 2016 is Rs.5,63,250/-. The document relied upon cannot be accepted because the chat is dated 09.11.2016. The amount therefore, if credited in the books of accounts, can only be found from 09.11.2016 onwards. The ledger account till October, 2016 does not explain the receipt made on 09.11.2016. therefore, the argument of the appellant is not acceptable.

21.17 Therefore, the addition of an amount of Rs.8,00,000/-is upheld. Further amount of 12Lac from Neha Kakkar has not been recorded in the books of account, therefore the addition of 12,00,000/- made by AO is hereby upheld. To sum up, addition of Rs. 20,00,000/- is upheld.

A. Receipt of cash from Shri Shrey (person in Zee group) (INR 40 lakhs)

In this chat on 19/08/2016 Sonal stated that Shrey will be giving 40 in cash. After that there is no reply against this message from Mr. Bhushan. Then Sonal on 02/10/2016 has written to Mr. Bhushan that 20 Lakh from Shrey to which Mr. Bhushan replied when and Sonal replied that Mon (Monday). The appellant has argued that firstly the AO has assumed that Shrey is someone from Zee even though nothing has been mentioned in the chat that Shrey is from Zee. The appellant has argued that the chat mentions only that shrey will be giving 40 and the same is in chat dated 19/08/2016 after that there is no chat regarding the same. Then there is one

chat on 02/10/2016 that 20 lakhs from shrey on Monday. This chat has taken place on 02/10/2016 which was Sunday. The argument of the appellant is that as per the chat 20 lakhs will come on Monday. However, there is no further chat confirming as to whether this 20 Lakhs was received or not. Since there is no confirmation regarding actual receipt of any amount no addition is required.

21.18 A perusal of the chat would show that first on 19/08/2016 there was a message from Sonal to Mr. Bhushan that some Mr. Shrey will be giving 40 lakhs in cash. However after that there is no follow up chat to this message. Then the second message is on 02/10/2015 which Is after more than a month of the original message dated 19/08/2016 and In this message Sonal has written, that 20 Lakhs from Shrey and Mr. Bhushan asked when to which she replied that on Monday. This chat took place on Sunday. As regards the first message it only states that shrey will be giving 40 in cash, which the AO has presumed as 40 Lakhs, then in the next message after one and a half months it has been mentioned that 20 laks from shrey. The case of the AO is that total 40 lakhs was to be received from shrey as per the message dated 19/08/2016 and out of the same 20 lakhs was received on 02/10/2016. Hence the AD made addition of 40 Lakhs. The action of the AO in making addition of 40 Lakhs is not correct since the first part of the chat only states that Shrey will be giving 40 in cash and after that only 20 lakhs came in 02/10/2016. The undisclosed Income cannot be taxed on due basis. The principles of 'Real Income apply in respect of undisclosed Income or expense. Since only 20 lakhs cash was received as per the chats reproduced then the action of the AO in making addition of 40 Lakhs is not sustainable. The addition can be made of only Rs. 20 Lakhs which was received. Hence the appellant gets a relief of Rs. 20 Lakhs and the addition of Rs. 20 Lakhs is sustained out of total addition made of Rs. 40 Lakhs.

Cash Income received from Amaal Arman and others (11.30 lakhs)

In this chat on 19/08/2016 sonal has stated that 2.55 lacs in cheque and 3.30 lacs in cash came for august. Further it has been mentioned that Dubai commission will be received post show and it will be 5 lakhs of amaalarmaan plus 3 lacs of sukupuku. Based on the above the AO made addition of 11.30 lacs as per following detalls

Received in cash	*3.30*
Dubal commission amaal and armaan	*5.00*
Dubal Commission sukupuku	*3.00*

Total *11.30*

21.19 The appellant has argued that as regards 3.30 lacs In cash received it has not been mentioned as to whom the same was received and for what purpose. As regards the Dubai commission of 8 Lacs the same was to be received post show and there is no chat to substantiate that the same was received in cash and these were only proposed amounts. The submissions of the appellant have been considered and the argument of the appellant that the Dubai commission is only proposed amount which was to come post show is justified since there is no chat to substantiate as to whether this amount of 8 lacs was received or not. The chats relied upon by the AO for making the addition only Indicate that the appellant would receive Dubai commission post show, but there is no chat to indicate when the same was received if at all received. The undisclosed Income cannot be taxed on due basis. The principles of 'Real Income apply in respect of undisclosed Income or expense. Therefore, the addition of 8 lacs is deleted since the same was not actually received and is only a proposal. As regards the amount of Rs. 3.30 Lacs the same was received as indicated in the chat, therefore addition of Rs. 3.30 Lacs is sustained. Out of total addition of Rs. 11.30 Lacs addition of Rs. 8 Lacs is deleted and Rs. 3.30 Lacs sustained.

21.20 The conversation dated 12.04.2016 between Beer Singh &Bhushan Kumar shows that Beer Singh informing that Rs 8.58lac received on behalf of Vinod Bhushani and same is kept at the instruction of Bhushan Kumar. The appellant failed to substantiate that amount was not received in cash.

21.21 The conversation dated 19.06.2016 between Sonal and Bhushan Kumar shows that 5 cash came of Rahul of Feb and March and the same is confirmed that is with Shivam. The appellant has no corporative evidence to substantiate that amount was not received in cash from Ranul. Therefore, the addition of Rs 5 lac received from Rahul in cash is hereby is sustained.

21.22 The conversation dated 05.08.2016 shows that Sonal Inform that amount of Rs 1008000/- to be received from Meet Bros out of which amount of Rs 187000 was received in cheque and Rs 821000/- in cash. The AO reproduced the edger account of Meet Bros whereby receipt of Rs 1,87,000/- has been recorded in corroborate of the chat. Therefore, it is evident that amount of Rs 8,21,000/ must be received by the appellant in cash. Therefore, addition of Rs 8,21,000/- is rightly made by the AC is hereby upheld.

21.23 To Sum up addition of Rs.11,30,000/- is upheld.

2018-19

15.15 The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground Nos. 6 and 7, the appellant has contended that the A.O was not justified in making an addition of Rs. 34,80,000/- and Rs. 3,00,000/- on account of alleged unaccounted cash income and cash expenditure received/paid from/to singers/ others on the basis of WhatsApp messages.

15.16 For the assessment year under consideration, the assessing officer has referred various chats on different dates. The said chat has been reproduced in the earlier part of this order.

15.17 The issue to be decided in the present ground is whether a presumption can be drawn only on the basis of chats containing numerical figures without any corroborating material to reach a conclusion that unaccounted cash income was earned by the appellant from singers.

15.18 The AO has determined unaccounted cash income from singers for various years on the basis of whatsapp chat. It has been presumed by him that the numerical figures appearing in the whatsapp message represent the real income of the appellant from singers i.e. income from artist management. The AO refers the WhatsApp chat on various dates which are reproduced above.

15.19 The basis for the entire addition is the whatsapp message reproduced above. The appellant argued that the contents of the chat cannot be the basis of any addition. However, such a contention of the appellant is baseless because the chat has been found from the phone of Shri Bhushan Kumar, the director the appellant company and Ms. Sonal, Artist Manager of the appellant company. Further, the contents of the chat has not been proved to be incorrect at any point of time by the appellant. It is also a matter of fact and record that neither of the two persons have stated that the transactions referred in the chat is incorrect or have not taken place. It is also to be noted that the chat is in respect of receipt of money by the appellant company. Therefore, the contents of the chat is considered as a valid evidence based on which addition can be made.

15.20 In the text of the chat there is clear mention of receipt of money from various persons. The document is self explanatory and the appellant has not furnished any evidence contrary to the evidence on record. The chats establish that the appellant had received monies and it was apparently not disclosed in the books maintained by the assessee. Be otherwise the onus to prove that cash transaction was recorded in the books lies on the assessee. The appellant has miserably failed to explain the same. Therefore, in principle, the Assessing Officer was justified in making the addition. In regard to the same whatsapp chat-wise addition on merit are decided as under:-

Receipt of cash of Rs.9,80,000/- from Neha Kakkar

15.21 This addition is related to chat sent by Ms. Sonal, Artist Manager on 06.06.2017 to Mr. Bhushan Kumar wherein he has mentioned that Rs.9,80,000/- was received in cash from Neha Kakkar. The appellant has argued that this amount has been received by Ms. Sonal and not by the appellant company. Therefore, the same cannot be added in the hand of the appellant company. Further from the chat it is not clear regarding the nature of this amount and who has given it. Therefore, In the absence of the same It cannot be added. In the chat it has been clearly mentioned that cash of Rs. 9.80 Lacs was received. Once it has been established that cash amount has been received than the onus is on the appellant to explain and justify the same and the appellant has tried to discharge Its onus by simply stating that name of the person giving the cash has not been found out by the AO. This argument put forth by the appellant will not hold good since the onus was on the appellant to prove that the cash received was not its income and accounted for in the books of accounts. The chat clearly states that the amount was received by the employee of the company and the same was informed to the Director of the appellant company i.e. Shri Bhushan Kumar. Therefore the addition of Rs. 9,80,000/- made by the AO is sustained.

Receipt of cash by Vinod Bhanushali for Ranchi Diaries

15.22 In the whatsapp chat dated 26.09.2017, there is mentioned of receipt of Rs.50,00,000/- out of which Rs.25,00,000/- was in cheque and Rs.25,00,000/- was in cash. The same transaction is in respect of Music Video titled as Ranchi Diaries. A chat is between Shri Bhushan Kumar, Director of the appellant company and Shri Vinod Bhanushali, president sales of the appellant company. The cheque amount of Rs.25,00,000/- was received by the appellant on 05.10.2017 and was credited in the appellants

account. As part (cheque component) of the transaction referred to in chat is established to be correct, therefore, the other part (cash component) is also correct. Therefore, it is held that the cash was also received by the appellant and the same is not reflected in the accounts of the appellant. Therefore, the addition of Rs.25,00,000/- is confirmed.

Addition of Rs.3,00,000/- u/s 69C on account of chat with Shri Shiv Chanana

15.23 There was communication between Shri Bhushan Kumar (Director of the Activate Windows appellant company) and Shri Shiv Chanana. In the chat, there is mention of payment of Rs.3,00,000/- to Shri Shiv. The chat is self explanatory. The addition of Rs.3,00,000/-u/s 69C of the Act is confirmed.

15.24 In view of the above discussion, the addition of Rs.34,80,000/- (in ground no.6) and Rs.3,00,000/- (in ground no.7) are confirmed. Accordingly, ground no. 6 and 7 are dismissed.

2019-20

14.15 The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground Nos. 5, the appellant has contended that the A.O was not justified in making an addition of Rs. 18,80,000/- on account of alleged unaccounted cash income received from singers/others on the basis of WhatsApp messages.

14.16 For the assessment year under consideration, the assessing officer has referred various chats on different dates. The said chat has been reproduced in the earlier part of this order.

14.17 The issue to be decided in the present ground is whether a presumption can be drawn only on the basis of chats containing numerical figures without any corroborating material to reach a conclusion that unaccounted cash income was earned by the appellant from singers/ parties.

14.18 The AO has determined unaccounted cash income from singers for various years on the basis of whatsapp chat. It has been presumed by him that the numerical figures appearing in the whatsapp message represent

the real income of the appellant from singers i.e. income from artist management. The AO refers the WhatsApp chat on various dates which are reproduced above.

14.19 The basis for the entire addition is the whatsapp message reproduced above. The appellant argued that the contents of the chat cannot be the basis of any addition. However, such a contention of the appellant is baseless because the chat has been found from the phone of Shri Bhushan Kumar, the director the appellant company and Mr Shivam Chanana, AVP Digital and Content creation of the appellant company. Further, the contents of the chat has not been proved to be incorrect at any point of time by the appellant. It is also a matter of fact and record that neither of the two persons have stated that the transactions referred in the chat is incorrect or have not taken place. It is also to be noted that the chat is in respect of receipt of money by the appellant company. Therefore, the contents of the chat is considered as a valid evidence based on which addition can be made.

14.20 In the text of the chat there is clear mention of receipt of money from Singer/Parties. The document is self-explanatory and the appellant has not furnished any evidence contrary to the evidence on record. The chats establish that the appellant had received monies and it was apparently not disclosed in the books maintained by the assessee. Be otherwise the onus to prove that cash transaction was recorded in the books lies on the assessee. The appellant has miserably failed to explain the same. Therefore, in principle, the Assessing Officer was justified in making the addition. In regard to the same whatsapp chat-wise addition on merit are decided as under:-

Receipt of cash of Rs.8,80,000/- from Neha Kakkar

14.21 This addition is related to chat sent by Ms. Sonal, Artist Manager on 02.11.2018 to Mr. Bhushan Kumar wherein she has mentioned that Rs. 8,80,000/- was received in cash from Neha Kakkar and Rs. 17,28,000 was received by cheque. The appellant has argued that amount of Rs.8.80 Lakhs has not been received by Ms. Sonal. Therefore, the same cannot be added in the hand of the appellant company. Further from the chat it is not clear regarding the nature of this amount. Therefore, in the absence of the same it cannot be added. In the chat it has been clearly mentioned that cash of Rs. 8.80 Lacs was received. Once it has been established that cash amount has been received than the onus is on the appellant to explain and

justify the same and the appellant has tried to discharge its onus by simply stating that the same was never received. This argument put forth by the appellant will not hold good since the onus was on the appellant to prove that the cash received was not its income and accounted for in the books of accounts. Further as per the Chat dated 02.11.2018, the amount mentioned against term "Chq" is corroborated with the bank statement of the appellant company. Therefore the addition of Rs. 8,80,000/- made by the AO is sustained.

Receipt of cash from Shri Raju.

14.22 In the WhatsApp chat dated 06.10.2018, there is mentioned of receipt of Rs. 10,00,000/- from Shri Raju. The same transaction is in respect of license fees received from M/s TV Vision against use of musical rights. On 05.10.2018 Rs. 10 lacs was received in the bank account of M/s SCIPL, the status of which was submitted by Shri Shivam Chanana to Shri Bhushan Kumar in Chat dated 06.10.2018. Therefore, the addition made on the basis of WhatsApp chat is already taken into consideration by the appellant company for calculating total income. The appellant has furnished bank statement and ledger account of TV vision limited wherein the amount of Rs. 10,00,000 has been received and accounted for as income of the appellant. Further in the chat it has been mentioned that 10 came from Raju and the word cash is not mentioned. If the same was cash payment received, then the word cash must have been mentioned in the chat. The appellant has already demonstrated that the amount of Rs. 10,00,000 was received in cheque and accounted for in the books of accounts on that date. Therefore, the addition of Rs.10,00,000/- is deleted.

14.24 In view of the above discussion, the addition of Rs.8,80,000/- (in ground no.5) is confirmed. Accordingly, addition of Rs. 10,00,000/- is deleted. Ground No. 5 is partly allowed.

12.4 The Ld. Counsel for the assessee highlighted that there is no proof or evidence of the receipt of amounts mentioned in the WhatsApp chat as is being alleged. It is also not clear that such cash income is emanating on what account. Thus, the whatsapp chat remains a dumb document.

12.5 Ld. counsel for the assessee further argued that the well settled legal position is that a non-speaking document without any corroborative material (evidence on record and finding that such document has been materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by such assessee has to disregarded for the purposes of assessments to be framed pursuant to search and seizure action. From the search and seizure perspective, such nonspeaking seized documents are referred to as "Dumb Documents".

12.6 We have heard the rival submissions made by the respective parties and we have pursued the materials available on record. We have reviewed the assessment order and the appellant's submissions, where the appellant challenged the Assessing Officer's (A.O.) additions made in AY 2016-17 to AY 2019-20 based on Whatsapp Chat extracted from the digital data seized during search proceedings at SCIPL premises. The addition made in the assessment order were mainly premised on the observation made by the AO that the appellant failed to disprove the chats' contents or demonstrate that the amounts were recorded in their books.

12.7 The appellant argument that the WhatsApp chats lack evidentiary value under Section 65B without certification is rejected in view of the order of Supreme Court's of India in the case of *Ambalal Sarabhai Enterprises v. KS Infraspace LLP,* in which it was held that WhatsApp chats, being virtual verbal

communications, have evidentiary value subject to proof at trial and cannot be treated as "dumb documents."

12.8 The contention of the assessee that these chats are not supported any corroborative material is not correct in view of the fact that in some chats the amount received vide cheque has also been mentioned and the cheque figure as per the chat has been received by the assessee and reflected in the books of accounts. In this regard certain chats are reproduced below wherein the amount has been reflected in the books of accounts.

Chat pertaining to AY 17-18

Chats dated 19.08.2016 and 02.10.2016 mentioned Rs. 40 lacs and Rs. 20 lacs from Shrey, respectively ou to which Rs. 20 lacs was found in the books of accounts.

Chat pertaining to AY 18-19

chat dated 26.09.2017 between Bhushan Kumar and Vinod Bhanushali (president sales) mentioned Rs. 50,00,000 for the music video "Ranchi Diaries," with Rs. 25,00,000 by cheque (recorded on 05.10.2017 in books) and Rs. 25,00,000 in cash.

12.9 During the appellate hearing, the ld. Counsel was asked that why artists were paying cash and cheque to SCIPL, when SCIPL is the one buying music rights from them and making payments for those rights. This question came up because the AO claimed these cash payments were hidden income, based on

seized WhatsApp chats. The AR explained that SCIPL is one of the top music production company in India. It gives artists huge platforms to grow their careers. In fact, SCIPL has helped launch many stars. To support this, SCIPL signs contracts with artists under which artists must share a part of their extra third party earnings like money from live shows, concerts, events, or award functions—with SCIPL for a certain period defined in the contract. The split is usually 80:20 (artist keeps 80%, SCIPL gets 20% of the gross amount, after taxes).

12.10 We agree with the AO's interpretation of the WhatsApp chats seized mentioning both cheque payments (which match bank records) and cash parts. Since the cheque payments matched with the books of accounts, it's fair to say that cash was also received by artists and handed over to SCIPL as per the contract.These chats are reliable evidence because they match the real business setup. Under the "real income rule", if money actually comes in and benefits the company even if not recorded in books it counts as taxable income.So, we confirm the AO's addition of the cash amounts from the chats as real, taxable income for SCIPL.

12.11 Consequently, the contention advanced by the Learned Counsel for the appellant, asserting that the aforementioned chats lack corroboration with the books of accounts, is found to be untenable and devoid of merit. In light of this finding, the department ground of appeal, based on the incriminating evidence

extracted from the WhatsApp chats for the AY 2016-17 to AY 2019-20, is hereby upheld and confirmed. Accordingly, the appeals filed by the assessee for Assessment Years 2017-18 to 2019-20 are dismissed and the appeals of the revenue for Assessment Tear 2017-18 and 2019-20 are allowed.

13. Under this ground of appeal, addition on account of cash income & expenditure noted in Diary of Sudesh Kumari seized during search proceedings is challenged by the department and assessee company. Details of additions made over the years are tabulated as under:

Assessment Year	Assessee Appeal	Department Appeal
2018-19	51,00,000	99,00,000
2019-20	1,50,00,000	Nil

13.1 Both assessee and department raised this common issue regarding addition on account of cash income & expenditure noted in Diary of Sudesh Kumari-Payment to Ved Prakash Chanana in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2018-19 and 2019-20 (ITA Nos. 51/DEL/2024 and 271/DEL/2024) for the assessee and Assessment Year 2019-20 (ITA No. 326/DEL/2024) for the Department.

13.2 Brief facts of the case are that a diary was seized (Annexure A-10) from SCIPL's Noida office on 29.11.2018 as per the AO the diary contains payment made to Sh. Ved Prakash Chanana. Page 12 of the diary shows payments to Sh.

Ved Prakash Chanana, with cheque payments marked "Chec" and cash payments marked "C." Smt. Sudesh Dua was asked via notice u/s 142(1) dated 15.02.2021 to explain payments to Sh. Ved Prakash Chanana and provide evidence. Sh. Ved Prakash Chanana was similarly questioned on 15.02.2021 about payments received and their accounting.

13.3 Further, summons were also issued to Sudesh Dua and Ved Prakash Chanana for appearance on 22.03.2021, but they failed to appear. Submission was filed by Smt. Sudesh Dua in which she claimed that entries shown on page 12 were related to purchase of ghee for charitable purposes in Haridwar, but provided no evidence. No documentary evidence, like ghee purchase bills, supported Smt. Sudesh Dua's claim. Smt. Sudesh Dua argued transactions belong to SCIPL, not her, but AO rejected this submission.

13.4 The AO observed that certain entries in the diary marked as "Chec" are reconciled with the corresponding credit entries in Bank Account of Sh. Ved Chanana which corroborates that the other entries made in cash are also true and made. Therefore, this proves that it is not a dumb document and it carries evidentiary value as when banking transaction recorded has taken place exactly the way mentioned in incriminating documents then this can be presumed that cash transactions must have happened which were not recorded but they have happened exactly the way it is mentioned in the diary. The diary qualifies as "books of account" under Section 2(12A), and Smt. Sudesh Dua failed to

explain entries satisfactorily. In view of the above observations, the AO added cash payments of Rs. 150 lakhs each in F.Y. 2017-18 and 2018-19 as unaccounted expenditure of appellant company.

13.5 As per the the amount mentioned in the diary was in Lacs and the AO interpreted 50 as 50 Lacs. However, in one instance the AO interpreted 1 as 1 Crore (100 Lacs) and not 1 Lacs. The CIT (A) coccured with the AO but provided part relief to the appellant company by stating that the AO's treatment of "1" as Rs. 1 crore is inconsistent with his observations made in the assessment order, it should be Rs. 1 lakh, as "100" would denote Rs. 1 crore and accordingly gave relief of 99 Lacs to the assessee for Assessment Year 2018-19 but confirmed the addition of 51 Lacs for Assessment Year 2018-19 and the entire addition of 150 Lacs for Assessment Year 2019-20. The conclusive findings of the CIT (A) for Assessment Year 2018-19 deserves to be reproduced herein below for further analysis and determination of the grounds:

> *"17.23 I have carefully considered the assessment order and the written submission of the appellant. The entire dispute in these Grounds of Appeal is about the interpretation of figures mentioned at Page No. 12 and Page No. 15 of the seized annexure A10. The AD in the assessment order has interpreted the figures mentioned at Page No. 12 and Page 15 as figures mentioned in lakhs and made the following additions:*

Addition	***AY 2018-19***	***AY 2019-20***
Cash payment made to Director Ved Prakash Chanana. (Page 12 of Annexure A10)	*1,50,00,000*	*1,50,00,000*

Cash payment for Bombay Office (Page 15 of Annexure A10)	*1,47,98,000*	

17.24 The AO has questioned the explanation in respect of jottings at Page No. 12 and Page No. 15 of the Annexure A 10. Therefore, the issue to examine would be whether transactions mentioned at Page No. 12 and Page No. 15 are merely rough jottings or amounts mentioned in lakhs.

17.25 The main argument of the Assessing Officer for making the addition is summarised as under:

I The assessee was given ample opportunity to explain the contents of rough jottings but the assessee avoiding the notice as well as not supporting any satisfactory evidence in support of the claim made.

II Notices issued to Shri Ved Prakash Chanana remain non complied and the reply received from Smt Sudesh Dua were not supported by any evidence such as invoices etc. Further it was submitted by Smt Sudesh Dua that the same may be

III The AO draws an observation that on perusal of Page 12 where it is written that "50 chee" on various instances have been verified from the bank account of Shri Ved Prakash Chanana as 50 lacs and therefore the amounts mentioned at Page 12 and Page 15 are in lacs and not in thousands. Based on the above observations additions of Rs. 1,50,00,000 was made for AY 2018-19 and AY 2019-20.

17.26 There is another addition of Rs.1.50 Crores u/s 69C of the Act. The addition is based upon page 12 of Annexure A-10. In the said document, there is mention of payments to one Shri Ved in cash and cheque. The contents of page 12 are stated as under:-

"Complete
ved 01.05.2017
C[50+[50chee
26.10.2017 [1C (50chee +30+20)-24.05.2018
21.07.2018 (50 chee+23.07.2018-(50C)

17.27 Based on the above document, the Assessing Officer has computed the amount of cash and cheque paid as under:-

S. No.	*Date*	*Cheque paid (In Lakhs)*	*Cash paid (in Lakhs)*
1.	*01.05.2017*	*50*	*50*
2.	*26.10.2017*	*Nil*	*100*
3.	*24.05.2018*	*50*	*50*
4.	*21.07.2018*	*50*	*Nil*
5.	*23.07.2018*	*Nil*	*50*
6.	*02.08.2018*	*Nil*	*50*
	Total	***150***	***300***

17.28 Accordingly, the Assessing Officer made addition of Rs.1,50,00,000/- u/s 69C of the Act for the impugned A.Y 2018-19. Another addition of Rs.1,50,00,000/- was made for the A.Y 2019-20.

17.29 In respect of amounts mentioned at Page No. 12 of the seized Annexure, the AO has interpreted that figures mentioned against the term "Chee" are amounts mentioned in lakhs as the same are corroborated with the bank statement of Shri Ved Chanana and resultantly figures mentioned against term "C" are interpreted as amounts mentioned in Cash which are added to the income of appellant company as unexplained expenditure. During the assessment proceedings the appellant submitted that the figures mentioned are nothing but instructions given to Shri Ved Chanana for arrangement of Desi Ghee which would be used for preparation of Desi Ghee Halwa for distribution to poors /religious sages on various occasions in haridwar. However, such an explanation of the appellant is not corroborated by any evidence. The amount of cheque is the same as mentioned in the document as chee. Therefore, chee do not represents Desi Ghee as claimed by the appellant.

17.30 Further, the appellant contradicted the allegation made in the assessment order that amounts mentioned at Page No. 12 of the seized annexure are amounts mentioned in lakhs with copy of bank statement of Shri Ved Chanana substantiating that out of 3 dates mentioned in the assessment order only one date is matching which is nothing but a coincidence. Further the submission of appellant that the amounts mentioned are in the nature payment of the amount which is matching is loan and not expenditure is not acceptable. It is a case, wherein the appellant has paid money in cash and has not been able to explain the

source of such money. Whether the amount by way of cash paid to Shri Ved Chanana was loan or expenditure is immaterial in deciding the availability of cash in the hands of the appellant. Therefore, the Assessing Officer was justified in making addition u/s 69C of the Act.

17.31 From the bank accounts of Shri Ved Prakash Chanana, it is seen that on 03.08.2017, he has received an amount of Rs.50,00,000/- from the appellant company in his Canara Bank account no.2009132000060. Therefore, It is established that 50 written in the document is actually Rs.50 lakhs. It is also evident that the sign "C [" represents cash and the sign "[chee" represents cheque.

17.32 The amount is written in lacs in the impugned document. If 50 Lakhs is paid in cheque, then 50 is written. Therefore, the same treatment has to be for the cash amount also. In the same document where 20 is written, the Assessing Officer has treated it as 20 Lakhs and so on. However, in respect of amount written as [1, the Assessing Officer has trated it as 1 crore. Clearly, there is contradiction. If the author of the document wanted to write 1 crore, in that case in the document, [100 would have been written instead of [1. Therefore, it is held that an amount of Rs. 51,00,000 was paid in cash and not Rs.1,50,00,000/- as held by the Assessing Officer.

17.33 During the year under consideration, the amount of Rs.50,00,000/- is reflected in the bank statement. The transaction amounting to Rs.51 lakhs is not reflected in the accounts of Shri Ved-Prakash Chanana. As a part of the document (relating to cheque) is found to be reflected, therefore, the other part (relating to cash) is also held to be undertaken. Therefore, the Assessing Officer was justified in making addition of in the hands of the appellant u/s 69 C of the Act. However, instead of amount of Rs.1,50,00,000/-, the addition to the extent of Rs.51,00,000/- Is only sustained.

17.34 In view of the findings discussed above out of addition of Rs. 1,50,00,000/-, addition to the extent of Rs. 51,00,000/- (in ground no. 9) is sustained."

13.6 The Ld. Counsel of the assessee submitted that addition has been made based on Diary Seized (Annexure A-10) seized from company's NOIDA Office

page 12. The AO has treated the figure as mentioned in lakhs and made this addition as unexplained expenditure being salary paid outside books to Sh. Ved Chanana. The total addition made by AO is Rs. 1.5 Crore in Assessment Year 2018-19 and Rs. 1.5 Crore in Assessment Year 2019-20. The CIT(A) deleted addition of Rs. 99 Lacs in Assessment Year 2018-19 and confirmed addition of Rs. 51 Lacs in Assessment Year 2018-19. The addition of Rs. 99 Lacs was deleted since the AO had treated the amount of 1 written as 100 lacs (1 Crore) and the CIT deleted 99 Lacs by observing that since as per the AO all the amounts are in lakhs and then he cannot treat one single amount in crores, based on this observation the CIT(A) restricted the addition of 100 Lacs made against figure of 1 to Rs. 1 Lacs and gave relief of Rs. 99 Lacs.

13.7 Further the Ld. Counsel of assessee submitted that the jottings on Page 12, written by Mrs. Sudesh Dua, relate to charitable activities (e.g., feeding the poor and religious sages in Haridwar using pure ghee for halwa), not unaccounted transactions. Instructions were given to Sh. Ved Prakash Chanana for these arrangements. The Ld. Counsel of assessee submitted that Ledger accounts and statements of affairs confirm the loan given to Ved Chanana by Bhushan Dua in which only one entry matching out of 3 entries is coincidental, and since it's a loan, not salary/expenditure, the AO's claim of unexplained cash payments lacks basis.

13.8 Further Ld. Counsel of assessee submitted that rough jottings in a diary are “dumb documents” under Section 34 of the Indian Evidence Act and require corroborative evidence to justify tax additions.

13.9 We have heard the rival submissions made by the respective parties and we have pursued the material available on record. In adjudicating the appeal we scrutinize the CIT(A)'s findings on the addition of Rs. 1,50,00,000 under Section 69C of the Income Tax Act, pertaining to unexplained expenditures derived from entries on "Page 12" of seized documents. This involves alleged cash and cheque payments to Sh. Ved Prakash Chanana, spanning Assessment Years (A.Y.) 2018-19 and 2019-20. It is evaluated that whether CIT(A)'s upholding of the addition, with partial modifications, aligns with evidentiary standards, interpretative consistency, and statutory provisions on unexplained sources, ensuring no arbitrary taxation without cogent proof.

13.10 We noted that CIT(A)'s endorsement of the Assessing Officer's (AO) reliance on "Page 12" entries as evidence of payments totalling Rs. 1,50,00,000, bifurcated into cash ("C") and cheque ("Chee") components. The AO's interpretation of “Chee” as denoting cheques (in lakhs) is supported by corroborative bank statements of Sh. Ved Prakash Chanana, treating these as unexplained expenditures under Section 69C. The appellant's alternative explanation—that “Chee” refers to "ghee" arrangements for charitable purposes—is dismissed for lack of substantiating evidence, as mere assertions

without documentary backing cannot override seized material interpretations. This reinforces the principle that burden of proof shifts to the assessee under Section 69C to explain sources satisfactorily.

13.11 We concurs that the distinction between loans and expenditures is immaterial. The unexplained source of cash payments warrants addition regardless. Bank records substantiate a Rs. 50,00,000 cheque receipt by Chanana on 03.08.2017, validating “50” as Rs. 50 lakhs and “C” as cash. However, the AR submission of an inconsistency in the AO's scaling treating “1” as Rs. 1 crore and suggests “1” should be equates to Rs. 1 lakh are already considered. This recalibration reduces the impugned cash component to Rs. 51,00,000, not the AO's Rs. 1,50,00,000, demonstrating corrective role by adjudicating authorities and we emphasis on proportionate and evidence-based additions.

13.12 We upholds core finding that the "Page 12" entries represent unexplained expenditures under Section 69C, justified by bank corroboration and the assessee's failure to provide credible alternatives. Nonetheless, we affirm the relief of Rs. 51,00,000 allowed by the CIT(A) and restricting the disallowance to Rs. 99 Lacs for Assessment Year 2018-19 since a concistency has to be maintained in interpretation of a document and by treating 1 as 100 Lacs instead of 1 lacs the AO was not factually correct. In view of the the assessee’s ground of appeal for Assessment Year 2018-19 and 2019-20 are dismissed and revenue grounds of appeal for Assessment Year 2018-19 is also dismissed.

14. Under this ground of appeal, addition on account of diversion of Income in Dubai through Bollywood Digial FZE is challenged by the Department. Details of additions made over the years are tabulated as under:

Assessment Year	Amount of addition
2016-17	4,47,30,282
2017-18	13,34,86,898

14.1 The department raised this common issued regarding addition on account of diversion of Income in Bollywood Digital FZE by investing in property of London in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2016-17 and 2017-18 (ITA Nos. 2756/DEL/2023 and 272/DEL/2024). The decision for the appeal for Assessment Years 2016-17 will br applicable for AY 2017-18 as the issues are identical and no new circumstances exist.

14.2 Brief facts of the case are that during the search proceedings on SCIPL Premises documents extracted from digital data seized from trusteed employee of Bhushan Kumar (Beer Singh) like Board resolution, FDR Creation paper, Statement of London Flat shows that the control and management of Bollywood Digital FZE is with Bhushan Kumar. Further, WhatsApp Chats between Hiren Mehta and Bhushan Kumar shows discussion in respect of shifting of management structure of BDML and FZE by forming a LLC company in Dubai shows ultimate control of these companies with Bhushan Kumar.

14.3 Further another WhatsApp chat extracted from seized digital data reveals that Beer Singh shared online banking login credentials of Bollywood Digital FZE with Bhushan Dua, indicating that Bhushan Dua exercises ultimate control over the financial operations of Bollywood Digital FZE. The shareholders of Bollywood Digital FZE is JMD Investments Limited (Dubai) (100%). The AO draws the observation that Bollywood Digital FZE (BD FZE) was controlled from India, leading to its income being taxed in the hands of SCIPL.

14.4 Based on the above observations of the AO, profits declared by Bollywood Digial FZE in the audited financials for AY 2016-17 and AY 2017-18 were added to the total income of the appellant company. Details of the additions made are tabulated as under:

Assessment Year	Profit In USD	Conversion rate	Addition Amount
2016-17	675276	66.24	4,47,30,282
2017-18	20,59,983	64.80	13,34,86,898

14.5 The additions so made were deleted by the CIT(A) by appreciating the facts and circumstances and concluding that there was sufficient explanation or the reason to substantiate that operation, management and control of Bollywood Digital FZE was not in India and the conclusive findings of the CIT(A) deserves to be reproduced herein below for further analysis and determination of the grounds. The relevant paras of AY 2016-17 are reproduced below:-

"57. I have carefully considered the assessment order and the written submissions of the appellant alongwith material filed in the Paper Books. The entire dispute in this Ground of appeal is with regard to the income (earned outside India) of the foreign entity BD FZE which has been taxed the hands of the appellant company (SCIPL) on the ground that income of SCIPL has been diverted into the hands of foreign entity namely BD FZE to a tax free jurisdiction for evading taxes and BD FZE it was not an independent entity, it only existed on paper and its control and management was being done from India. Accordingly, the AO treated the entire amount of revenue as per the D & L account for FY 2015 16the USD 675276 (equivalent to Rs.4,47,30,282/- taking 1USD equal to 66.24 INR as on 31.03.2016).

58. It is not the case of the AO that there was a Permanent Establishment (PE) of M/s BD FZE in India and the income of BD FZE is to be taxed in India. The AO has treated the entire Foreign investment of the foreign entity as income of the appellant company. It is also not the case of the AO that any undisclosed income of the appellant was parked in the BD FZE, Dubai.

59. The issue to be examined would be whether BD FZE existed and functioned independently or not. The appellant has filed evidence in support of existence and functioning of BD FZE which was also filed during the assessment before the assessing officer. The assessing officer has not examined the same by making a generalized statement that the in the assessment order that the reply of the assessee is not acceptable. He has primarily relied upon the material found during search to come to a conclusion that BD FZE was being controlled from India and therefore its income should be taxed in the hands of SCIPL. The submissions of appellant have been discussed in the foregoing part of this order on the basis of which the evidence/material in support of existence and functioning of BD FZE can be summarised as under :-

(i) Audited Balance Sheet showing revenue and expenditure
(ii) Presence of employee on whom salary expenditure was incurred.
(iii) Copy of lease agreement for registered office and invoices for admn. office.

(iv) Copies of invoices for legal expenses, audit fees.

(v) Details furnishing physical presence of Bhushan Dua in UAE for taking management decisions.

(vi) Auditors certificate giving classification of revenue earned by BD FZE during AY 2016-17 and 2017-18.

60. The above evidences and material cannot be overlooked by the assessing officer making a simple statement that reply of the assessee is not acceptable. Thus, I find that the AO has not been able to meet the material and evidence brought on record by the Appellant to evidence the independent functioning of BD FZE. The evidence/material which was filed during assessment in support of the claim that BD FZE was an independent entity functioning from UAE has been examined during the present appellate proceedings. The audited Balance Sheet of BD FZE as on 31.03.2017 has been reproduced in the assessment order itself. Thus, the Balance Sheet in which audit report is signed by an Independent Auditor cannot be simply dismissed as not acceptable.

61. The above reproduced Balance Sheet is further supplemented by Auditors Certificate dated 10.06.2021 which was filed during assessment proceedings giving classification and break up of revenue earned during A.Y. 2016-17 and 2017-18 by BD FZE.

62. Upon examination of the above Balance Sheet and Auditors certificate it is seen that revenue in the form of Interest Income is 0.1454 million USD, Commission Income is 0.217 million USD and in addition license fees income is 0.312 million USD and after taking into account the expenses of 0.151 million USD, the net profit for the year was 0.523 million USD. Amount of 151,908 USD was incurred on administrative expenses which includes salary (96,000 USD), rent (42,000 USD), Legal & professional expenses (11,180 USD) other expenses (2728 USD). The above results also indicate that BD FZE has not booked superfluous income to boost its profits and maximise tax free profits, contrary to the allegation made in the assessment order that BD FZE was a device for diversion of income of SCIPL to a tax free jurisdiction.

63. The appellant has also submitted that after the closure of operations of BDML its earlier employee namely Jainulabdeen Anwar Batcha was working for BD FZE to whom Salary was paid. Therefore, the observation made in the assessment order that BDML had no employee is found to be factually incorrect. The appellant has also filed copy of tenancy agreement executed with Govt. of Sharjah for its registered office premises at P.O. Box 123029 within Sharjah Airport International Free Zone bearing address at R2 – 2191, SAIF Lounge, Sharjah, UAE. The lease agreement for office premises has been executed with a third party that too Govt. of Sharjah.

Further for is administrative office located at premises bearing No. 2604, The Prism Tower, Business Bay, P.O.Box 34724, Dubai, UAE the appellant has filed copies of lease invoices and expenditure on rent has been recorded in the P&L account of BD FZE. The fully furnished premises has been taken on rent on all inclusive basis including electricity, water, maintenance and secretarial assistance. Also an amount of USD 9544.96 was paid to Magus Consultancy for renewal of license fee of BDFZE, an amount of USD 1634.88 was paid to the Auditors towards audit fee. Copy of relevant ledger accounts and substantiating invoices have been filed. Therefore, it has been incorrectly presumed in the assessment order that these expenses appear to be bogus. Further, the Appellant has filed copies of License Certificate having License No. 12462 and License No. 17502 for the relevant period issued by SAIF Zone Authority permitting General Trading and permitting social media applications development and management as activities (i.e. creating and distribution of copyrighted content and its derivatives on mobile phones) for BDFZE for the relevant period. All these evidences/materials are in the nature of transactions of BD FZE with non-related third party and therefore cannot be over looked. The material and evidence brought on record by the appellant supports the submission that during the relevant assessment year the entity BD FZE existed and functioned from Dubai.

64. It is also noted that all the key management decisions were taken by Sh. Bhushan Dua Director, Ms. Neha Shinde, Manager and Mr. Jainalubdeen Anwar Batcha, employee in UAE. Ms. Neha Shinde and Mr. Jainalubdeen Anwar Batcha were residents of UAE and Shri Bhushan Dua physically visited UAE for taking these management and policy decisions. The dates of his visits in UAE during AY 2016-17 and 2017-18 are tabulated below:-

FOR A.Y 2015-16

S.NO	***Particular***	***Date of presence in UAE***
1.	*Bhushan Dua*	*01.08.2015 to 02.08.2015*
2.	*Bhushan Dua*	*17.10.2015 to 18.10.2015*
3.	*Bhushan Dua*	*19.01.2016 to 20.01.2016*
4	*Bhushan Dua*	*02.03.2016 to 03.03.2016*
5.	*Bhushan Dua*	*12.03.2016 to 13.03.2016*

FOR A.Y 2016-17

S.NO	***Particular***	***Date of presence in UAE***
1.	*Bhushan Dua*	*05.04.2016 to 06.04.2016*

2.	*Bhushan Dua*	*06.10.2016 to 07.10.2016*
3.	*Bhushan Dua*	*28.10.2016 to 02.11.2016*
4	*Bhushan Dua*	*03.02.2016 to 05.12.2016*
5.	*Bhushan Dua*	*22.02.2017 to 23.02.2017*

65. All major decisions regarding the control, management and functioning of the company BD FZE were taken by the owner, promoter, manager and employee of BD FZE during the physical presence of promoter i.e. Bhushan Dua in UAE and the remaining members of the decision making team were residents of UAE.

66. From the above discussed material/evidence it is found that there is sufficient material on record to hold that BD FZE had independent existence and functioned independently from UAE. Moreover, the material filed by the appellant during the assessment proceedings has not been dislodged by the assessing officer has it has been overlooked by him.

67. It has been argued in the assessment order that control and management of BD FZE is effectively in India and the entity is only being used to keep the revenue belonging to SCIPL in a tax-free jurisdiction such as Dubai to escape the tax net in the country. Certain material/evidences in the nature of document retrieved from emails, WhatsApp chats retrieved from mobile phones have been reproduced in the assessment order. These have been discussed in earlier part of this appellate order. The assessing officer has referred to following material in this regard :-

67.1 Sh. Bhushan Dua signed as authorised signatory on behalf of Bollywood Digital FZE for opening an FDR of AED (Arab Emirates Dirham) 20,00,000 (INR 3.8 crores approx.) by debiting the funds from its own account in First Gulf Bank, Dubai, which clearly proves that transfer of funds from the account of Bollywood Digital FZE is controlled by Shri Bhushan Kumar.

67.2 The documents recovered from the email data of M/s SCIPL during the search shows the shareholder resolution of Bollywood Digital FZE where Sh. Bhushan Kumar is appointing himself and one Ms. Neha Shinde for completing the formalities for the formation of subsidiary in Dubai as adopted in the shareholder resolution of Bollywood Digital FZE. The date of this resolution which has been signed by Shri Bhushan Kumar is 07/01/2017. From the resolution it becomes clear that even the policy decisions in the case of companies controlled by Shri Bhushan Kumar such

as formation of subsidiaries and authorising Ms. Neha Mukesh Shinde as the authorised person to operate the bank accounts etc are being taken from India only and agreements are being signed in India and sent through the email.

67.3 Another evidence recovered pertaining to M/s Bollywood Digital FZE during the search of M/s SCIPL also shows a property in London, United Kingdom in the name of Bollywood Digital FZE. The Landlord statement provided by an asset managing company namely Life residential clearly shows that property having address as 0609 Sovereign Tower, 1 Emily Street London, E161LU, belongs to Bollywood Digital FZE and the property is controlled by employees of Shri Bhushan Kumar as the evidence was found with Shri Beer Singh, trusted employee of Shri Bhushan Kumar.

67.4 There are so many evidences in the form of whatsapp chats & emails extracted from the seized data of SCIPL which clearly indicates that the actual control & management of Dubai based entities are with the trusted employees of the SCIPL. WhatsApp chat of Sh. Hiren Mehta with Shri Bhushan Kumar shows clearly that Shri Hiren Mehta is suggesting to set-up a management structure for Bollywood Digital Music Limited and Bollywood Digital FZE (subsidiary of BDML) so that the companies are not covered in the ambit of the concept of Place of Effective management (POEM) which was made effective by India Income Tax Act, 1961 from 01.04/2017.

67.5 Evidences in various chats of Shri Bhushan Kumar with his employee namely Shri Beer Singh suggest that all the decisions regarding the functioning of these Dubai based companies are being taken by Shri Bhushan Kumar from India. In a WhatsApp chat found between Shri Beer Singh and Shri Bhushan Kumar, it has been noticed that Shri Beer Singh is sending the details of internet banking id and password of the accounts of Dubai based companies owned by Shri Bhushan Kumar namely Bollywood Digital Music Limited and Bollywood Digital FZE.

68. In response to the same the appellant has filed a point-wise rejoinder clarification to the entire material referred above which has been discussed in earlier part of this order. From an examination of the response of the appellant it is seen that the appellant has been able to meet all the observations made in the assessment order.

69. Regarding the operation of bank account of BD FZE the appellant has explained that the operation of the bank account of BDFZE by Sh. Bhushan Dua, in as much as placing the surplus funds with the bank as fixed deposit, would not be decisive to determine the position regarding control and management of BDFZE. The manager of BDFZE namely Ms. Neha Shinde who is resident of Dubai was also an authorised signatory for operating the bank account of the company. As regards the shareholder resolution of BDFZE dated 07.01.2017 it has been explained that the same was for the purpose of establishment of a subsidiary company in Dubai, UAE. As a shareholder it was signed by Bhushan Dua but had appointed the employee of BDFZE namely Jainulabdeen Anwar Batcha as Manager of the subsidiary company to be established. The said resolution also empowered Ms. Neha Shinde (resident of Dubai) to open, operate and close bank account in the name of the subsidiary company. As regards the material in the nature of Landlord's statement for the flat purchased in London the explanation of the Appellant is that the same is absolutely innocuous. The value of the flat bearing No. 609, Sovereign Tower - I, Emily Street, London, E16 1LU was around 425,0000 pounds for which sufficient funds were available with BDFZE through past earnings. Moreover, the presence of such Landlord statement in email of the employee of SCIPL does not mean that control and management of BD FZE is carried out from India. Regarding the WhatsApp chats with Chartered Accountant of Shri Bhushan Kumar it has been explained that it was an innocuous chat merely updating about the implication of proposed changes in Section 6 of the Income Tax Act to be brought in w.e.f. 01.04.2017 whereby the concept of place of effective management was being changed in the Income Tax Act. Regarding the WhatsApp chat with Beer Singh it has been explained that the same is entirely innocuous in nature as the password details for internet banking for the bank account of BDML and BDFZE were forwarded by Beer Singh to Bhushan Kumar.

70. The legal position is now well settled that the expression "control and management" means control and management of a company and not carrying on day to day business. In order to determine the residence of a foreign company the real test to be applied is where does the control and directing power function. The situs of the "Board of Directors" of a foreign company would determine the place of control and management. This would not necessarily mean where one or more of the directors normally reside but where the board of directors actually meet for the purpose of determination of the key issues relating to the management of the company. The argument since beneficial shareholding of BD FZE is held by Bhushan Dua, he controls and manages the entire affairs of BD FZE, would be

against the principles of corporate formation and management. In the case of BD FZE the status of the entity is that of a Free Zone Enterprise. It is primarily managed and controlled by its manager namely Neha Shinde who is a resident of UAE.

71. As discussed in earlier part of this appellate order, there is physical presence of the promoter Bhushan Dua in UAE for taking major decisions regarding the control, management and functioning of the company BD FZE.

72. Another important aspect which needs to be noted is that the search action which had element of surprise did not detect any original records of BD FZE in the nature of its books of accounts, invoices, vouchers, original agreements, title deeds of immovable property, tenancy agreements, cheque books, bank statement etc. If the argument made regarding BD FZE being controlled and managed from India was taken to be true at least some original record of BD FZE would have been detected in the search action. Thus, on the basis of various documents on record, point-wise clarification of the appellant on material found during search, it is established that the control and management of BD FZE during assessment year under appeal was in UAE only.

73. It may be noted that even if it is held that BD FZE was controlled and managed from India its income cannot be taxed in the hands of SCIPL since it is a separate legal entity. Thus, even if the provisions of section 6(3) of the Income Tax Act were made applicable, then BD FZE is to be separately taxed in India on the basis of its residence being in India. But under no circumstances, the income of BD FZE can be taxed in the hands of the appellant company. In the assessment order, the Assessing Officer has discussed and vehemently argued that BD FZE has place of effective management and control in India. If that be so, then it is not understandable as to why the income of BD FZE has been assessed to tax in the hands of the appellant company. If the Assessing Officer believed that BD FZE had place of effective management and control in India, then the income accruing in India of BD FZE's case should have been taxed in the hands of BD FZE only. Therefore, I find that the addition made in the assessment order is not sustainable even on this ground.

74. It has been vehemently contended in the assessment order that income of BD FZE is actually income of SCIPL which has been diverted to a tax-free jurisdiction for evading taxes in India. However, in support of

this argument the assessing officer has not been able to bring on record anything material or substance except for alleging that BD FZE is not an independent entity and was being controlled and managed from India. The term "diversion of income", would mean a process by which income is diverted before it is earned by the assessee.

75. Income of the appellant is from commercial exploitation of its copyrighted content through license agreements. It is an uncontroverted position that BD FZE was not engaged in this activity in any manner. Thus, there cannot be a case of diversion of income. From the facts discussed in earlier part of this order it is apparent the BD FZE earned revenue from consultancy, commission and interest. In addition to the same it also earned some revenue in the nature of license income which was assigned in its favour by BDML. The appellant has explained the reason behind the same by elaborating that after the discontinuance of licensing arrangement between SCIPL and BDML abruptly w.e.f. 31.03.2014, BDML was allowed to retain the license fees from copyrighted content from the territory of Pakistan for a period of 5 years. Since the operations in BDML had been closed whatever little license income accrued the same was assigned by BDML in favor of BD FZE. Thus, whatever little licensing income accrued to BD FZE was in the nature of passive income.

76. In view of the above discussed position I hold that the income of BD FZE cannot be treated as a case of diversion of income of SCIPL.

77. In the assessment order the Assessing Officer has referred to the concept of lifting the corporate veil which disregards the separate identity of the company and looks behind true owners or real person who are in control of the company. The assessment order further states that whenever a dishonest use is made to the legal entity like BD FZE the tax authority can always life the corporate veil to come to the root of transaction. It has been held by the AO that, in the present case BD FZE did not do any business except for helping the assessee to evade tax by diverting licensing income to a foreign jurisdiction. In this regard the appellant submitted that BD FZE is an independent legal entity and therefore its separate existence cannot be disregarded. It has been pointed out that the entire shareholding of BD FZE is held by JMD Investments Pvt. Ltd. (foreign company) and hence it is not a subsidiary of SCIPL. Therefore, without prejudice, even if the corporate veil has to be lifted the income of BD FZE cannot be taxed in the hands of SCIPL since the owner of BD FZE is JMD Investments Pvt. Ltd. and not SCIPL.

78. On merits, it is submitted by the appellant that there is no shifting or diversion of revenue, in the nature of license fees from copyrighted content, from SCIPL to BD FZE, since the revenue earned by the foreign entity is from independent sources which has nothing to do with SCIPL. It has also been pointed out that there is no allegation in the assessment order that BD FZE is a shell company. The facts discussed in preceding paras would prove that BDML is not Shell Company and it had its independent existence and functioning.

79. In the landmark case of Vodafone International Holdings BV Vs. UOI 17 taxmann.com 202 (SC) decided by the apex court, the concept of corporate veil, substance over form, beneficial ownership has been elaborately discussed. The relevant portion of the judgement by CJI S.H. Kapadia is as under :-

> *"Thus, whether a transaction is used principally as a colourable device for the distribution of earnings, profits and gains, is determined by a review of all the facts and circumstances surrounding the transaction. It is in the above cases that the principle of lifting the corporate veil or the doctrine of substance over form or the concept of beneficial ownership or the concept of alter ego arises. There are many circumstances, apart from the one given above, where separate existence of different companies, that are part of the same group, will be totally or partly ignored as a device or a conduit (in the pejorative sense). [Para 67]"*
>
> *"Applying the above tests, it can be said that every strategic foreign direct investment coming to India, as an investment destination, should be seen in a holistic manner. While doing so, the Revenue/Courts should keep in mind the following factors: the concept of participation in investment, the duration of time during which the Holding Structure exists; the period of business operations in India; the generation of taxable revenues in India; the timing of the exit; the continuity of business on such exit. In short, the onus will be on the Revenue to identify the scheme and its dominant purpose. The corporate business purpose of a transaction is evidence of the fact that the impugned transaction is not undertaken as a colourable or artificial device. The stronger the evidence of a device, the stronger the corporate business purpose must exist to overcome the evidence of a device. [Para 68]"*

"Parent entities own equity stakes in their subsidiaries. Consequently, on many occasions, the parent suffers a loss whenever the rest of the group experiences a downturn. Such grouping is based on the principle of internal correlation. Courts have evolved doctrines like piercing the corporate veil, substance over form etc. enabling taxation of underlying assets in cases of fraud, sham, tax avoidant, etc. However, genuine strategic tax planning is not ruled out. [Para 79]"

Justice K.S. Radhakrishnan who was also part of the Bench gave a concurring view through a separate order. The relevant portion of his judgement is as under:-

"Lifting the Corporate veil doctrine is readily applied in the cases coming within the Company Law, Law of Contract, Law of Taxation. Once the transaction is shown to be fraudulent, sham, circuitous or a device designed to defeat the interests of the shareholders, investors, parties to the contract and also for tax evasion, the Court can always lift the corporate and examine the substance of the transaction. [Para 75]"

"Lifting the Corporate veil doctrine can, therefore, be applied in tax matters even in the absence of any statutory authorisation to that effect. Principle is also being applied in cases of holding company - subsidiary relationship - wherein spite of being separate legal personalities, if the facts reveal that they indulge in dubious methods for tax evasion. [Para 76]"

80. Thus, on the basis of above legal discussion the judicial view which emerges is that though a company is a separate legal entity different from its shareholders, however, at times the corporate veil can be pierced by the taxing authorities if it is found that the transactions are sham or bogus or of it is a case of shell company. In this background if the facts of the present case

(i) There is ample material brought on record by the appellant to establish the existence and functioning of the BD FZE as discussed in earlier part of this order. It is established that BD FZE is engaged in business activities in UAE for earning income. It had infrastructure for carrying out its activities. The AO has been unable to dislodge any

evidence/material furnished by the appellant during assessment proceedings and instead of examining the material has simply overlooked the same by making a generalized statement that the reply of the assessee is not acceptable.

(ii) The revenue earned by BD FZE is in the nature of consultancy income, commission income and interest income from independent sources and a little bit of license income (which was assigned in its favor by BDML). Thus, there is no correlation between the business activities of BD FZE and SCIPL.

(iii) Further, the search action did not detect any worthwhile evidence to indicate that BD FZE is a shell company or it only existed on paper. Similarly, if BD FZE was a mere paper entity its entire records such as books of accounts, original license agreements, title deeds of immovable properties, original bank statements, original invoices and vouchers would have been based out of SCIPL's office and would have been detected in the search action.

81. The AO has failed to bring on record any cogent reasons for resorting to lifting of corporate veil and disregarding the independent existence of BD FZE. It has been held by the apex court in the case of Vodafone International Holdings B.V. (supra) that – "In short, the onus will be on the Revenue to identify the scheme and its dominant purpose. The corporate business purpose of a transaction is evidence of the fact that the impugned transaction is not undertaken as a colourable or artificial device. The stronger the evidence of a device, the stronger the corporate business purpose must exist to overcome the evidence of a device. [Para 68]" Thus, the onus is on the revenue to make out a case of a "device" if the intendment is to lift the corporate veil. However, on the basis of above discussion I find that there is a lack of evidence in the assessment order to hold that BD FZE was a device for evasion of taxes.

82. In view of the findings discussed above the addition of Rs. 4,47,30,282/- is not sustainable on merits. Consequently, the addition of Rs.4,47,30,282/- is deleted and this ground of appeal is allowed."

14.6 The ld. Counsel of the assessee defends the independent status of BD FZE, arguing its income cannot be taxed in SCIPL's hands numerating the following points:

a. The SCIPL-BDML licensing agreement (50:50 revenue sharing) ended in FY 2013-14 as SCIPL developed its own international licensing infrastructure. BDML was allowed to license T-Series content in Pakistan (post-termination until 31.03.2019) without sharing fees with SCIPL, due to Indian restrictions on Pakistan licensing. BD FZE, a step-down subsidiary of BDML, received this license income (USD 292,000 in FY 2015-16; USD 90,200 in FY 2016-17) as BDML's nominee.

b. The AO alleges BD FZE's control lies in India due to Bhushan Kumar's involvement however, "control and management" refers to where key policy decisions are made, not day-to-day operations.

1. BD FZE's registered office and operations are in Dubai (SAIF Zone and Prism Tower, with tenancy agreements and rent payments).
2. Key decisions involving consultancy income, investments, London property purchase were made in Dubai by Dubai-based manager Neha Shinde and employee Jainulabdeen Anwar Batcha.
3. Statutory books, auditors, and bank accounts are maintained in Dubai; no BD FZE records were found in India during the 29.11.2018 search.
4. The London flat (£425,000) was funded by BD FZE's earnings, and WhatsApp chats (e.g., with CA, Beer Singh) are innocuous, unrelated to control.
5. BD FZE has infrastructure (offices, employees like Jainulabdeen Anwar Batcha), licenses (SAIF Zone for general trading, social

media), and earned consultancy, commission, and interest income (USD 96,000 to employees, USD 9,544.96 to consultants, USD 1,634.88 to auditors). Audited balance sheets, licenses, and invoices (pp. 316–340, Vol. II) confirm its operations.

6. Bhushan Dua visited Dubai multiple times in AY 2016-17 (e.g., 01.08.2015–02.08.2015) and AY 2017-18 (e.g., 05.04.2016–06.04.2016) for management decisions, supporting Dubai-based control.
7. During search on SCIPL premises on 29.11.2018, no documents of BD FZE records (e.g., books, bank statements, agreements), disproving claims of Indian control were found.
8. The London flat purchase (USD 580,060, per 31.03.2017 balance sheet) was funded by BD FZE's retained earnings, not SCIPL, and is not incriminating.

14.7 The Ld. Counsel of the assessee further highlights that Section 6(3) of the Income Tax Act requires BD FZE's control to be wholly in India to be taxed as a resident. Partial control outside India (e.g., by Neha Shinde in Dubai) excludes this. Even if resident, BD FZE's income cannot be taxed in SCIPL's hands, as they are separate entities. The AO's attempt to tax BD FZE's income in SCIPL's hands is legally invalid.

14.8 The Ld. Counsel of the assessee submitted that the AO's attempt to lift BD FZE's corporate veil, alleging tax evasion via income diversion, lacks evidence. BD FZE is owned by JMD Investments Pvt. Ltd., not SCIPL, so its income cannot be taxed in SCIPL's hands even if the veil is lifted. Further BD FZE's

independent operations and lack of search evidence (no shell company records) refute sham claims.

14.9 Lastly the Ld. Counsel of the assessee relied on the judgement of Vodafone International Holdings (SC), in which it was held that lifting the veil requires proof of a fraudulent "device." The AO failed to provide such evidence, and BD FZE's legitimate business purpose (revenue from independent sources) prevails.

14.10 Legally, "control and management" refers to the situs of the board of directors' decision-making, not day-to-day operations, and BD FZE, a Free Zone Enterprise, was primarily managed by Neha Shinde in the UAE.

14.11 Bhushan Dua's physical presence in the UAE for key decisions further supports this. No original BD FZE records were found during the search, undermining claims of Indian control. Even if BD FZE were deemed India-controlled, its income cannot be taxed in SCIPL's hands, as it is a separate legal entity.

14.12 The AO's claim of income diversion to a tax-free jurisdiction lacks evidence, as BD FZE's revenue from consultancy, commission, interest, and minimal license income (assigned by BDML) is unrelated to SCIPL's copyrighted content licensing.

14.13 The AO's attempt to lift the corporate veil, alleging BD FZE as a tax evasion device, is unsupported, as BD FZE is owned by JMD Investments Pvt.

Ltd., not SCIPL, and no evidence suggests it is a shell company. The Supreme Court's Vodafone ruling emphasizes that lifting the corporate veil requires proof of sham transactions, which the AO failed to provide, as BD FZE's independent operations, infrastructure, and revenue sources are well-documented.

14.14 We have heard the rival submissions made by the respective parties and we have pursued the material available on record. The addition made was premised on the AO finding in the assessment order that control management and operations of Bollywood Digital FZE were with Bhushan Dua and his close associates based on certain information, documents, Whatsapp Chats seized during the search proceedings.

14.15 Ld. Counsel for the assessee draws the attention of the bench towards the evidences including audited balance sheets, employee salary records, lease agreements, invoices for legal and audit expenses, and details of Bhushan Dua's physical presence in the UAE for management decisions (Copy of passport stamps and immigration data), which demonstrates that BD FZE's is an independent entity functioning in Dubai.

14.16 We observed that submission of audited financials including audited balance sheet signed by an independent auditor, cannot be summarily dismissed.

Further in the financial details extracted from the balance sheets of Bollywood Digital FZE submitted during the assessment and appellate proceedings the CIT (A) reveals legitimate revenue streams, including interest

income ($0.1454 million), commission income ($0.217 million), and license fees ($0.312 million), with expenses of $0.151 million (including salary, rent, legal, and other costs), resulting in a net profit of $0.523 million. These figures refute the Assessing Officer's (AO) claim that BD FZE was used to divert SCIPL's income to a tax-free jurisdiction, as no superfluous income was booked.

14.17 We observe that documents available on record including tenancy agreement with the Government of Sharjah for BD FZE's registered office, lease invoices for its Dubai administrative office, and audit fee payments ($1,634.88), proves the legitimacy of expenses.

14.18 We further observed that AO assertion that BD FZE had no employees is factually incorrect and unsupported by the evidence on record. It is established that Jainulabdeen Anwar Batcha, a former employee of BDML, was employed and remunerated by BD FZE, thereby confirming the entity's operational structure in the UAE. Furthermore, copies of license certificates (Nos. 12462 and 17502) issued by the SAIF Zone Authority substantiate that BD FZE was duly authorized to undertake activities in general trading and social media applications. The evidence further demonstrates that key management decisions were made in the UAE by Bhushan Dua, Neha Shinde, and Jainulabdeen Anwar Batcha. The physical presence of Bhushan Dua in the UAE during the Assessment Years (A.Y.) 2016-17 and 2017-18, as corroborated by travel records, reinforces the independent operational status of BD FZE in Dubai.

These third-party transactions and documentary evidence unequivocally establish BD FZE's legitimate existence and functioning as an independent entity in the UAE, thereby contradicting the AO's conclusion that it was a sham entity or controlled from India.

14.19 We observed that CIT (A)'s point-wise observation made in the appeal order based on whatsapp chat seized are cogent and supported by evidence. Chat-wise explanation is furnished as under:

1. Operation of BD FZE's Bank Account: The AO's contention that Bhushan Dua's operation of BD FZE's bank account, including the placement of surplus funds in fixed deposits, indicates control and management from India is misconceived. The evidence clearly establishes that Neha Shinde, a resident of Dubai and an authorized signatory, also managed the bank account, thereby demonstrating that operational control was exercised within the UAE. The involvement of a Dubai-based signatory undermines the AO's claim of Indian control.

2. Shareholder Resolution for Subsidiary Establishment: A shareholder resolution dated 07.01.2017, signed by Bhushan Dua, pertains to the establishment of a subsidiary in Dubai. The resolution appointed Neha Shinde and Jainulabdeen Anwar Batcha to manage the subsidiary, further evidencing that management and control were vested in UAE-based personnel. This resolution supports the conclusion that BD FZE's operations were independently conducted in the UAE and not from India.

3. Statement Regarding London Flat: The landlord's statement concerning a flat in London, valued at £425,000 and funded by BD FZE's earnings,

does not support the AO's inference of control from India. We finds that the statement was not intended to cause harm and lacks any material connection to establishing Indian control over BD FZE's operations. The funding of the property through BD FZE's legitimate earnings further corroborates its operational independence in the UAE.

14.20 Upon careful consideration of the submissions and evidence presented, we find that the documentary and factual evidence adduced by the assessee conclusively establishes that the control and management of BD FZE were situated in the UAE and not in India. The evidence, including employee records, license certificates issued by the SAIF Zone Authority, records of management decisions taken by UAE-based personnel, and third-party transactions, unequivocally demonstrates the independent operational status of BD FZE in Dubai. The Revenue's contention that BD FZE was controlled and managed from India lacks merit and is unsupported by the material on record.

14.21 Further audited financials signed by an independent auditor, reflecting interest income, commission income, and license fees along with expenses including salary, rent, legal, and other costs refute the AO claim that BD FZE was used to divert SCIPL's income to a tax-free jurisdiction, as no superfluous income was booked in BD FZE.

14.22 We observe that The AO assertion that the operation of BD FZE's bank account by Bhushan Dua, including the placement of surplus funds in fixed deposits, indicates control and management from India is erroneous and

unsupported by evidence. The record clearly demonstrates that Neha Shinde, a resident of Dubai and an authorized signatory, also actively managed the bank account. This establishes that operational control was exercised within the UAE, thereby negating the AO's claim of control from India. Further shareholder resolution dated 07.01.2017, executed by Bhushan Dua, pertains to the establishment of a subsidiary in Dubai in which Neha Shinde and Jainulabdeen Anwar Batcha Dubai based persons were appointed to manage the operations, reinforcing the fact that management and control of BD FZE were vested with UAE-based personnel. This resolution unequivocally supports the finding that BD FZE's operations were independently conducted in the UAE, independent of any control from India. Lastly the AO's reliance on the landlord's statement concerning a flat in London, valued at £425,000 and funded by BD FZE's earnings, to infer control from India is misplaced as the statement lacks any material nexus to establishing control over BD FZE's operations from India and was not intended to cause prejudice. Furthermore, the funding of the property through BD FZE's legitimate earnings corroborates the independent operational status of BD FZE in the UAE.

14.23 It has been held in ITA Nos 214, 215, 216, 1290, 1291, 1292 for Assessment Year 2007-08 till 2012-13 by the coordinate bench in the case of appellant company that BDML is a separate and distinct company and not a sham entity. We further observe that the AO has not mentioned that how the

income of Bollywood Digital FZE can be taxed in the hands of the assessee as the assessee is not a shareholder of Bollywood Digital FZE. The AO even has not mentioned under which provisions of under which provisions of Income Tax Act this income has been assessed in the hands of the appellant. Therefore the profit of Bollywood Digital FZE cannot be added in the total income assessee company

14.24 Consequently, the grounds of appeal raised by the Revenue, premised on the erroneous assumption of Indian control over BD FZE, are unsustainable in law and fact. Accordingly, the Revenue's grounds of appeal for AY 2016-17 and 2017-18 are hereby dismissed.

15. Under this ground of appeal, addition on account of retention of income in Dubai through M/s Highpath Limited is challenged by the department. Details of additions made over the years are tabulated as under:

Assessment Year	Amount
2017-18	63,11,784
2018-19	89,29,050
2019-20	1,24,42,299

15.1 The department raised this common issued regarding addition on account of retention of Income in Dubai through M/s Highpath Limited in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2017-18, 2018-19 and 2019-20 (ITA Nos. 272/DEL/2024, 273/DEL/2024 and 326/DEL/2024). The decision for the appeals for Assessment Years 2017-18 will

be applicable for AY 2018-19 and 2019-20 as the issues are identical and no new circumstances exist.

15.2 Brief facts of the case are that the during the search proceedings on appellant premises signed agreement was found between Highpath Ltd and SCIPL for sharing of revenue in the territories of Pakistan. Further, M/s HighPath Limited had another agreement with M/s Media Master Pakistan for distribution of music rights in Pakistan. Further the AO the funds received from Media Master Pakistan.

15.3 The additions so made were deleted by the CIT(A) by appreciating the facts and circumstances and concluding that there was sufficient explanation or the reason for which BDML was incorporated in Dubai and further Highpath Limited and Bollywood Digital FZE existed and functioned independently in Dubai and the conclusive findings of the CIT(A) deserves to be reproduced herein below for further analysis and determination of the grounds:

> *"12.15 I have carefully considered the assessment order and the written submission of the appellant. The entire dispute in this Ground of Appeal is about the income (earned outside India) of the foreign entity Bollywood Digital FZE (BD FZE) from another foreign entity Highpath Limited and the same has been taxed in the hands of appellant company (SCIPL) on the ground that income of SCIPL has been diverted into the hands of foreign entity Bollywood Digital FZE through Higpath Limited.*
>
> *12.16 The AO has questioned transaction between Highpath limited and BD FZE. Therefore the issue to examine would be whether Highpath Limited and Bollywood Digital FZE existed and functioned independently or not. A license agreement dated 17.12.2016 executed between SCIPL and Highpath Limited was entered to facilitate Master Media Pakistan for*

exploitation of rights of music videos, film etc copyrights belonging to M/s SCIPL in the territories of Pakistan.

12.17 The issue is determined in this ground is whether the amount received by Highpath Limited from Media Master Pakistan will be treated as income of SCIPL.

12.18 The main argument of the Assessing Officer for making the addition is summarised as under:

> *a) Signed agreement was there between Highpath Ltd and SCIPL for sharing of revenue in the territories of Pakistan. Further, M/s HighPath Limited had another agreement with M/s Media Master Pakistan for distribution of music rights in Pakistan. The funds received from Media Master Pakistan have been retained in Dubai whereas these funds should have been offered to tax in India.*
>
> *b) Instructions have been given by employees of Sh. Bhushan Kumar to transfer the amount received in Highpath Ltd to BDML after deduction of 5%.*
>
> *c) On account of detailed reasoning given in assessment order for AY 2013-14 and 2014-15 regarding de facto control of the affairs of BDML by employees of SCIPL to prove that BDML Itself has been established for diverting Income of SCIPL, the Income diverted to Bollywood Digital FZE a nominee of BDML is to be added to the total income of the assessee.*
>
> *d) With these remarks the AO concluded that total USD 414594 retained in Dubai through Highpath Ltd is to be added for Assessment Years 2017-18, 2018-19 and 2019-20. The addition of AY2018-19 is 1,37,370 USD equivalent to Rs. 89,29,050/-.*

12.19 The AO has argued that income of SCIPL has been diverted to tax free jurisdiction and parked with M/s Bollywood Digital FZE Dubal through M/s High path Limited. The AO In the order has stated that the bank account of Highpath Ltd shows credit of USD 97,344 on 01/03/2017, the same comes to AED 357252 taking 3.67 AED as exchange rate on 01/03/2017. This amount after deducting 5% commission has been credited in the bank account of Bollywood digital FZE an entity owned and controlled by Sh. Bhushan Kumar in Dubai. The Assessing Officer further stated that the bank account of Bollywood Digital FZE shows a credit of

AED 3,37,820 on 17/06/2017 and this amount is almost equal to amount after 5% deduction of commission from AED 3,57,252 credited in the bank account of Highpath Ltd from Media Master Pakistan. Hence relying on this argument, the assessing officer observed that income received in Highpath Ltd have been retained in Dubai through Bollywood Digital FZE an entity owned and controlled by Mr. Bhushan Kumar. However, the Assessing Officer has not referred to any document to support this contention.

12.20 Firstly, the fact that the money received by M/s Highpath from Media Master Pakistan has been transferred to BD FZE is not established. Even if it is assumed that income has been diverted to Bollywood Digital FZE, it has been held that matter of diversion of Income of SCIPL in the hands of Bollywood Digital FDE has been already addressed in the present appeal and in earlier years. It has been held that Bollywood Digital FZE is an independent and separate entity from SCIPL, therefore Income off Bollywood Digital FZE is not taxable in the hands of assessee. It is important to underline that this adjudication Include the income received by Bollywood Digital FZE from M/s Highpath Limited, ultimately settling the entire matter.

12.21 Moreover, the independent existence of BD FZE has been already confirmed under ground no 2 of the present appeal which is summarised under this ground. The appellant has filed evidences in support of existence and functioning of BD FZE which was also filed during the assessment before the assessing officer. The assessing officer has not examined the same during the course of assessment before the assessing officer. The evidence /material in support of existence and functioning of BD FZE furnished by the appellant can be summarised as under:-

(i) Audited Balance Sheet showing revenue and expenditure
(ii) Presence of employee on whom salary expenditure was incurred.
(iii) Copy of lease agreement for registered office and invoices for admn office.
(iv) Copies of Invoices for legal expenses, audit fees.
(v) Details furnishing physical presence of Bhushan Dua in UAE for taking management decisions.
(vi) Auditors certificate giving classification of revenue earned by BD FZE during AY 2016-17 and 2017-18.

12.22 Upon examination of the above Balance Sheet and Auditors certificate it is seen that revenue is 2.059 million USD and after taking into account the expenses of 0.207 million USD, the net profit for the year was 1.851 million USD. Amount of 2,07,990 USD was incurred on administrative expenses which includes salary (96,000 USD), rent (42,000 USD), Legal & professional expenses (20136 USD) other administrative expenses (49,654 USD). The above results also indicate that BD FZE has not booked superfluous income, to boost its profits and maximise tax free profits, contrary to the allegation made in the assessment order that BD FZE was a device for diversion of Income of SCIPL to a tax free jurisdiction.

12.23 The appellant has also submitted that after the closure of operations of BDML its earlier employee namely Jainulabdeen Anwar Batcha was working for BD FZE to whom Salary was paid. Therefore, the observation made in the assessment order that BDML had no employee is found to be factually incorrect. The appellant has also filed copy of tenancy agreement executed with Govt. of Sharjah for its registered office premises at P.O. Box 123029 within Sharjah Airport International Free Zone bearing address at R2-2191, SAIF Lounge, Sharjah, UAE. The lease agreement for office premises has been executed with a third party that too Govt. of Sharjah. Further for is administrative office located at premises bearing No. 2604, The Prism Tower, Business Bay, P.O. Box 34724, Dubai, UAE the appellant has filed copies of lease invoices and expenditure on rent has been recorded in the P&L account of BD FZE. The fully furnished premises has been taken on rent on all Inclusive basis including electricity, water, maintenance and secretarial assistance. Also an amount of USD 18444.13 was paid to Magus Consultancy for renewal of license fee of BDFZE, an amount of USD 1634.88 was paid to the Auditors towards audit fee. Copy of relevant ledger accounts and substantiating invoices have been filed. Therefore, it has been Incorrectly presumed in the assessment order that these expenses appear to be bogus. Further, the Appellant has filed copies of License Certificate having License No. 12462 and License No. 17502 for the relevant period issued by SAIF Zone Authority permitting General Trading and permitting social media applications development and management as activities (i.e. creating and distribution of copyrighted content and its derivatives on mobile phones) for BDFZE for the relevant

period. All these evidences/materials are in the nature of transactions of BD FZE with non-related third party and therefore cannot be over looked. The material and evidence brought on record by the appellant supports the submission that during the relevant assessment year the entity BD FZE existed and functioned from Dubai.

12.24 It is also noted that all the key management decisions were taken by Sh. Bhushan Dua Director, Ms. Neha Shinde, Manager and Mr. Jainalubdeen Anwar Batcha, employee in UAE. Ms. Neha Shinde and Mr. Jainalubdeen Anwar Batcha were residents of UAE and Shri Bhushan Dua physically visited UAE for taking these management and policy decisions. The dates of his visits in UAE during AY 2016-17, 2017-18 AY 2018-19 are tabulated below :-

For A.Y 2016-17

S. No.	*Particulars*	*Date of presence in UAE*
1.	*Bhushan Dua*	*01.08.2015 to 02.08.2015*
2.	*Bhushan Dua*	*17.10.2015 to 18.10.2015*
3.	*Bhushan Dua*	*19.01.2016 to 20.01.2016*
4.	*Bhushan Dua*	*02.03.2016 to 03.03.2016*
5.	*Bhushan Dua*	*12.03.2016 to 13.03.2016*

FOR A.Y 2017-18

S. No.	*Particulars*	*Date of presence in UAE*
1.	*Bhushan Dua*	*05.04.2016 to 06.04.2016*
2.	*Bhushan Dua*	*06.10.2016 to 07.10.2016*
3.	*Bhushan Dua*	*28.10.2016 to 02.11.2016*
4.	*Bhushan Dua*	*03.02.2016 to 05.12.2016*
5.	*Bhushan Dua*	*22.02.2017 to 23.02.2017*

FOR A.Y 2018-19

S. No.	*Particulars*	*Date of presence in UAE*
1.	*Bhushan Dua*	*09.04.2017 to 11.04.2017*
2.	*Bhushan Dua*	*19.05.2017 to 23.05.2017*
3.	*Bhushan Dua*	*14.09.2017 to 15.09.2017*
4.	*Bhushan Dua*	*05.12.2017 to 05.12.2017*
5.	*Bhushan Dua*	*23.12.2017 to 01.01.2018*

12.25 All major decisions regarding the control, management and functioning of the company BD FZE were taken by the owner, promoter, manager and employee of BD FZE during the physical presence of promoter i.e. Bhushan Dua in UAE and the remaining members of the decision making team were residents of UAE.

12.26 From the above discussed material/evidence it is found that there is sufficient material on record to hold that BD FZE had Independent existence and functioned Independently from UAE.

12.27 It has been established that Highpath Limited is an Independent foreign entity. Shri Bhushan Kumar neither holds a directorial position nor any ownership shares in M/s Highpath Limited. Additionally, none of his associated entities or employees have any directorial or ownership roles within this company, further affirming the lack of control over this entity by Mr. Bhushan Kumar. The legal position is well settled that the expression "control and management" means control and management of a company and not carrying on day to day business. In order to determine the residence of a foreign company the real test to be applied is where does the control and directing power function. The situs of the "Board of Directors" of a foreign company would determine the place of control and management. Since the Bhushan Kumar is neither a director in the company Highpath Limited nor any of his employee or associate entity having any directorship or ownership in the company therefore no question of controlling the entity by Bhshan Kumar has been arises.

12.28 For the sake of argument even if it is believed that the control and management of Highpath Ltd. or BD FZE was in India, even in that case the income of Highpath or BD FZE cannot be taxed in the hands of the appellant company. In that scenario, M/s Highpath or M/s BD FZE can be taxed separately holding their PE to be in India. However, it is not the case of the Assessing Officer that the overseas entities are to be taxed Independtly in India.

12.29 Another important aspect which needs to be noted is that the search action which had element of surprise did not detect any original records of M/s Highpath Limited in the nature of its books of accounts, Invoices, vouchers, original agreements, title deeds of immovable property, tenancy agreements, cheque books, bank statement etc. If the argument made regarding M/s Highpath Limited being controlled and managed from India was taken to be true at least some original record of M/s Highpath Limited would have been detected in the search action. Thus, it is established that

the control and management of M/s Highpath Limited during assessment year under appeal was in UAE only.

12.30 It may be noted that even if it is held that M/s Highpath Limited was controlled and managed from India its income cannot be taxed in the hands of SCIPL since it is a separate legal entity. Thus, even if the provisions of section 6(3) of the Income Tax Act were made applicable, then M/s Highpath Limited is to be separately taxed in India on the basis of its residence being in India. But under no circumstances, the income of M/s Highpath Limited can be taxed in the hands of the appellant company. In the assessment order, the Assessing Officer has discussed and vehemently argued that M/s Highpath Limited has place of effective management and control in India. If that be so, then it is not understandable as to why the income of M/s Highpath Limited has been assessed to tax in the hands of the appellant company. If the Assessing Officer believed that M/s Highpath Limited had place of effective management and control in India, then the income accruing in India of M/s Highpath Limited 's case should have been taxed in the hands ofM/s Highpath Limited only. Therefore, I find that the addition made in the assessment order is not sustainable even on this ground.

12.31 It has been vehemently contended in the assessment order that income of M/s Highpath Limited is actually income of SCIPL which has been diverted to a tax-free jurisdiction for evading taxes In India. However, in support of this argument the assessing officer has not been able to bring on record anything material or substance except for alleging that Highpath Limited is not an independent entity and was being controlled and managed from India. The term "diversion of income", would mean a process by which income is diverted before it is earned by the assessee.

12.32 There has been no evidence to establish in any manner whatsoever that the receipt of either BD FZE or Highpath was returned back to the appellant company in any manner whatsoever. On this ground also the addition made is not sustainable.

12.33 In view of the above discussion, it is held that the income of M/s Highpath Limited cannot be treated as a case of diversion of Income of SCIPL.

12.34 In view of the findings discussed above the addition of Rs. 89,29,050/- is not sustainable on merits. Consequently, the addition of Rs.

89,29,050/- is deleted and this ground of appeal is allowed. Ground No. 3 is allowed"

15.4 The Ld. Cousel of the assessee argued that BDML's independent existence in Dubai is already established by coordinate bench in prior years (2007-08 to 2012-13, per ITA Nos. 214, 215, 216, 1290, 1291, 1292), and additions treating BDML's income as SCIPL's diversion deleted by CIT(A) are upheld. Thus, the current addition of taxing income of Highpath in the hands of the assessee is not at all justified and without any basis, more so in this case the assessee or its directors have no stake or control in High path which is a independent entity.

15.5 Further the Ld. Cousel of the assessee in respect of WhatApp chat between Bhushan Kumar and Beer Singh, alleging Highpath Limited is a pass-through entity diverting SCIPL's income to a low-tax jurisdiction submitted that the agreement dated 17.12.2016 between SCIPL and Highpath Limited was solely to demonstrate to Media Master (Pakistan) that Highpath had rights to license T-Series content for Pakistan, as Indian entities (like SCIPL) are restricted from direct licensing there.Highpath acted as a facilitator for the commercial arrangement between BDML and Media Master, not as a conduit for diverting SCIPL's income.

15.6 We have heard the rival submissions made by the respective parties and we have pursued the material available on record. We have meticulously examined the record and the submissions made by the appellant company and it is observed

that the AO's case hinges on unsubstantiated assumptions (e.g., transaction approximations without docs). Appellant counters with concrete, third-party verified evidence (audits, govt. leases, licenses), which AO ignored during assessment.

15.7 In reply the appellant submitted evidence (audited balance sheets, employee records, lease agreements, expense invoices, and Bhushan Dua's UAE visit proofs via passport stamps/immigration data) in substantiation of the fact that BD FZE's was an independent entity in UAE. Critically, AO's failure is highlighted to rebut or even address this material, including the independent auditor-signed balance sheet, which carries presumptive validity under auditing standards. This omission by AO amounts to a procedural infirmity, rendering the assessment order flawed and unsustainable, as per precedents on fair inquiry.

15.8 We observe that BD FZE's financial figures including revenue USD 2.059 million, expenses of USD 0.207 million (broken down into salaries, rent, legal/professional fees, etc.), yielding a net profit of USD 1.851 million debunks AO's allegation of income diversion from SCIPL to a tax-free heaven, as no inflated or fictitious income is evident. We view this as evidence of arm's-length operations, aligning with Section 92 of the Act on transfer pricing, and underscore that mere routing suspicions without proof cannot justify additions.

15.9 We endorse BD FZE's physical and functional presence through third-party documents (Sharjah Government tenancy agreement, Dubai office lease invoices, audit fees, license certificates for trading/social media activities). It corrects AO's factual errors, such as the "no employees" claim, by noting Jainulabdeen Anwar Batcha's employment (post-BDML closure). Management decisions by Bhushan Dua (during documented UAE visits in AY 2016-17/2017-18), Neha Shinde, and Batcha in UAE further prove effective control outside India. We see these as irrefutable third-party interactions, negating AO's "bogus expenses" narrative and supporting non-residency under Section 6(3).

15.10 Extending to Highpath, absence of Bhushan Kumar's ownership/directorship/employee involvement confirms its UAE-based control. No incriminating records found in Indian searches bolsters this.

15.11 The ground of appeal that Bollywood Digital FZE is a separate legal and independent entity and its income can-not be taxed in the hands of SCIPL in India is already addressed above.

15.12 We find that the AO’s order is speculative and evidence-deficient. BD FZE and Highpath are deemed separate, UAE-resident entities with legitimate operations, not conduits for SCIPL's income diversion. AO's failure to engage with appellant's proofs violates natural justice, while CIT(A)'s evidence-based analysis aligns with law. This decision safeguards against overreach in cross-

border taxation, emphasizing substance over form and separate entity principles. Since no diversion of SCIPL's income is proven, the department's ground of appeal for AY 2017-8 to AY 2019-20 is dismissed.

16. The addition made in the assessment order based on WhatsApp Chat Extracted from the digital data seized using codewords Tapes has been challenged by the department. Details of additions made over the years are tabulated as under:

Assessment Year	2018-19	2019-20
Unaccounted Cash Receipts	50,00,000	75,00,000
Unaccounted Cash Payments	5,00,000	Nil

16.1 The department raised this common issue regarding addition on account of cash transaction conducted using the-Codewords Tapes in order to avoid payment of taxes, which is present in appeals for Assessment Years 2018-19 and 2019-20 (ITA Nos. 273/DEL/2024 and 326/DEL/2024).

16.2 Brief facts of the case are that WhatsApp chats between Shri Shivam Chanana and Shri Bhushan Kumar reveal discussions about receiving "tapes," with 75 tapes confirmed on 04/07/2018, 50 tapes (including 25 from the previous day) on 30/11/2017, and 5 tapes given to Shri Susheel for POP (Plaster of Paris) on 30/04/2017, which the assessing officer linked to the construction of M/s SCIPL's new corporate office in Mumbai. The AO interpreted the term "tapes" as unaccounted cash income received by SCIPL in lakhs. Despite Shri Bhushan

Kumar's claim to the Investigation Wing that these were actual tapes, the AO draws the observation that evidence suggests the 5 tapes represent unaccounted expenditure of Rs. 5 Lakhs in cash for the office construction.

16.3 The appellant's primary contention is that WhatsApp chats lack evidentiary value under Section 65B unless certified, and this issue is addressed first. Relying on the Supreme Court's ruling in Ambalal Sarabhai Enterprises v. KS Infra space LLP, WhatsApp chats are virtual verbal communications with evidentiary value, subject to proof during trial, and are not "dumb documents."

16.4 Based on the details extracted from the WhatsApp communications, a year-wise bifurcation of cash transactions allegedly conducted by Super Cassettes Industries Private Limited (SCIPL), using the codeword "Tape," has been tabulated by the Assessing Officer (AO). The AO determined that the appellant company received cash payments amounting to Rs. 50,00,000/- during the Assessment Year (A.Y.) 2018-19 and Rs. 75,00,000/- during A.Y. 2019-20. Additionally, an expenditure of Rs. 5,00,000/- was incurred in cash during A.Y. 2018-19. Consequently, these amounts, were added to the total income of the appellant company for the respective assessment years, as unexplained income and unexplained expenditure.

16.5 The additions so made were deleted by the CIT(A) by appreciating the facts and circumstances and concluding that no corroborative material

was found during the search under Section 132(4) of the Income Tax Act. The relevant paras of AY 2018-19 are reproduced below:-

> *"**18.7** The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground Nos. 11 and 12, the appellant has contended that the A.O was not justified in making an addition of Rs. 50,00,000/- and Rs. 5,00,000/- during AY 2018-19 on account of un accounted income on account of alleged unaccounted cash income received /paid.*
>
> ***18.8** For the assessment year under consideration, the assessing officer has referred various chats on different dates which are re produced as under:*
>
> *From: 919920533221@s.whatsapp.net Shivam*
> *Timestamp: 04-07-2018 15:11:47(UTC+0)*
> *Source App WhatsApp*
> *Body:*
> *75 tapes revived*
> *From: From: 919821444221@s.whatsapp.net Bhushan Kumar*
> *Timestamp: 04-07-2016 15:12:16(UTC+0)*
> *Source App: WhatsApp*
> *Body:*
> *From: 919920533221@s.whatsapp.net Shivam*
> *Timestamp: 30-11-2017 11:08:00 (UTC+0)*
> *Source App: WhatsApp*
> *Body:*
> *Got 25 tapes*
> *From: From: 919821444221@s.whatsapp.net Bhushan Kumar*
> *Timestamp: 30-11-2017 11:09:53(UTC+0)*
> *Source App: WhatsApp*
> *Body:*
> *Total 50 right*
> *From: From: 919821444221@s.whatsapp.net Bhushan Kumar*
> *Timestamp: 30-11-2017 11:10:01(UTC+0)*
> *Source App: WhatsApp*
> *Body:*
> *Yesterday and today*
> *From: 919920533221@s.whatsapp.net Shivam*

Timestamp: 30-11-2017 11:10:12(UTC+0)
Source App: WhatsApp
Body:
Yes sir
From: 919920533221@s.whatsapp.net Shivam
Timestamp: 22-04-2017 06:52:22 (UTC+0)
Source App: WhatsApp
Body:
Given 5 tapes to susheelji
From: 919920533221@s.whatsapp.net Shivam
Timestamp: 22-04-2017 06:52:27(UTC+0)
Source App: WhatsApp
Body:
For POP
From: From: 919821444221@s.whatsapp.net Bhushan Kumar
Timestamp: 22-04-2017 06:52:37 (UTC+0)
Source App: WhatsApp
Body:
Ok

18.9 *The issue to be decided in the present ground is whether a presumption can be drawn only on the basis of chats containing numerical figures without any corroborating material to reach a conclusion that unaccounted cash income / Expenses were earned /incurred by the appellant.*

18.10 *The AO has determined unaccounted cash Income / expenses were incurred for construction work-at-Bombay on the basis of whatsapp chat. It has been presumed by him that the numerical figures appearing in the whatsapp message are amounts mentioned in lakhs. It has further been assumed that tapes mean unaccounted cash.*

18.11 *The basis for the entire addition is the whatsapp message reproduced above. During the course of search action, no other corroborating material has been found to support the inferences drawn by the AO for making the Impugned addition. From the assessment order, it is found that no statement of any person involved in the chat with Director Sh. Bhushan Kumar (Managing Director) have been recorded at the time of search u/s 132(4) of the Act or during post search enquiries. It is also found that apart from relying on the whatsapp chat, the AO failed to make any enquiry on the impugned Issue during the course of assessment proceedings. Lastly Shri Bhushan Dua in his statement recorded on 02.09.2019 replied in*

respect of Q 103 that the Chat is in respect of Tapes which were asked from Shri Shivam, the details of which could not be remembered by him at the time of statement.

18.12 *It is observed that the explanation in respect of the Chat furnished at the same of search, during the post search proceedings and during the assessment proceedings are same i.e. Musical Tapes for some Music Album, therefore the same cannot be inferred as afterthought. There is no evidence available in the order to establish that the use of word "tapes' are indicative/representative for the word cash or money.*

18.13 *If the chats found from the mobile phone of Shri Bhushan Kumar is seen, then it is found that the word tapes are used in the impugned chat only. At other places for cash he does not uses any acronym after the amount. In any way the Assessing Officer has not discussed or established that tapes means cash. The appellant is in the business of making of films and music. In this line of business tape is commonly used word. It appears that probably some film or music tapes were called for revival.*

18.14 *In the chat the use of the word 'revived' indicates that probably some old music/film tapes may have been called for revival. If the persons involved in the chat was mentioning about the cash in the chat, in that case the word 'received' or 'paid' would have been written. The use of the word 'revived' does not indicate that it was in respect of transaction of any money. Therefore, the presumption drawn by the Assessing Officer is baseless and not supported by any evidence.*

18.15 *Therefore, the well settled legal position is that a non speaking document referred to as a "Dumb Document" without any corroborative material, evidence on record and finding that such document has materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by such assessee, has to disregarded for the purposes of assessments to be framed u/s 153A of the Act.*

18.16 *In view of the above it is held that the addition made based on whatapp chat with Shri Shivam are nothing but a Dumb Document. The same has to be disregarded for the purpose of computation of total income and therefore addition of Rs 50,00,000/-(Ground No. 11) and Rs. 5,00,000/- (Ground No. 12) during AY 2018-19 is hereby is deleted. Accordingly, Ground No. 11 and 12 are allowed."*

16.6 The key issue is whether numerical figures in WhatsApp chats, without corroborating evidence, can support a presumption of unaccounted cash income or expenses incurred by the appellant. The AO assumed unaccounted cash income/expenses for construction work in Bombay based on WhatsApp chats, presuming numerical figures were amounts in lakhs and that "tapes" referred to unaccounted cash.

16.7 The Ld. Counsel of the assessee submitted that as per chat dated 04.07.2018, the messages read as "75 tapes revived" which mean that some corrections were done in the tapes before finalisation. Nowhere it is mentioned that the tapes are received. It may be highlighted that these tapes containing media were damaged and therefore the same were revived with the help of technical persons. The data maintained in the tapes is very crucial and must be preserved. At times some tapes got wear and tear which required repair and maintenance. This matter was being discussed in chat which the Ld. AO alleged to be unaccounted amount received in cash. Therefore, the allegation is completely baseless.

16.8 Further Ld. Counsel of the assessee submitted that there is no corroborating material on record which states that 50 tapes and 5 tapes mentioned in the chat is amount in lacs. The Ld. AO has not highlighted even one instance where the amount mentioned in chat in tapes is interpreted as amount mentioned in lacs. Further Shri Bhushan Kumar in the post search proceedings in his

statement also affirmed that the amount mentioned in chat are tapes. Therefore, the allegations of AO are meaningless and without any base. The Ld Counsel further argued that in the chat no name has been mentioned and it is only mentioned that tapes revived or tapes got. As per the Ld Counsel if the argument of the Ld. AO that tapes means cash is accepted then also no names have been mentioned in the chats as to from whom the cash was received and for what. Hence the presumption of the AO that tapes is cash is not correct and without any basis.

16.9 The AO alleged that 5 tapes given to Susheel ji (another employee of appellant company) for POP meant that amount of 5 lacs was spent on construction of Bombay office without establishing a link between the two. In this regard the The Ld. Counsel of the assessee submitted that there is no corroborating material highlighted in the order which proves that 5 tapes handed over to Susheel ji were 5 lacs spent on building of Bombay Office. There is no link between tapes given to Susheel ji and construction of Bombay Building. Further "POP" used in the chat here means POP music tapes and not Plaster of Paris. Be that as it may, there is no proof or evidence of the receipt of cash of Rs. 75 lacs during AY 2019-20, 50 lacs and 5 lacs during AY 2018-19 as is being alleged. It is also not clear that such cash income is emanating on what account and from whom. There are no particulars specified in the SCN regarding the

alleged person making the payment of cash income to SCIPL. Thus, the whatsapp chat remains a dumb document.

16.10 Lastly the Ld. Counsel of the assessee highlighted that the well settled legal position is that a non-speaking document without any corroborative material, evidence on record and finding that such document has materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by such assessee, has to be disregarded for the purposes of assessments to be framed pursuant to search and seizure action. From the search and seizure perspective, such nonspeaking seized documents are referred to as ”Dumb Documents”.

16.11 We have heard the rival submissions made by the respective parties and we have pursued the material available on record.The AO’s determination is premised on interpretation of WhatsApp Chats extracted from the digital data seized from SCIPL premises during search proceedings. The AO interpreted the words used as “Tapes” as cash and the figure mentioned in lakhs and added Rs. 50 lakhs and Rs. 75 Lakhs as unexplained income in AY 2018-19 and AY 2019-20 and Rs. 5 lakhs as unexplained expenditure in AY 2018-19.

16.12 The primary issue before us is whether numerical figures contained in WhatsApp chats, in the absence of corroborative evidence, can form the basis for presuming unaccounted cash income or expenses incurred by the appellant company. The Assessing Officer (AO) made additions to the appellant’s income,

presuming that the numerical figures mentioned in WhatsApp chats represented unaccounted cash transactions related to construction work in Bombay, with the term "tapes" interpreted as a codeword for cash and the figures assumed to be amounts in lakhs. These additions were solely based on the WhatsApp chats, without any corroborative evidence recovered during the search conducted under Section 132(4) of the Income Tax Act, 1961.

16.13 The AO failed to conduct any further investigation to substantiate the presumption that the term "tapes" referred to cash. A statement recorded from Shri Bhushan Dua on 02.09.2019 clarified that the chats pertained to musical tapes requested from Shri Shivam, though specific details were not recalled. The absence of any inquiry or corroborative material renders the AO's presumption speculative and unsupported by evidence.

16.14 The appellant has consistently maintained, during the search, post-search inquiries, and assessment proceedings, that the term "tapes" referred to musical tapes related to a music album, not cash. We find that this explanation is consistent and cannot be dismissed as an afterthought. The record reveals no evidence to suggest that "tapes" was a codeword for cash or money. Notably, the term "tapes" appears only in the impugned WhatsApp chat, while other communications by Shri Bhushan Kumar do not employ acronyms to denote cash. Given the appellant's business in the film and music industry, the term "tapes" is more likely to refer to film or music tapes, particularly for revival purposes. The

use of the word "revived" in the chat further supports the interpretation that the reference was to old music or film tapes, not cash transactions. Had the chats referred to cash, terms such as "received" or "paid" would likely have been used. Further there are no names mentioned in the WhatsApp chat from whom the alleged unaccounted receipts were made. The AO's interpretation of "tapes" as cash lacks evidential foundation and is unsustainable. Further no name has been mentioned in the chats relied upon by the AO and even if the presumption drawn by AO is taken as correct then also in the absence of any names it cannot be held that the assessee had received cash. The absence of corroborative material renders the AO's reliance on the WhatsApp chat legally untenable.

16.15 In light of the above facts, we find that the additions of Rs. 50,00,000/- and Rs. 75,00,000/- (alleged cash receipts) during AY 2018-19 and AY 2019-20 and Rs. 5,00,000/- (alleged cash expenditure) during Assessment Year (A.Y.) 2018-19 are devoid of evidential support and are based on an erroneous presumption. The AO's failure to conduct inquiries, the lack of corroborative evidence, and the appellant's consistent explanation regarding the term "tapes" collectively render the additions unsustainable. Accordingly, the additions of Rs. 50,00,000/- and Rs. 75,00,000/- during AY 2018-19 and AY 2019-20 as unexplained receipts and Rs. 5,00,000/- during Assessment Year (A.Y.) 2018-19 as unexplained expenditure deleted by CIT(A) are upheld and revenue ground of

appeal for Assessment Years 2018-19 and 2019-20 are dismissed.

17. Under this ground of appeal the enhancement made by the CIT(A) after issue of notice of enhancement of income u/s 127 has been challenged by the assessee. Details of additions are tabulated as under:

Assessment Year	Particulars	Amount
2015-16	Enhancement done on account of Roy Movie Expenses	17,52,50,000
2018-19	Enhancement done on account of Raabta Movie Expenses	8,73,51,431

17.1 The assessee raised this common issue regarding enhancement done in appeal in respect of Roy Movie / Raabta Movie Expenses in order to avoid payment of taxes, which is present in appeals for Assessment Years 2015-16 and 2018-19 (ITA Nos. 2713/DEL/2023 and 51/DEL/2024).

17.2 Brief facts of the case are that for AY 2015-16, the appellant company produced a film titled “Roy” which was released on 13.02.2015. The main cast of the said film included eminent stars. The assessee company had shown and claimed expenditure of Rs. 78,25,37,440/- in respect of this film for the Financial Year ended 31.03.2015 relevant to Assessment Year 2015-16. The AO

made a disallowance of Rs. 26,81,39,398/- in the Assessment Year 2016-17 by disallowing part of the expenses incurred on foreign shooting of the film “Roy”. In the First Appellate proceedings for the Assessment Year 2016-17 the assessee argued before the CIT(A) that the disallowance of Rs. 26,81,39,398/- for the Assessment Year 2016-17 is not sustainable since these expenses were never debited and claimed in the Assessment Year 2016-17. The CIT(A) after considering the submission of the assessee deleted the disallowance made in the Assessment Year 2016-17 and issued a notice for enhancement for the Assessment Year 2015-16 since the appellate proceedings for Assessment Year 2015-16 were pending before the CIT(A). The assessee filed response before the CIT(A) in respect of notice for enhancement issued for Assessment Year 2015-16. The CIT(A) upon considering the response of the Assessee made enhancement of Rs. 17,52,50,000/- as against initial disallowance of Rs. 26,81,39,398/- made by the AO for Assessment Year 2016-17 on account inflated expenses claimed in respect of Roy Movie for Assessment Year 2015-16

17.3 Further AO had disallowed amount of Rs 8,73,51,431/- being inflated production expenses of the film 'Raabta’ in A.Y 2017-18. The assessee in appellate proceedings for Assessment Year 2017-18 before the CIT(A) submitted that disallowance should not be made in AY 2017-18 since these expenses do not pertain to A.Y 2017-18 and were never claimed in the P&L

Account for the year ended 31.03.2017 but were incurred during AY 2018-19 and debited in the Profit & Loss Account for the Assessment Year 2018-19. The CIT(A) after considering the submission of the assessee deleted the disallowance made in the Assessment Year 2017-18 and issued a notice for enhancement for the Assessment Year 2018-19 since the appellate proceedings for Assessment Year 2018-19 were pending before the CIT(A). The assessee filed response before the CIT(A) in respect of notice for enhancement issued for Assessment Year 2018-19. The CIT(A) upon considering the response of the Assessee made enhancement of Rs. 8,73,51,431/- by disallowing expenses incurred for the movie Raabta.

17.4 Ld. Counsel for the assessee argued before us that the CIT (A) was not legally correct in enhancing the income of the assessee by Rs. 17,52,50,000/- in respect of Roy Movie Expenses for Assessment Year 2015-16 and Rs. 8,73,51,431/-in respect of Roy movie for AY 2018-19. According to the Ld Counsel this disallowance was made by the AO in Assessment Year 2016-17 and AY 2017-18 respectively, these expenses were debited in the Profit and Loss Account for the Financial Year 2014-15 and AY 2017-18 relevant to Assessment Year 2018-19 and AY 2015-16. Based on the same the CIT(A) deleted the additions made in Assessment Year 2016-17 and 2017-18 and issued notice for enhancement for the Assessment Year 2015-16 and 2018-19 respectively.

17.5 Further Ld. Counsel argued that this was a completely new source of income for the Assessment Years 2015-16 and 2018-19 respectively since these issues were never the part of the Assessment Orders for both these years, further these issues were never discussed in the Assessment Years 2015-16 and 2018-19. According to the Ld. Counsel the jurisdiction to deal with this was under section 147/148 and section 263 and hence the CIT(A) exceeded its jurisdiction by enhancing the income for Assessment Years 2015-16 and 2018-19. The Ld Counsel in this regard placed reliance on the following judicial precedents

a) Commissioner of Income Tax VS Sardari Lal & Co. (2002) 120 Taxmann 595 (Delhi High Court)

b) Hari Mohan Sharma VS Assistant Commissioner of Income-tax, Circle-63(1), New Delhi [2019] 110 taxmann.com 119 (Delhi - Trib.)

c) CIT VS Union Tyres (1999) 107 Taxmann 447 (Delhi High Court)

d) Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC)

e) *Shapoorji Pallonji Mistry 44 ITR 891 (SC)*

17.6 The Ld DR has drawn attention of the Bench to the Judgement of Supreme Court in the case of *CIT* v. Nirbheram Daluram 224 ITR 610 to argue that the powers of CIT(A) are wide and CIT(A) can make enhancement on new source of income. The Ld. Counsel for the assessee argued that the case laws relied upon by him have considered and distinguished the judgement of Supreme Court in the case of ***CIT* v. Nirbheram Daluram 224 ITR 610**. The Ld Counsel submitted

that the reiteration of judicial restraint on enhancement powers highlights that although CIT(A) has wide powers, they are not absolute. The Supreme Court in ***Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC)*** reaffirmed that the appellate authority can exercise enhancement power only in respect of issues that were the subject of the AO's inquiry. In ***Shapoorji Pallonji Mistry 44 ITR 891 (SC)***, the Court emphasized that the enhancement power is circumscribed by what was already processed in assessment. The CIT(A) cannot act as an alternate assessing authority or initiate proceedings on new income sources. In the present case the issues on which enhancement was made were never the subject matter AO's enquiry for the Assessment Year in which enhancement was made and the Ld Counsel stressed that CIT(A) does not have the power to act as alternate assessing authority. The Ld Counsel also submitted that the CIT(A) could issue notice for enhancement only due to the fact that the appeals for Assessment Year 2015-16 and 2018-19 were pending before the CIT(A), however if these appeals were not pending then the recourse before CIT(A) would have been to instruct the AO to initiate 148 or 263 proceedings. The CIT(A) by issuing notice for enhancement has exceeded its powers by making enhancement on a completely new source of income which was not at all the subject matter of the Assessment order for the year in which enhancement was made.

17.7 We have heard the rival submissions made by the respective parties; we

have also perused the relevant materials available on record. It appears from the records that that the Ld. AO has disallowed the impugned amount of Rs. 26,81,39,398/- as inflated production expenses for the film *Roy* in Assessment Year (A.Y.) 2016-17 and Rs. 8,73,51,431/- for the film *Raabta* in A.Y. 2017-18, on the grounds that these expenses were not genuine. During the course of appellate proceedings the CIT(A) found that these expenses were never claimed in the year in which these were disallowed. These expenses were claimed in the Assessment Years 2015-16 and 2018-19 respectively. Accordingly, the CIT(A) deleted these disallowances made in Assessment Year 2016-17 and 2017-18 respectively and further issued enhancement notices on these disallowances for Assessment Years 2015-16 and 2018-19. After considering the reply of the assessee the CIT(A) made enhancement of income of Rs. 17,52,50,000/- for Assessment Year 2015-16 by disallowing inflated expenditure on production of film Roy and Rs. 8,73,51,431/- by disallowing inflated expenditure on production of film Raabta. The assesse has challenged the power of the CIT(A) to make enhancement of income on a completely new source of income.

17.8 We have meticulously examined the record and the submissions made by the parties. The Ld. AR of the assessee, submitted before the commissioner of Income Tax (Appeals) [CIT (A)] and us that the disallowed expenses were not claimed in the Profit and Loss Account for the Financial Years ending 31.03.2016 (A.Y. 2016-17) and 31.03.2017 (A.Y. 2017-18). Instead, the

expenses for *Roy* were incurred in A.Y. 2015-16 (relevant to Financial Year 2014-15), and those for *Raabta* were incurred in A.Y. 2018-19 (relevant to Financial Year 2017-18). In response to these submissions, the CIT (A) issued enhancement notices and added these expenses to their respective assessment years i.e. AY 2015-16 and AY 2018-19 for *Roy* and *Raabta movies*.

17.9 The CIT(A) enhanced the appellant's income by Rs. 17,52,50,000/- for A.Y. 2015-16 and Rs. 8,73,51,431/- for A.Y. 2018-19, corresponding to the expenses for *Roy* and *Raabta*, respectively. The CIT (A) provided relief for A.Y. 2016-17 and A.Y. 2017-18 by deleting the AO's erroneous additions for those years.

17.10 Ld. Counsel for the assessee Mr. Nirbhay Mehta has vehemently argued that the CIT (A) lacked jurisdiction to enhance the income for A.Y. 2015-16 and A.Y. 2018-19, as these disallowances constituted new sources of income not considered in the AO's assessment orders for those years. The Ld counsel in support of the argument has relied on various judicial pronouncement of the Supreme Court jurisdictional High Court and Delhi Income Tax Tribunal.

17.11 On examination of the facts the contention of the Ld Counsel that the enhancement made by the CIT(A) was on a completely new source of income which was not a subject matter of the Assessment proceedings for that Assessment Year. It is a settled principle that each Assessment Year is a separate year and there are separate proceedings for each Assessment Year. In the present

case the enhancement was made in the Assessment Year 2015-16 and 2018-19 and it is quite apparent that the issue on which enhancement was made were neither the part of the Assessment order for those years nor there was any enquiry by the AO made on the issue on which enhancement was done by CIT(A).

17.12 Coming to the issue of powers of enhancements by the ld CIT (A), Powers of Ld CIT (A) enshrined u/s 251 of the Act is as under:—

"251. POWERS OF THE(...)COMMISSIONER (APPEALS).

(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers--

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under

section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a

reasonable opportunity of showing cause against such enhancement or reduction.

Explanation In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant."

17.13 A careful reading of the Section 251 which lays down the powers of CIT(A) the explanation to Section 251 clearly lays down that in disposing of an appeal the CIT(A) may consider any matter arising out of the proceedings in which the order appeal against was passed whether or not such matter was raised before the CIT(A) or not. In the present case the enhancement has been done by the CIT(A) on the issue which was not at all arising out of the proceedings in which the order appealed against was passed. The assessee was in appeal before the CIT(A) for Assessment Years 2015-16 and 2018-19. However, it is an undisputed fact that the disallowance of expenses of Roy Movie for Assessment Year 2015-16 and expenses of Movie Raabta for Assessment Year 2018-19 were never a subject matter of assessment proceedings before the Ld. AO for those years. Therefore, the enhancement done by the CIT(A) for the two years is in violation of the provisions of section 251 since these issues were never the part proceedings before the AO in assessment years 2015-16 and 2018-19.

17.14 Hon'ble Delhi High Court in [2013] 213 Taxman 33 (Mag.)/[2012] 18 taxmann.com 176/348 ITR 170, Gurinder Mohan Singh Nindrajog v. CIT has discussed in paragraph nos. 19 and 20 laying down the guidance as to when the

powers of enhancement by the ld CIT (A) are validly invoked. The Hon'ble High Court held the following:

"19. We have considered the submissions of both the parties. There is no doubt about the fact that while framing the assessment even under section 143(3) of the Act, the Assessing Officer may omit to make certain additions of income or omit to disallow certain claims which are not admissible under the provisions of the Act thereby leading to escapement of income. The Income-tax Act provides for remedial measures which can be taken under these circumstances. While framing an assessment under section 143(3) of the Act, any of the following situations may occur:

(a) the Assessing Officer may accept the return of income without making any addition or disallowance; or

(b) the assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of order of assessment but he under assessed such sums; or

(c) he makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income;

(d) yet, there can be another situation where the Assessing Officer inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry;

(e) further another situation may arise, where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the Revenue, or

(f) where an item of income which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts necessary for computation of income.

20. To ensure for each of such situations, an income which ought to have been taxed and remained untaxed, the Legislature has provided different remedial measures as are contained in sections 251(1)(a), 263, 154 and 147 of the Act.

21. In the category stated in (a), obviously if an income escapes an assessment, the provisions of section 147 of the Act can be invoked, subject to the condition stated in the proviso to the said section. In the category of cases falling in category (b), section 251(1)(a) provides the Commissioner of Income-tax (Appeals) could enhance such an assessment qua the under assessed sum, i.e., where the Assessing Officer had dealt with the issue in the assessment and was the subject-matter of appeal. In category falling in (c) and (e), the Commissioner of Income-tax has been empowered to take an appropriate action under section 263 of the Act In the category of cases falling under clauses (d) and (f), appropriate action under section 147 of the Act can be taken to tax the income which has escaped assessment or had remained to be taxed. There can be situations where an item has been dealt with in the body of the order of assessment and the assessee being aggrieved from the addition or disallowances so made, had preferred an appeal before the Commissioner of Income-tax (Appeals) against the said addition and disallowance, the said disallowance and addition being the subject-matter of appeal before the Commissioner of Income-tax (Appeals) in such cases, the Commissioner of Income-tax (Appeals) has been empowered under section 251(1)(a) of the Act to enhance such an income where the Assessing Officer had proceeded to make addition or disallowance by dealing with the same in the body of order of assessment by under assessing the same as the same was the subject-matter of the appeal as per the grounds of the appeal raised before him. In other words, the Commissioner of Income-tax (Appeals) has a power of enhancement in respect of such item or items of income which has been dealt with in the body of the order of the assessment, and arose for his consideration as per the grounds of appeal raised before him, being the subject-matter of appeal."

A careful reading of the observation made by the Hon;ble Delhi High Court would suggest that the CIT(A) can use power of enhancement under section 251 in a case where the assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of

order of assessment but he under assessed such sums. This is not the fact in the present case. The issue before us is that the issue of enhancement was never discussed by the AO during the course of assessment proceedings of the year in which enhancement was made i.e. AY 2015-16 and 2018-19. The AO never made any enquiry on this issue during AY 2015-16 and 2018-19. This being the case the correct recourse would have been section 147/148 or section 263 but the CIT(A) exceeded its jurisdiction by making enhancement under section 251 of the Income Tax Act

13.13 The Division Bench of Delhi High court in *CIT* v. *Union Tyres* [1999] 240 ITR 556 (Delhi) reiterated that the first appellate authority cannot consider new scope of income under section 251(1) of the Act.

"Section 251 of the Act prescribes the power of the Appellate Assistant Commissioner, now the Commissioner (Appeals). Section 251(1)(a) of the Act empowers the Appellate Assistant Commissioner in disposing of an appeal by the assessee against an order of assessment to confirm, reduce, enhance or annul the assessment or to set aside and refer the case back to the Income-tax Officer for making fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner. The Explanation to section 251 provides that the Appellate Assistant Commissioner may hear and decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding that such a matter was not raised before the Appellate Assistant Commissioner by the appellant. (Para 8)

The issue with regard to the scope of powers of the first appellate authority in disposing of an appeal has come up before the courts umpteen times but we do not propose to burden the judgment by making reference to all the decisions on the point. We will notice a few decisions which we consider are relevant to answer the question referred. In CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC), while construing the corresponding provisions of the Indian Income- tax Act, 1922, relating to the jurisdiction of the Appellate Assistant Commissioner in such an appeal, the Supreme Court held that, in an appeal filed by the assessee, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering a new source of income, not considered by the Income-tax Officer in the order appealed against. Similar views were expressed by the apex court in CIT v. Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC). It was held that the power of

enhancement under section 31(3) of the 1922 Act was restricted to the subject-matter of the assessment or the source of income which had been considered expressly or by clear implication by the Income-tax Officer from the point of view of taxability and that the Appellate Assistant Commissioner had no power to assess a source of income which had not been processed by the Assessing Officer." (Para 9)

17.15 This view of the Division Bench was confirmed by Full Bench of Delhi High Court in *Commissioner of Income Tax v. Sardari Lal & Co.* [2002] 120 Taxman 595 holding as follows:

"Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 and section 263, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, the decision in Union Tyres' case [1999] 240 ITR 556 (Delhi) of this court expresses the correct view and does not need reconsideration. This reference is accordingly disposed of.' " (Para 8)

17.16 The Full Bench of jurisdictional Delhi High Court has observed that as regards the question of taxability of income from a new source is concerned which was not considered by the AO, the jurisdiction to deal with same is under Section 147/148 and Section 263 subject to fulfilment of requisite conditions. The facts of the present case are similar wherein the CIT(A) has exceeded its powers by making enhancement on a new source of income not at all considered in Assessment Proceedings for the year. The jurisdiction to deal with same is

given to sexercise under Section 147/148 or 263.

17.17 The AR's reliance on the Delhi ITAT decision in *Hari Mohan Sharma v. Assistant Commissioner of Income-tax* [2019] 110 taxmann.com 119 (Delhi - Trib.) is opposite, wherein it was observed:

> *"The principle emerging from various pronouncements of the Supreme Court, Union Tyres observes, is that the first appellate authority is invested with very wide powers under section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only regarding a matter raised by the assessee in appeal but also regarding any other matter considered by the Assessing Officer and determined in assessment. (Para 18 (48))*
>
> *49. There is a solitary but significant limitation, according to Union Tyres, to the power of revision: It is not open to the Appellate Commissioner to introduce in the assessment a new source of income and the assessment must be confined to those items of income which were the subject-matter of the original assessment. (Para 18 (49))*
>
> *50. In course of time, Union Tyres was doubted. In CIT v. Sardari Lal and Co. [2001] 251 ITR 864 (Delhi) [FB], the same issue whether the appellate authority has the power under section 251 to discover a new source of income was referred to a Full Bench. After examining the authorities holding the fielding on that issue, the learned Full Bench has held that the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147, or section 148, or even section 263 of the Act if requisite conditions are*

fulfilled. It is inconceivable, according to Sardari Lal, that in the presence of such specific provisions, a similar power is available to the first appellate authority. Eventually, Sardari Lal upheld the decision in Union Tyres. (Para 18 (50))

"Undeniably, the precedential position on the powers of the first appellate authority under section 251 undulates. There are seeming contradictions. But, as held by Union Tyres, and as affirmed on reference by Sardari Lal, there is a consistent judicial assertion that the powers under section 251 are, indeed, very wide; but, wide as they are, they do not go to the extent of displacing powers under, say, sections 147, 148, and 263 of the Act." (Para 18 (51))

"The principle culled out from the above judicial precedents clearly shows that words 'enhance the assessment' are confined to the assessment reached through a particular process. It cannot be extended to the amount which ought to have been computed." (Para 19)

17.18 The Ld DR has relied upon the Supreme Court's decision in *CIT v. Nirbheram Daluram* [1997] 224 ITR 610. The Ld AR has distinguished the same by emphasizing that in that case the hundi loans added at the later stage were of same nature on which addition was already made in the assessment order unlike the case of assessee where there is no link with the additions made in assessment order. The Ld AR also mentioned that the case *CIT v. Nirbheram Daluram* [1997] has been distinguished in the citations relied upon by him. On examining Daluram's holding, a Division Bench of the Delhi High Court in CIT v. Union Tyres , Delhi [1999] 240 ITR 556 has observed that Daluram did not comment whether these wide powers also include the power to discover a new source of income. So, Union Tyres concludes that the principle of law laid down in

Shapoorji and Chamaria still holds the field. The Supreme Court in *Rai Bahadur Hardutroy Motilal Chamaria* [1967] 66 ITR 443 (SC) and *Shapoorji Pallonji Mistry* [1962] 44 ITR 891 (SC) clarified that enhancements are limited to issues already processed by the AO, and the CIT(A) cannot act as an alternate assessing authority by introducing new sources of income.

17.19 Further the Coordinate Bench in the case of Prashant Pitti in ITA No. 3032/Del/2022 held that first appellate authority has no power to take into account a new source of income that came up for consideration in appellate proceedings. The Coordinate Bench deciding the appeal in favour of appellant held as under:

> *"20. The issue whether the Ld.CIT(A) has power to enhanced the income from a source which was not before him in appeal is shrouded in controversy. In CIT vs. Union Tyres (1999) 240 ITR 556 (Del), the Hon'ble Delhi High Court considered the relevant decisions including the decision of Hon'ble Supreme Court in CIT vs. Nirbheram Daluram (1997) 224 ITR 610 (SC) where the Hon'ble Supreme Court reiterated the powers of Ld. CIT(A) "co-terminus with ITA No.- 3032/Del/2022 Prashant Pitti that that of the Ld. AO" so that "the Ld. CIT(A) can do what the Ld. AO can do and can also direct him to do what he failed to do", a proposition laid down by the Hon'ble Supreme Court in the case of Kanpur Coal Syndicate (supra) which was followed in Jute Corporation of India Ltd. vs. CIT (1991) 187 ITR 688 (SC) and applied the principles of Law laid down by the Hon'ble Supreme Court in their earlier decisions in CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891(SC) and CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC) that there is a solitary but significant limitation to the power of Ld. CIT(A) u/s 251 of the Act, namely that it is not open to him to introduce in the assessment a new source of income and the assessment has to be confined to those items of income which were the subject of matter of original assessment.*

21. The same issue namely whether the first appellate authority has power to take into account a new source of income came up for consideration again for fresh adjudication before the full bench of Hon'ble Delhi High Court in CIT vs. Sardari Lal & Co. (2001) 251 ITR 864 (Del)(FB). The Revenue contended that proceedings before the first appellate authority cannot be restricted to only those matters considered and decided by the Ld. AO. The first appellate authority has the power to adjudicate and decide everything necessary to ascertain the true and correct income of the assessee. The assessee, on the other hand contended that if such a view was taken, the provision u/s 147/148 and 263 of the Act would become meaningless and purposeless. The Hon'ble Delhi High Court gave its verdict in favour of the assessee observing that it is unconceivable that in the presence of specific provision u/s 147/148 and 263 of the Act, a similar power is available to the first appellate authority.

22. Accordingly, in the light of the decisions (supra) and on the facts and in the circumstances of case, we decide the appeal in favour of the assessee."

17.20 Further in the decision of Coordinate Bench in the case of Mandeep Singh Anand Vs DCIT CC-04 New Delhi it was held that the undisputed facts show that Rs.30,753/- paid by M/s Spring Travels Pvt. Ltd. to HDFC via regular banking channels was claimed as business promotion expenses by the company. However, the Assessing Officer (AO) treated this as unexplained expenditure under Section 69C of the Income Tax Act in the hands of the assessee, Mandeep Singh Anand. The Commissioner of Income Tax (Appeals) [CIT (A)] reclassified this amount as a perquisite under Section 17(2) of the Act, deeming it an expense incurred by the company on behalf of its director. This reclassification is considered a new source of income, which the CIT(A) lacked the authority to introduce without issuing an enhancement notice as required under Section 251(2). Consequently,

the addition made by the AO and upheld by the CIT(A) on different grounds is deemed invalid, and the assessee's grounds of appeal are allowed, leading to the deletion of the addition. Relevant Paras are as under:

> *"5. The Ld. CIT(A) observed that the expenditure of Rs.30,753/- has been paid from the bank statement of M/s Spring Travels Pvt. Ltd. and the same pertains to M/s Spring Travels Pvt. Ltd. However, he concluded that the same would be treated as prerequisite as it is a payment made on behalf of its Director u/s 17(2) instead of section 69C of the Act.*
>
> *6. From the above narration of facts which are undisputed, it could be seen that the lower authorities had categorically agreed that a sum of Rs.30,753/- paid to HDFC by M/s Spring Travels Pvt. Ltd. by regular banking channels and the same was claimed as ITA No.3069 & 3070/Del/2022 Mandeep Singh Anand vs. ACIT business promotion expenses by M/s Spring Travels Pvt Ltd. The same was treated as an unexplained expenditure in the hands of the assessee by the Ld. AO. Once it is proved that the said expenditure is reflected in the books of Spring Travels Pvt. Ltd. and sourced out of regular banking channels from the funds of the said company, the same cannot be added an unexplained expenditure in the hands of the assessee u/s 69C of the Act. But what has been done by the Ld. CIT(A) is treating the very same sum as perquisite in the hands of the assessee on the premise that the said expenditure has been incurred by M/s Spring Travels Pvt. Ltd. on behalf of its director u/s 17(2) of the Act. This in our considered opinion, becomes a new source of income which CIT(A) is not entitled to add/enhance under the powers provided to him under the statute. In any event, the Ld.CIT(A) had also not given any enhancement notice to the assessee proposing to shift the addition from unexplained expenditure u/s 69C of the Act to perquisite u/s 17(2) of the Act, thereby violating the requirements of provisions of section 251(2) of Act. Hence, in any case, the addition made by the Ld. AO and sustained by the Ld. CIT(A) are on different count and ITA No.3069 & 3070/Del/2022 Mandeep Singh Anand vs. ACIT deserves to be deleted. Accordingly, the grounds raised by the assessee are allowed."*

17.21 In the present case the CIT(A) has made enhancement in the Assessment Years 2015-16 of Rs. 17,52,50,000/- by disallowing inflated movie expenses of Roy and made enhancement in Assessment Year 2018-19 of Rs. 8,73,51,431/- by disallowing inflated movie expenses of Raabta. The fact is that these issues were never part of the assessment proceedings for those Assessment years and it was completely new issues on which enhancement was made. In view of the various judicial pronounced on this identical issue it is held that addition made by the CIT(A) freshly during appellate proceedings, on a new source of income which CIT(A) is not entitled to add/enhance under the statutory powers. The CIT(A) erred in enhancing the appellant's income for A.Y. 2015-16 and A.Y. 2018-19, as these enhancements introduced disallowances not considered in the original assessments for those years and were never a subject matter of proceedings for those years. Such actions fall outside the scope of Section 251 and the correct jurisdiction for the same is under Sections 147/148 or 263.

17.22 In light of the above findings and judicial precedents, it is held that the by the CIT (A) exceeded its jurisdictional powers by enhancing the income of the assessee on a new source of income. As a result the enhancement of Rs. 17,52,50,000/- for A.Y. 2015-16 and Rs. 8,73,51,431/- for A.Y. 2018-19 made by the CIT(A) are deleted and the ground of the assessee for both the years are treated as allowed.

Now coming to grounds which are not common over the year and therefore the same are addressed yearwise as under:

Un-Common Grounds for AY 2014-15

18. The deletion of addition by CIT (A) of Rs. 3,50,00,000/- on account of disallowance of advertisement expenses from M/s Ayush Add.Com considering them as bogus expense is challenged for AY 2014-15 by Revenue.

18.1 Brief facts of the case are that evidence from a handwritten sheet recovered during a survey on Shri Ritesh Srivastava on 06/10/2016 confirms that SCIPL received Rs. 3.5 crore in cash, corroborated by a ledger showing a payment of Rs. 3.93 crore to M/s Ayush Add. Com Pvt. Ltd. in FY 2013-14. Shri Ritesh Srivastava, under oath in his statement, admitted that the bills issued by Ayush Add. Com Pvt. Ltd. were fictitious, with no advertising or other services provided to SCIPL, and that payments made through banking channels were returned in cash to SCIPL after deducting a commission. Thus, the AO draws the observation that advertising and song promotion expenses claimed by SCIPL were bogus.

18.2 The AO disallowed the expenses pertaining to advertisement from M/s Ayush Add.Com Pvt ltd concluding that although SCIPL submitted invoices from Ayush Add. Com Pvt. Ltd. to support its advertisement expense claims, these lack credibility given Shri Ritesh Srivastava's admission that no services were rendered.

18.3 The additions so made in AY 2014-15 were deleted by the CIT(A) by appreciating the facts and circumstances and concluding that no incriminating material was found during course of search on SCIPL and the AO has made addition based on document seized from survey proceedings on Shri Ritesh Srivastava on 06/10/2016. Further assessment U/s 143(3) was already completed in the year 2016 and date of search was 28.11.2018 and therefore, the said assessment is a completed assessment. Reliance was placed on the decision of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla 61 Taxmann.com 421 which was upheld by the Supreme Court in the case of Pr CIT Vs Abhishar Buildwell Pvt Ltd vide order dated 24.04.2022. The conclusive findings of the CIT(A) deserves to be reproduced hereinbelow for further analysis and determination of the grounds. The relevant paragraphs are reproduced below:-

> "*196. The contents of the assessment order and the written submissions of the appellant as regards the addition of Rs. 3,50,00,000/- on account of disallowance of advertisement charges paid to Ayush Ad.com Pvt. Ltd. have been carefully considered by me.*
>
> *197. From the above discussed facts, it is apparent that the disallowance is based on the survey action carried out on 06.10.2016 by Investigation Wing on Ayush Ad.com Pvt. Ltd. and statement of Sh. Ritesh Srivastav recorded during the survey action. In the search of SCIPL carried out on 29.11.2018 the only material found was the ledger account of Ayush Ad.com Pvt. Ltd. found in the books of accounts of SCIPL. Since the ledger account was forming part of the regular books of accounts of SCIPL, it cannot be said to be incriminating material.*

198. In the survey action on Ayush Ad-com Pvt. Ltd. undertaken on 06.10.2016, Material the form of hand written note, where certain cash payments are recorded was impounded.

199. Further, statement of Sh. Ritesh Srivastav was recorded during the survey action on 06.10.2016 on Ayush Ad-com Pvt. Ltd., wherein he admitted that transactions between SCIPL and Ayush Ad.com Pvt. Ltd. were accommodation entries where cash was paid back in lieu of cheques against the invoices raised on SCIPL.

200. The preliminary legal contention raised by the appellant that in the absence of any incriminating material having been found during search, no addition can be made in a completed assessment is first taken up for adjudication.

201. While adjudicating similar plea raised by the appellant, it is already discussed in detail under earlier grounds of appeal that assessment year under appeal is a completed assessment. From the examination of the assessment order, it is apparent that no incriminating material was found during the course of search action on 29.11.2018 on the appellant qua the aforesaid disallowance. Whatever incriminating material is discussed in the assessment order for making the impugned disallowance was found in the survey action on 06.10.2016 on Ayush Ad-com Pvt. Ltd. The appellant has placed reliance on the ratio of the decision of Hon'ble Delhi High Court in the case of Pr. CIT Vs. Kabul Chawla 61 Jaxmann.com 421. This decision of Hon'ble Delhi High Court came up for consideration of the Hon'ble Supreme Court in the case of Pr. CIT Vs. Abhisar Buildwell Pvt. Ltd. in Civil Appeal No. 6580 of 2021 and other connected appeals. The apex court vide its order dated 24.04.2022 has upheld the above referred order of Delhi High Court, The relevant portion of the order of the Hon'ble Supreme Court has been reproduced in detail while adjudicating Ground No. 3 of the present appeal. The ratio laid down by the apex court is reproduced below:-

14. In view of the above and for the reasons stated above, it is concluded as under:

v) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

vi) All pending assessments/reassessments shall stand abated;

vii) 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

viii) 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 Section 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.

202. Further, a letter dated 16.05.2023 was addressed to the Assessing Officer (DCIT, Central Circle-3, New Delhi) requiring to bring to the notice incriminating evidence, if any, found during search action on SCIPL. In response to the same, the Assessing Officer has sent a letter dated 13.06.2023. On-going through the contents of the said letter the observations made therein are summarized as under:-

i. Books of accounts were seized from the premises of SCIPL and these become incriminating in nature when seen in the light of statements recorded during search and other findings during post search investigations.

ii. Sample invoices/bills, ledger account and sample release orders have been attached to the above referred letter of the Assessing Officer.

203. From the above summarized contents, it is apparent that there is no incriminating material which was found during search as regards the above addition. Although, this was also clear from an examination of the assessment order, the above referred letter of the Assessing Officer further confirms this fact. Regular Books of accounts found during search cannot be termed as incriminating material.

204. Books of accounts cannot be incriminating material and the same has been held in the following cases.

205. In the case of Micro Ankur Developers vs DCIT ITA No.1046 to 1050/MUM/2019, ITAT, Mumbai vide its order dated 02.09.2022 held that regular books of accounts cannot be treated as "incriminating material", unless the revenue makes out a case with corroborative evidence that the transaction reflected in the books of accounts did not represent the true state of affairs. In para 16, it was held:-

"In view of the above, we are of the considered view that the regular books of accounts maintained by the assessee in tally software, now being referred by the revenue, to justify the addition did not constitute incriminating material unearthed during the search."

206. Further, the Hon'ble Delhi High Court in the case of Pr. CIT, Central-2, New Delhi Vs. Param Dairy Ltd. in ITA No. 37/2021 & 41/2021, vide para 5 of its order dated 15.02.2021 have held as under:-

"We have considered the aforesaid contentions and are of the view that no substantial question of law arises, as the matter is squarely covered by Kabul Chawla supra, which has been correctly applied to the facts of the case by the ITAT. The ITAT, in the impugned order has held that in the audited report filed by the assessee along with the report, cash book, ledger, bank book etc. were mentioned; that

the respondent assessee was maintaining books on TALLY Accounting Software which was seized during the search and was being treated as incriminating material; however, regular books of account of the assessee, by no stretch of imagination, could be treated as incriminating material to form basis of framing assessment under Section 153A read with Section 143(3) of the Act.

206.1 Further, even the statement does not form part of incriminating material and the same has been held in the following cases:-

1. Ajay Gupta Vs. DCIT 81 Taxmann.com 462 (Del-ITAT)
Para 7- No addition can be made or sustained simply on the basis of statement recorded at the time of search, for which no corroborative material is found. In order to make a genuine and legally sustainable addition on the basis of surrender during search, it is sine qua non that some incriminating material must have been found to correlate the undisclosed income with such statement. Thus, where surrender made by the assessee's elder brother on his behalf on account of commission income was not backed by any material/evidence indicating the involvement of the assessee in the agency business, no addition could be made to the assessee's income on basis of such surrender.

2. CIT Vs. Harjeev Aggarwal 70 taxmann.com 95 (Del)

A statement recorded under section 132(4) can form basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search
3. CIT Vs. Sunil Aggarwal 64 Taxmann.com 107 (Del)

Where assessee during search conducted under section 132 made admission that a sum of Rs. 86 lakhs seized from his employee belonged to him and it represented undisclosed income and subsequently he retracted above admission and offered an explanation that said amount was verifiable from records and books of account and Assessing Officer did not accept explanation and added said amount in income as unexplained cash credit, impugned addition was not justified

207. Therefore, the argument of the Assessing Officer that books of accounts and statements during the search and during the post search forms part of incriminating material is not acceptable. It is held that in this case there was incriminating material but it was not found during the course of search on the appellant, therefore, the Assessing Officer was incorrect in adding it u/s 153A assessment.

208. In view of the above respectfully following the above order of Hon'ble Supreme Court the impugned disallowance of Rs. 3,50,00,000/- is hereby deleted since the disallowance is not based on any incriminating material found during the search of the appellant. It is held that the Assessing Officer was not correct in initiating proceedings u/s 153A of the Act on the impugned issue."

18.4 The Ld. Counsel of the assesse submitted that for AY 2014-15 assessment was already completed much before the date of search and therefore these assessment years were unabated years. Since no incriminating material was found during course of search the addition made was liable to be deleted in view of the judgement of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla 61 Taxmann.com 421 which was upheld by the Supreme Court in the case of Pr CIT Vs Abhishar Buildwell Pvt Ltd vide order dated 24.04.2022.

18.5 The Ld. Counsel of the assesse draws the attention of bench on the letter dated 16.05.2023 which was addressed to the AO by CIT(A) requiring to bring to notice incriminating document found during search on this issue in respect of which a reply was received on 13.06.2023 stating that Books of accounts seized along with copies of sample invoices, ledgers etc are incriminating in nature.

18.6 From the above summarized content it is evident that no incriminating material was found during search for making the addition. The only document relied by the Ld. AO for making the additions are books of accounts seized, copy of invoices and legder accounts. It was argued that the books of accounts, copy of invoices and legder accounts are not incriminating in nature and this assessment year being unabated addition can only be made on the basis of incriminating material found and in this particular case no incriminating material was found during the year.

18.7 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. The primary contention of the assessee is that no addition can be made by the AO in the absence of incriminating material since this is an unabated year. The CIT(A) in the appeal order has duly verified this aspect by addressing a letter to the AO asking him the furnish the incriminating material relied upon for making the addition. It is seen that the AO in response has mentioned that the marterial relied upon is books of accounts, invoices and bills. It is a settled law that Books of Accounts, biils, vouchers and invoices are not incriminating in nature. We upon careful consideration of the facts and circumstances of the case, concur with the findings of the CIT(A) that no incriminating material was unearthed during the search proceedings during AY 2014-15. The addition made by the Assessing Officer were solely based on surmises and conjectures, lacking any substantive evidence.

Furthermore, the additions pertain to unabated assessment year, as the original assessment under Section 143(3) of the Income Tax Act, 1961, was completed prior to the date of the search, i.e., 28th November 2018.

18.8 Since no incriminating material was found during course of search, the addition was correctly deleted by the CIT(A) reling on the judgement of Hon'ble Delhi High Court in the case of Pr. CIT vs Kabul Chawla 61 Taxmann.com 421 which was upheld by the Supreme Court in the case of Pr CIT Vs Abhishar Buildwell Pvt Ltd vide order dated 24.04.2022. Accordingly the finding of the CIT(A) is upheld and this ground raised by the department for AY 2014-15 is dismissed.

AY 2015-16

19. The addition on account of unaccounted cash/salary paid to Neeraj Kalyan of Rs. 17,34,000/- during AY 2015-16 is challenged by the assessee company.

19.2 The Learned Counsel representing the assessee chose not to press this particular ground of appeal, citing that the amount involved was relatively minor in nature. Consequently, this ground of appeal raised by the assessee for the Assessment Year 2015-16 has been dismissed as being not pressed.

AY 2017-18

20. The addition of Rs. 5,24,00,000/- on account of disallowance of expenses of production of film TUM BIN-2 considering them as bogus expense is challenged for AY 2017-18 by the assessee company.

20.1 Brief facts of the case are that the SCIPL routed funds through overseas subsidiaries, including T-Series (UK) Films Ltd., to Dubai-based entities such as Magus Consultancy DMCC, NM Worldwide Ltd., and Al Mohazab General Trading LLC, controlled indirectly by SCIPL's employees, in order to inflate movie production expenses and park funds abroad. For the film*Tum Bin 2*, SCIPL transferred Rs. 18.16 crores to T-Series (UK) Films Ltd., which in turn remitted around Rs. 7 crores to Magus Consultancy DMCC under the guise of director and writer fees for Shri Anubhav Sinha. However, evidence showed that Shri Anubhav Sinha actually received only Rs. 1.5 crores, leaving Rs. 5.5 crores retained in Dubai as bogus expenses. Agreements produced by SCIPL to justify these transactions were found inconsistent and considered afterthoughts. Despite repeated notices, SCIPL failed to provide satisfactory evidence or compliance, leading the Assessing Officer to conclude that the inflated payments represented sham transactions and the same were intended to claim false deductions, warranting disallowance of Rs. 5.5 crores from the company's books for A.Y. 2017–18.

20.2 The company has entered into a film commissioning agreement dated 22/01/2016 with T Series Films UK for production of film Tum Bin 2. The company has transferred Rs. 18.67 Crore to T Series UK Transferred out of which it transferred 674150 Pounds equivalent to 7 Crores to Magus Consultancy Dubai for providing services of Anubhav Sinha Director and writer of the film. The AO has stated that out of the same Magus only paid Rs. 1.5 Crore to Anubhav Sinha. It is to be noted that the appellant was supposed to bear the amount of cost involved in making of the film and T Series UK was only supposed to execute the project and the cost of Directors fees was paid by the assessee to T Series UK. SCIPL has claimed inflated expenses on account of payment made to Sh. Anubhav Sinha Director of Tum Bin 2. The payment to Sh. Anubhav Sinha was only Rs. 1.5 Crore as against transfer of 674150 Pounds to Magus. Therefore, the excess payment to Magus by T Series UK over and above what was paid to Anubhav Sinha is to be disallowed.

20.3 The AO disallowed the expenses pertaining to expenses on production of film TUM BIN-2 and considered the same as bogus expenses.

20.4 The additions so made in AY 2017-18 were partly upheld by the Ld. CIT(A) by stating that the appellant inflated its expenditure for production of Film Tum Bin 2 to the extent of Rs. 5,24,00,000/- and accordingly addition to the extent of Rs. 5,24,00,000/- is confirmed and Rs. 26,00,000/- is deleted.The

assessee is in appeal before us for the addition of Rs. 5,24,00,000/- confirmed by the CIT(A), the department had not filed appeal on the deletion of Rs. 24,00,000/- by the CIT(A). The relevant paras from the order of CIT(A) are reproduced below:-

> *"14.12 The Assessing Officer has made addition of Rs. 5.50 crores on the assumption that the appellant transferred an amount of Rs.7 crores to M/s Magus through T-series UK Limited. There appears to be a clerical mistake in computing the amount of disallowance which will be dealt in the end.*
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> *14.13 The appellant company had entered into a film commissioning agreement dated 22/01/2016 with T series (UK) Films Limited (T Series UK) for production of film Tum Bin 2. The appellant transferred Rs. 18.67 Crore to T series UK for production of the film and out of the same the Assessing Officer has disallowed Rs. 5.50 Crores. The facts of the case briefly stated are as under:*
>
> *14.13 The company had entered into a film commissioning agreement dated 22/01/2016 with T Series UK for production of film Tum Bin 2. The company had paid Rs. 18.67 Crore and out of the same T series UK transferred 6,74,150 Pounds equivalent to approx. 7 Crore to Magus Consultancy DMCC (Magus) in Dubai for providing services of Anubhav Sinha, director, and writer of the film. The assessing Officer has stated that M/s Magus Consultancy has only paid Rs.1.50 Core to Shri Anubhav Sinha as compensation for direction of the film.*
>
> *14.14 On the basis of the above material discussed in the assessment order, it was observed by the Assessing Officer that the amount of Rs. 18.67 Crore was transferred by SCIPL to T-Series (UK) Films Limited out of which an amount of Rs. 7 crore was paid to M/s Magus Consultancy DMCC (Dubai) for providing services of Anubhav Sinha, director and writer of the film. Whereas, M/s Magus Consultancy has only paid Rs.1.50 Core to Shri Anubhav Sinha as compensation for direction of the film from which it is clear that Rs.5.50 core has been retained in Dubai by Magus Consultancy*

DMCC as bogus expenses and the agreement submitted by the assessee between T-Series (UK) Films Limited and Magus Consultancy DMCC is an after-thought to justify the retention of Rs.5.50 Crore in Dubai against bogus expenses.

14.15 The Assessing Officer had made the disallowance by observing that the shareholders of Magus are Neha Mukesh Side (50%), Sh. DipendraAmin (25%) and Mrs. Yogini Ami (25%) ad the trade license issued to Magus by UAE Authorities shows magus is licensed to provide consultancy services, document clearing services and other corporate services and the Authorised Signatory of Magus is Ms. Neha Mukesh Shinde. It was stated by the Assessing Officer that evidences have been found which shows that SCIPL has used entities based I Dubai such as Magus to retain funds in Dubai in the garb of bogus film production expenses. There was transfer of funds from T Series UK to Magus and during the search at corporate office of SCIPL at Noida books of accounts of T Series UK was found in Tally Format for the FY 2015-16 and 2016-17 and the books of accounts shows that huge funds have been transferred from T Series UK to Magus. As per books of accounts of Magus these sums have been paid as Directors Fees to Magus, However in the professional trade license of Magus it is nowhere mentioned that Magus can provide any assistance in film making or any ancillary activities. Therefore Magus seems to be a company which was used by SCIPL to divert the funds belonging to SCIPL and retain these funds in tax free jurisdiction.

14.16 Further the Assessing Officer has stated that Magus has transferred funds to Bollywood Digital FZE. Based on the above the Assessing Officer has disallowed Rs. 5.5 crore out of total expenses debited in respect of Tum Bin 2 as bogus since the same were finally transferred in the books of accounts of Bollywood Digital FZE.

14.17 The appellant has argued that all payments for foreign shooting of the film were made as agreed between the parties and in terms of agreement Rs. 18,16,71,123 was transferred to the bank account of T Series UK towards cost of shooting and out of the same if 674150 GBP was transferred by T Series UK to a Dubai Entity Magus for accomplishing

part of shooting then the said agreement was between two parties and as far as SCIPL is concerned the entire cost Incurred and claimed was backed by a valid and subsisting commercial agreement. The appellate has argued that there is no evidence to suggest that the amount transferred to Magus was received back y SCIPL in any manner. Further the reference made in the assessment order of the amount transferred to Bollywood Digital FZE does not conclusively prove that these are the same funds which were received from T Series UK by Magus. As regards the inquiry from Anubhav Sinha if the director has been paid a lesser amount as compared to amount charged from T Series UK by Magus the it would not lead to an inference that expense have been Inflated it can be due to higher margin retained by Magus. The appellant has drawn attention to clause 2.1 of the film commissioning agreement wherein the entire cost of foreign shooting was to be incurred by T Series UK and same was to be reimbursed by SCIPL. As per the budget forming part of the film commissioning agreement it includes expenditure of 7,13,000/- pounds (Approx 7 Crore) as directors fee and hence the amount contemplated in the budget matches with the amount claimed by T Series UK on account of Directors Fees.

14.18 The AO has disallowed Rs. 5.5 Crore bogus expenditure. This disallowance is based upon transfer of Rs. 7 crore by T Series UK to Magus for Directors Fess and out of the same only Rs. 1.5 Crore was paid. On perusal of the assessment order and contentions of the appellant, it is undisputed fact that the appellant transferred an amount of Rs.18.17 Crores to T Series UK. The same has been claimed as expenditure in the books of accounts of the appellant company for the F.Y 2016-17. It is also an undisputed fact that out of Rs.18.17 Crores, an amount of 674150 GBP was transferred by T Series UK to Dubai based entity named Magus.

14.19 The transfer of GBP 674150 was for payment of directors' fees to Anubhav Sinha and the SCIPL has claimed the same to be paid to Anubhav Sinha. However, in the response to summons u/s 131(1A) SH. Anubhav Sinha has confirmed that he has received only Rs. 1.5 Crore from Magus in his bank account in FY 2016-17. As per the submission of Sh. Anubhav Sinha an agreement dated 10/08/2014 was entered between Sh. Anubhav Sinha and Magus titled Directors Loan out Contract for the Film Tum Bin

2. According to this agreement compensation to be paid to Sh. Anubhav Sinha is shown as Rs. 1.5 Crore which was received in FY 2016-17 by Sh. Anubhav Sinha from Magus.

14.20 SCIPL has furnished two agreements dated 25/01/2016 between T Series UK and Magus one titled Directors Loan out agreement (Tum Bin 2) and other titled Writers Loan out agreement (Tum Bin 2). The compensation to be paid to Sh. Anubhav Sinha for Directors Loan out agreement was 600000 GBP and for Writers Loan out Agreement 100000 GBP. The total compensation to be paid to Sh. Anubhav Sinha was 700000 GBP. Against the same Sh. Anubhav Sinha has confirmed receipt of only 1.5 Crore. If the amount of Rs.7,00,00,000/- has been booked by the appellant on account of payment to the director, in that case it is not known as to why the entry of 5.5 crores was not written back if it was not actually paid.

14.21 It is to be noted that the appellant was supposed to bear the amount of cost involved in making of the film. T series UK was only supposed to execute the project. The cost of director's fee was paid by the appellant to T-series UK.

14.22 Hence it is clearly established that SCIPL has claimed inflated expenses on account of payment made to Sh. Anubhav Sinha, Director of Tum Bin 2. The payment to Sh. Anubhav Sinha was only Rs. 1.5 Crore as against transfer of 674150 pounds to Magus. Therefore, the excess payment to Magus by T Series UK over and above what was paid to Sh. Anubhav Sinha is to be disallowed.

14.23 The Appellant has also taken an alternate argument that the Assessing Officer has made a mistake in working of disallowance. The appellant has argued that at Page No. 89 of the order the Assessing Officer has mentioned that 674150 Pounds (6.74 Crore INR Approx) were transferred to Magus from T Series UK and against the same Sh. Anubhav Sinha has confirmed receipt of 1.5 Crore from Magus. Hence the addition if any that can be made is difference of 6.74 Crore which is the amount

transferred to Magus by T Series UK and Rs. 1.5 Crore which is the actual payment made to Sh. Anubhav Sinha which comes to 5.24 Crores.

14.24 This argument of the appellant has been considered and found to be correct. It is seen from assessment order that at Page 89 assessing officer has clearly stated that 674150 (6.74 Crore INR Approx) pounds were transferred from T-Series UK to Magus, but while working out the disallowance the assessing officer has considered this amount as Rs. 7 Crores and reduced actual payment of Rs. 1.5 Crore to Anubhav Sinha and worked out disallowance of 5.5 Crore. It seems while working out the disallowance the assessing officer has considered the amount appearing in Directors Loan out agreement (Rs. 6 Crore) and Writers Loan Out agreement (Rs. 1 Crore). However, for working out the disallowance the amount actually paid to Magus is to be take into consideration and the same is Rs. 6.74 Crore which has also been confirmed by the assessing officer in the assessment order page 89 Para C1.5.

14.25 The addition on account of inflated expense therefore, can only be made to the extent of Rs. 5,24,00,000/-.

14.26 In view of the above discussion, it is held that the appellant inflated its expenditure for production of Film Tum Bin 2 to the extent of Rs. 5,24,00,000/- and accordingly addition to the extent of Rs. 5,24,00,000/- is confirmed. In view of the above discussion, the addition of Rs. 5,24,00,000/- is confirmed and the addition of Rs. 26,00,000/- is deleted.

20.5 The Ld. Counsel of the assessee submitted before us that a major portion of the film Tum Bin-2 was shot in UK. This film is a sequel of the earlier film Tum Bin which was also produced by SCIPL in 2001 and was appreciated by public. The director of the earlier film as well as Tum Bin-2 is the same person namely Shri Anubhav Sinha. The foreign shooting of the film was done through the line producer i.e. T-Series (UK) Films Ltd. which is an associate entity. An agreement

called the Film Commissioning Agreement dated 22.01.2016 was executed between SCIPL and T-Series (UK) Films Ltd. for the shooting of the film in UK.

20.6 The Ld. Counsel of the assesse submitted that in accordance with the above referred agreement, all payments for foreign shooting of the film were made as agreed between the parties. An amount of Rs. 18,16,71,123/- was transferred to the bank account of T-Series (UK) Films Ltd. towards cost of foreign shooting. Out of the same if an amount of Rs.674150 GBP was transferred by T-Series (UK) Films Ltd. to a Dubai entity for accomplishing part of the shooting then the said agreement was between those two parties. As far as SCIPL is concerned the entire cost incurred and claimed as expenditure on foreign shooting of the film is backed by a valid and subsisting commercial agreement.

20.7 Further the Ld. Counsel of the assesse highlighted that there is no evidence on record to suggest that the amount transferred to Dubai entity was received back by SCIPL in any manner. The reference made in the assessment order of the amount transferred to the bank account of Bollywood Digital FZE does not conclusively prove that these are the same funds which were received from T-Series (UK) Films Ltd. which were transferred. It may be explained that Bollywood Digital FZE is a separate and independent entity, being step down subsidiary of Bollywood Digital Music Ltd., which was engaged in the business activities in UAE including earning of commission and consultancy income. As

regards inquiry done from Sh. Anubhav Sinha, director, it may be noted that if the director has been paid lesser amount as compared to the amount charged from T-Series (UK) Films Ltd. by Magus Consultancy DMCC then it would not automatically lead to an inference that the expenses have been inflated. The same can at the highest be attributed as extra margin retained by Magus Consultancy which the appellant has nothing to do with.

20.8 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that the Assessing Officer (AO) added Rs. 5.5 crore to the income of SCIPL, alleging that out of Rs. 18.67 crore transferred to T-Series (UK) Films Limited for Tum Bin 2 production under a film commissioning agreement dated 22/01/2016, Rs. 6.74 crore was paid to Magus Consultancy DMCC (Dubai) for director Anubhav Sinha's services, but only Rs. 1.5 crore was paid to him, with the remaining Rs. 5.5 crore retained as bogus expenses. The initial disallowance made by the AO was Rs. 5.5 Crore on the basis that Rs. 7 Crore was transferred to Magus against payment of Rs. 1.5 Crore to Anubhav Sinha however before the CIT(A) it was argued that amount paid to Magus was Rs. 6.74 Crore and disallowance, if any, required to be made is only Rs. 5.24 Crore. The CIT(A) after verification accepted the contention of the assessee and restricted the disallowance to Rs. 5.24 Crore.

20.9 It is seen that during the course of assessment proceedings the AO had issued notice to Anubhav Sinha requiring him to furnish the details of amount received by him against services provided as director and writer for the film TUM BIN 2. In response to the notice as per the AO Sh. Anubhav Sinha furnished that he had received Rs. 1.5 Crore total for the services. Whereas as per the documents Magus Cosultancy Dubai was paid Rs. 6.74 crore by T-Series (UK) Films Limited. This Rs. 6.74 crore paid to Magus Dubai by T-Series (UK) Films Limited was against receipt of Rs. 18.67 Crore from the assessee under film commissioning agreement dated 22/01/2016. This chain of events leads to conclusion that Magus was paid extra Rs. 5.24 Crore (Rs. 6.74 Crore minus Rs. 1.5 Crore). The ld. Counsel of the assessee has not been able to explain the reason as to why payment of 6.74 crores was made to Magus for directors / writer's fee to be paid further to Anubhav Sinha. However, out of the same only 1.5 crore was paid to Shri Anubhav Sinha as confirmed by him. The only argument of the assessee for this is that same can at the highest be attributed as extra margin retained by Magus Consultancy which the assessee has nothing to do with. This argument of the assessee is not valid when seen because why an Indian Director was being paid through a foreign entity.

20.10 The contention of the Ld Counsel that the payments were as per a valid agreement and there is no evidence of funds remitted were returned to them is not

tenable since clearly the expenditure booked as per the Books of Accounts is inflated and there is no proper justification for the same.

20.11 Based on the discussion the disallowance of Rs. 5.24 crore as bogus expenditure is upheld and this ground of appeal for AY 2017-18 of the assessee company is dismissed.

21. The addition of Rs. 2,39,60,000/- being amount paid to Sanjay Singhal during AY 2017-18 for acquisition of remake rights of film Tum Bin 2 is challenged by the assessee company.

21.1 Brief facts of the case are that the SCIPL claimed Rs. 2.64 crore as an expense for buying Tum Bin 2 remake rights from Shri Sanjay Singhal, a gutkha/pan masala trader with no film experience. Shri Sanjay Singhal had bought the same rights from SCIPL for only Rs. 25 lakh two months earlier and sold them at an inflated price to T-Series (UK). He provided no documentary proof of negotiations, and his income tax returns did not reflect this foreign income. Investigations indicate the transaction was a scheme to adjust unaccounted cash through a fake capital gain. Consequently, the Rs. 2.64 crore expenses were deemed bogus and added to SCIPL's income for A.Y. 2017

21.2 During the first appellate proceedings the CIT(A) restricted the addition to Rs. 2,39,60,000/- by holding that the initial amount of Rs. 25,00,000 recievd

from Sh. Sanjay Singhal is to be reduced from Rs. 2,64,00,000/- for the purpose of determining the disallowance. The CIT(A) therefore confirmed addition of Rs. 2,39,60,000/- (Rs. 2,64,00,000/- minus Rs. 25,00,000/-)The relevant paras from the order of CIT(A) are reproduced below:-

> *"15.6 The appellant company had produced film named 'TUM BIN'. Subsequently, he planned to produce 'TUM BIN-2'. The appellant had right over 'TUM BIN'. Any right over production of Film TUM BIN-2, therefore, existed with the appellant.*
> *15.7 Subsequently, vide film commissioning agreement dated 22.01.2016, between the appellant and M/s T-series (UK) Films Limited (T-series UK), the M/s T-series (UK) Films Limited was commissioned as producer for the film 'TUM BIN-2'. In this agreement, the appellant company appointed T-series UK for producing the film. In this agreement, the budget for making of the film was also agreed upon for 3033992 pound sterling. In the same agreement, the estimate for story and script was decided at 300000 pound sterling.*
> *15.8 In April, 2016, the appellant claims to have sold the story of film of TUM BIN-2 to Shri Sanjay Singhal for a consideration of Rs.25 lakhs. Later on, M/s T-Series UK purchased the same story from Shri Sanjay Singhal for 300000 pound sterling equivalent to Rs.2,64,60,000/-. Apparently, the impugned transaction with Shri Sanjay Singhal was a concocted deal wherein profits were artificially transferred to him by way of a sham transaction.*
> *15.9 The Assessing Officer made addition of Rs.2,64,60,000/- by treating the same as bogus expenses on account of the following:*
> *a. The story rights purchased by Shri Sanjay Singhal from the appellant in April, 2016 for Rs.25,00,000/- and later sold to T-series UK for Rs.2,64,60,000/-. No plausible explanation for this huge increase in price of purchase of story rights have been furnished and Shri Sanjay Singhal in his statement recorded has given an evasive reply in his statement that he does not remember the reason for such huge increase in the price of re-make rights.*

b. Shri Sanjay Singhal in his ITR filed for the assessment year 2017-18 has not shown any foreign income.

15.10 The appellant has argued as under:-

a. Shri Sanjay Singhal had shown interest in the remake rights of the movie and therefore, Shri Bhushan Kumar had sold rights to him for Rs.25,00,000/-However, later on, the potential commercial benefit for independtly producing the film TUM BIN-2 were recognized and therefore, after hard negotiation with Shri Sanjay Singhal the buyback price was agreed that Rs.2,64,60,000/-. Hence, this was purely business transaction.

b. The expenditure for purchase of remake rights was incurred by T-series UK and the same has not been debited in the books of the appellant.

c. The Assessing Officer has failed to record and evidence which suggest that amount which was paid to Shri Sanjay Singhal by Tseries UK was routed back to SCIPL in any manner.

d. The assessment of Shri Sanjay Singhal for assessment year 2017-18 was completed under section 153A and no adverse Inference was drawn in respect of this transaction relating to procurement of remake rights of TUM BIN-2.

e. Shri Sanjay Singhal in his statement has not denled this transaction but rather confirmed the transaction and its genuineness.

f. The appellant has also taken an alternative argument that in case any adverse inference is likely to be drawn on this issue then the benefit of Rs.25,00,000/-on account of income declared from sale of remake rights may kindly be given.

15.11 It is not understood as to how the appellant could sale the rights of story of the film when it was assigned to T series UK for 300000 pound sterling. The appellant in the agreement dated 22.01.2016 had already transferred the rights to T series UK for production of film. The appellant was supposed to only finance the making of the movie. When in January 2016, T series UK was commissioned as producer of the film, the appellant could not have sold the story to Shri Sanjay Singhal and subsequently purchased it from him.

15.12 From schedule I of the agreement, it is seen that the story of the film was written by Shri Anubhav Sinha. The story written by Anubhav Sinha for the film could not have been sold by the appellant to Sanjay Singhal. The deal between the two persons was a sham transaction aimed at inflating the price of the film. Further, no evidence in support of the claim has been furnished by the appellant.

15.13 It is therefore, held that the transaction with Shri Sanjay Singhal was a sham transaction and expenses claimed on account of such impugned transaction is not allowable deduction.

15.14 In view of the above, the Assessing Officer was correct in making addition. However, the correct amount that needs to be added is only Rs.2,39,60,000/-(Rs. 2,64,60,000 - 25,00,000). The appellant accordingly, gets relief to the extent of Rs. 25,00,000/-. The addition on account of sham transaction with Sanjay Singhal is restricted to Rs. 2,39,60,000/-."

21.3 The CIT(A) confirming the addition held that it is not understood as to how the appellant could sale the rights of the story of the film when it was assigned to T-Series Films UK for 300000 Pounds sterling. The appellant was only supposed to finance the making of the film and the assessee could not have sold the story to Sh. Sanjay Singhal and subsequently purchased it from him. Further the CIT(A) held that it is not reasonable as to how a story which was sold to Sanjay Singhal for Rs.25,00,000/- was purchased by T Films UK Limited for such a higher amount Rs.2,64,60,000/- compared to its purchase price in just 2 month period.

21.4 That Ld. Counsel of the assessee submitted that payment of Rs 2,64,60,000/- made to Sh Sanjay Singhal was for acquisition of remake rights of the movie Tum Bin 2. Since the Film Commissioning agreement had been

executed with T series (UK) Films Ltd these remake rights were directly purchased by the UK company.

21.5 Further the Counsel submitted that the rights were purchased by Sh Sanjay Singhal from SCIPL for 25 lacs which was later on sold for Rs 2.64 Cr to T series (UK) Films Ltd. Regarding the hike in the prices of the remake rights it is submitted that Sh Sanjay Sinhgal has shown the interest in the remake rights of the movie and therefore Sh Bhushan Kumar has sold the rights to Sh Sanjay Singhal for 25 lakhs. However, later on SCIPL recognized the potential for commercial benefit in independently producing the film 'Tum Bin 2. Therefore, SCIPL approached to Sh Sanjay Singhal approximately after 2 month and after a hard negotiation buy back prices were agreed at Rs 2,64,60,000/-. This sequence of events highlights that the initial sale of rights to Sh. Sanjay Singhal was primarily a business transaction. The subsequent decision by SCIPL to reclaim the rights was rooted in their assessment of the favourable prospects of self-production, rendering it a well-considered business move. The Ld Counsel also submitted that Tum Bon was the first film produced by Sh. Bhushan Kumar and and hence was very close to his heart. In light of these circumstances, it is reasonable to view the buyback of rights by the assessee company from Sh Sanjay Singhal at a higher price is nothing more than an innocuous business transaction.

21.6 It is further submitted by the counsel before us that above expenditure for purchase of remake rights of movie TUM BIN 2 were incurred by T-Series (UK) Films Ltd which is backed by a valid and subsisting commercial agreement. As far as question arises that payment made to Sh Sanjay Singhal was a bogus expenditure the AO failed to record any evidence on record which suggest that amount which was paid to Sh Sanjay Singhal by T-Series (UK) Films Ltd was routed back to SCIPL in any manner. The AO failed to appreciate the fact that the impunged expenditure of Rs 2,64,60,000/- was never debited in the books of SCIPL since it did not make any payment to Sanjay Singhal.

21.7 The AO observed that Sh Sanjay Singhal does not have any domain expertise in the field of film production and alleged that investigation wing has established that modus operandi of Sh Sanjay Singhal is to adjusted his unaccounted cash. Regarding the same the counsel highlighted that Sh Sanjay Singhal is close friend of Sh Bhushan Kumar. Apart from his involvement in the Gutkha and Pan Masala business, Sh. Sanjay Singhal has consistently demonstrated an inclination towards diversifying his business venture. There exists no unlawful element in this regard. Further it is worth noting that assessment in the case of Sanjay Singhal was completed for A.Y 2017-18 u/s 153A, during which no additions were made to his income nor were any adverse inferences drawn with respect to the transactions related to the procurement of the Remake Rights for the movie 'Tum Bin 2.

21.8 The Counsel of the assessee highlights that regarding statement of Shri Sanjay Singhal is concerned, only a part of which has been reproduced in the assessment order, it is submitted that the said statement in fact supports the case of the assessee. An examination of the said statement would confirm that Shri Sanjay Singhal has not denied his transactions with SCIPL but rather confirmed the transactions and its genuineness

21.9 As regards the observation of the CIT(A) that the story written by Sh. Anubhav Sinha could not have been sold by the assessee it is submitted that the assessee has sold the remake rights and not the story. Once the remake rights were repurchased by T Series UK then the Sh. Anubhav Sinha was appointed by T Series UK to direct and write the film. Hence, this observation of the CIT(A) has not merit.

21.10 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that the appellant, SCIPL, had sold the remake rights of TUM BIN to Sh. Sanjay Singha in April 2016 for Rs. 25,00,000/- and after just 3 months the same were brought back for Rs. 2,64,60,000/- from Sh. Sanjau Singhal. The assessee thereby incurred a loss of Rs. 2,39,60,000/- in this transaction. The AO observed that it was a sham transaction just to avoid taxes and the CIT(A) concurred with the view of the AO and confirmed the disallowance.

21.11 SCIPL argument that the sale to Singhal was a legitimate business transaction, the repurchase followed negotiations recognizing commercial potential, the expense was borne by T-Series UK, and no evidence showed funds returning to SCIPL is rejected since Sanjay Singhal who being in the business of tabocco lacks film production experience. As per the argument of the Ld Counsel the film very dear to Sh. Bhushan Kumar if that was the case then why the same was sold to SH. Sanjay Singhal in first place is difficult to comprehend. Moreso, the same was brought back from Sh. Sanjay Singhal in just 3 months at 10 times the price. The assessee kept the rights of TUM BIN for more than 10 years and then sold them and within a span of 3 months brought them back. This act of the assessee creates doubt regarding the genuineness of the transaction.

21.12 The CIT(A) has observed that how the appellant could sale the rights of story of the film when it was assigned to T series UK for 300000 pound sterling. The appellant in the agreement dated 22.01.2016 had already transferred the rights to T series UK for production of film. The appellant was supposed to only finance the making of the movie. When in January 2016, T series UK was commissioned as producer of the film, the appellant could not have sold the story to Shri Sanjay Singhal and subsequently purchased it from him. Thus, it was a sham transaction just to inflate the cost of the film to evade taxes. The Ld Counsel has not been able to explain as to how when the assessee had already entered into an agreement with T Series Films UK for production of TUM BIN-2

in January 2016 sell the rights of this film to Sanjay Singhal in April 2016 who has no experience in Film production Line and then buy it back from him at 10 times the price at which they were sold to SH. Sanjay Singhal. Therefore, the transaction with Shri Sanjay Singhal was a sham transaction and expenses claimed on account of such impugned transaction is not allowable deduction.

21.13 We uphold the order of CIT(A) of confirming disallowance of Rs. 2,39,60,000 (Rs. 2,64,60,000 minus Rs. 25,00,000). Therefore, this ground of the assessee is dismissed.

21.14 So far as the addition to the tune of Rs. 3,00,000/- under Section 69 of the Act as unacounted expenditure incurred in respect of whatsapp chat with Shiv Channa is concerned, we have already discussed this particular ground in A.Y. 2018-19 in the forgoing paragraph in assessee's own appeal whereby and whereunder this addition made in the hands of the assessee has already been upheld.

Un-Common Grounds for AY 2018-19

22. The addition of Rs. 6,21,14,771/- on account of disallowance of expenses of production of Film Hate Story-4 considering them as bogus expense is challenged for AY 2018-19 by the assessee company.

22.1 Brief facts of the case are that M/s SCIPL produced "Hate Story 4," released on 09.03.2018, with major filming in the UK through Super T Films (UK) Ltd. which outsourced the payments in respect of cast, crew, and

technicians to NM Worldwide Ltd in Dubai. The Assessing Officer (AO) noted SCIPL transferred Rs. 19,56,92,500 to Super T Films (UK) Ltd for foreign shooting, of which 874,626 GBP (approx. Rs. 7.50 crores) was sent to NM Worldwide Ltd (line producer) for payments to the Director, Dialogue Writer, and Screenplay Writer. On Investigation by the Investigation Wing it was found that out of Rs. 7.50 crores remitted to NM Worldwide Limited, an amount of Rs. 1,28,85,229/- was actually paid by NM Worldwide to cast, crew, and technicians, etc. and resultantly Rs. 6,21,14,771/- being Rs. 7.50 crores transferred to NM Worldwide less Rs. 1,28,85,229 actually paid by NM Worldwideis added to the total income of appellant company being bogus expenses claimed on account of production of movie "Hate Story 4".

22.2 The additions so made by the AO in AY 2018-19 were upheld by the CIT(A) by stating that the appellant inflated its expenditure for production of Film Hate Story-4. The relevant paras are reproduced below:-

> *"13.28 The appellant company produced a film titled "Hate Story 4" which was released on 09.03.2018. The main cast of the said film included Karan Wahi and Ihana Dhillon and it was directed by Vishal Pandya. A major portion of this film was shot in United Kingdom (UK) for which a separate line producer was engaged for carrying out the shooting of the film in London, United Kingdom. The production of the film in UK was carried out through Super T Films (UK) Ltd. The local line producer in London (UK) i.e. Super T Films (UK) Ltd in turn outsourced part of the activities related to the production of the film to a Dubai based entity namely NM Worldwide Ltd for making payments to certain cast crew and technicians of the film. The entire funds required to produce the film were transferred from the bank account of SCIPL in India to the bank account of Super T*

Films (UK). Certain expenses towards the shooting of the film and payment to cast, crew and technician was incurred through bank account of Super T Films (UK). Certain amount was further transferred from the bank account of Super T Films (UK) to the bank account of NM Worldwide Ltd in Dubai.

13.29 It was observed by the assessing officer SCIPL had transferred 19,56,92,500/- to Super T Films (UK) Ltd towards cost of foreign shooting and out of this 874626 GBP equivalent to 7.50 crores were transferred to NM Worldwide Ltd in Dubai for the making payments the Director, Dialogue Writer, Screenplay Writer. The payments claimed to be made to these persons as under:

S.NO	*Nature of Expense*	*Name of Individual*	*Amount*
1	*Director Loan Out*	*Vishal Pandya*	*3,50,00,000/-*
2	*Dialogue Writer Loan Out*	*Milap Milan Zaveri*	*1,50,00,000/-*
3	*Assignment of Story Rights*	*Sameer Brijmohan Arora*	*1,00,00,000/-*
4	*Screenplay Writer Loan Out*	*Sameer Brijmohan Arora*	*50,00,000/-*
5	*Director of Photography (DOP) Loan Out*	*Sunita Radia*	*1,00,00,000/-*
		TOTAL	***7,50,00,000/-***

13.30 The investigation wing during post search proceedings had summoned the above-mentioned persons under section 131(1A) and persons were asked to justify the sources of income and whether any income both foreign and domestic has been received by them with respect to the film Hate Story-4. They were also summoned to furnish the agreement entered by them with NM Worldwide Limited with respect to Hate Story-4. The replies of the individuals were received, and based on their response received the payments received from NM Worldwide Limited by these persons is as per the table given below:

S.No	*Name*	*Amount received From NM Worldwide Limited*	*Value of Agreement Entered with NM Worldwide Limited*
1.	*Vishal Pandya(Director)*	*89,14,997/-*	*91,00,000/-*
2.	*Milap Milan Zaveri*	*14,83,894/-*	*15,00,000/-*

	(Dialogue Writer)		
3.	*Sunita Radia(DOP)*	*24,86,338/-*	*25,00,000/-*
4.	*Sameer Brijmohan Arora (Screenplay Writer)*	*Not submitted*	*Not Submitted*
	Total	*1,28,85,229/-*	

13.31 The assessing officer has made addition of Rs. 6,21,14,771/- being difference of funds paid to NM Worldwide and actual payment made by them (Rs. 7,50,00,000 1,28,85,229) by treating the same as bogus expenses debited against production of movie Hate Story 4. The Assessing officer has observed that Rs. 6,21,14,771/- were retained In Dubai for the benefit of the appellant.

13.32 The appellant has argued that all payments for foreign shooting of the film were made in accordance with the agreement. An amount of Rs. 19,56,92,500/- was transferred to the bank account of Super T Films (UK) Ltd. for meeting the cost of foreign shooting. Out of the above sum if Super T Films (UK) Ltd transferred an amount of 874,626 pounds approx. Rs. 7.50 crores to an entity in Dubai for doing part of the shooting work, the said arrangement is between those 2 parties. As far as appellant is concerned the entire cost incurred on the foreign shooting is backed by commercial agreement. The appellant has further argued that there is no evidence on record to suggest that the amount transferred to Dubai entity namely NM Worldwide Ltd. was received back by SCIPL in any manner. Therefore, it was claimed by the appellant that the modus operandi stated in the assessment order only remains an allegation. Enquiries were done from Sh. Vishal Pandya; Director of the film Milap Milan Zaveri Dialogue Writer, Sameer Brijmohan Arora screenplay writer and Sunita Radia Director of Photography and the same has been referred to in the assessment order. However, it may be noted that if these persons director has been paid a lesser amount as compared to the amount charged from Super T Films (UK) Ltd. by NM Worldwide Ltd. then it cannot be inferred that expenses have been inflated, the same can at the most be attributed as margin retained by NM Worldwide Ltd. Another argument of the appellant is that as per terms of the film commissioning agreement the entire cost of foreign shooting was to be incurred by Super T Films (UK) Ltd. and the same was to be reimbursed by SCIPL

13.33 The AO has disallowed Rs. 6,21,14,771 as bogus expenditure. This disallowance is based upon transfer of Rs. 7.5 crore by Super T Films (UK) Ltd to NM Worldwide Dubai for for the making payments the Director, Dialogue Writer, Screenplay Writer and out of the same only Rs. 1,28,85,229 was paid. On perusal of the assessment order and contentions of the appellant, it is undisputed fact that the appellant transferred an amount of Rs.19.57 Crores to Super T Films (UK) Ltd. The same has been claimed as expenditure in the books of accounts of the appellant company for the F.Y 2017-18. It is also an undisputed fact that out of Rs.19.57 Crores, an amount of 874626 GBP was transferred by Super T Films (UK) Ltd to Dubai based entity named NM Worldwide.

13.34 The transfer of GBP 874626 was for payments to the Director, Dialogue Writer, Screenplay Writer and the SCIPL has claimed the same to be paid to various persons. However, in the response to summons u/s 131(1A) the various persons to whom payments were made have confirmed the receipt of following payments.

S.No	*Name*	*Amount received From NM Worldwide Limited*	*Value of Agreement Entered with NM Worldwide Limited*
1.	*Vishal Pandya(Director)*	*89,14,997/-*	*91,00,000/-*
2.	*Milap Milan Zaveri (Dialogue Writer)*	*14,83,894/-*	*15,00,000/-*
3.	*Sunita Radia(DOP)*	*24,86,338/-*	*25,00,000/-*
4.	*Sameer Brijmohan Arora (Screenplay Writer)*	*Not submitted*	*Not Submitted*
	Total	*1,28,85,229/-*	

13.35 From the above table it can be seen that the total payment to various persons by NM Worldwide was only Rs. 1,28,85,229/- against Rs.7.5 crore claimed by SCIPL as expense against the movie Hate Story - 4.

13.36 Hence it is clearly established that SCIPL has claimed inflated expenses on account of payment made to Director, Dialogue Writer, Screenplay Writer Hate Story - 4. The payment to them was only Rs. 1,28,85,229/- as against transfer of 874626 GBP to NM Worldwide Dubai. Therefore, the excess payment to NM Worldwide Dubai by Super T Films

(UK) Ltd over and above what was paid to Director, Dialogue Writer, Screenplay Writer is to be disallowed.

13.37 In view of the above discussion, it is held that the appellant inflated its expenditure for production of Film Hate Story 4 to the extent of Rs.6,21,14,771/- and accordingly addition to the extent of Rs. 6,21,14,771/- is confirmed.

22.3 The Commissioner of Income Tax (Appeals) [CIT(A)] upheld the addition made in the assessment order, rejecting SCIPL's contention that all payments were governed by valid commercial agreements. The CIT(A) found that SCIPL transferred Rs. 19,56,92,500 to Super T Films for production expenses, out of which 874,626 GBP (approximately Rs. 7,50,00,000) was further transferred to NM Worldwide for payments to the Director, Dialogue Writer, and Screenplay Writer. However, upon investigation, it was determined that NM Worldwide disbursed only Rs. 1,28,85,229 to the Director, Dialogue Writer, and Screenplay Writer, thereby justifying the disallowance of the excess amount.

22.4 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that SCIPL transferred Rs. 19,56,92,500 to Super T Films (UK) Ltd. for foreign shooting, of which 874,626 GBP (approx. Rs. 7.5 crore) was transferred to NM Worldwide Ltd. in Dubai for payments to the Director (Vishal Pandya), Dialogue Writer (Milap Milan Zaveri), Screenplay Writer (Sameer Brijmohan Arora), and Director of Photography (Sunita Radia). Investigation under section 131(1A) revealed that only Rs. 1,28,85,229 was paid to these individuals. SCIPL

argument that payments were as per valid commercial agreements and there is no evidence on record to show that funds were returned to SCIPL, attributing the shortfall to NM Worldwide's profit margins is rejected as the investigation reveals that finances and operations of NM Worldwide are operated and managed by Bhushan Dua and his employees.

22.5 It is seen that the AO has disallowed Rs. 6,21,14,771 as bogus expenditure. This disallowance is based upon transfer of Rs. 7.5 crore by Super T Films (UK) Ltd to NM Worldwide Dubai for for the making payments the Director, Dialogue Writer, Screenplay Writer and out of the same only Rs. 1,28,85,229 was paid. On perusal of the assessment order and contentions of the appellant, it is undisputed fact that the appellant transferred an amount of Rs.19.57 Crores to Super T Films (UK) Ltd. The same has been claimed as expenditure in the books of accounts of the appellant company for the F.Y 2017-18. It is also an undisputed fact that out of Rs.19.57 Crores, an amount of 874626 GBP (approx. Rs. 7.5 crore) was transferred by Super T Films (UK) Ltd to Dubai based entity named NM Worldwide.

22.6 The transfer of GBP 874626 was for payments to the Director, Dialogue Writer, Screenplay Writer and the assessee has claimed the same to be paid to various persons. However, in the response to summons u/s 131(1A) the various persons to whom payments were made have confirmed the receipt of following payments.

S.No	Name	Amount received From NM Worldwide Limited	Value of Agreement Entered with NM Worldwide Limited
1.	Vishal Pandya(Director)	89,14,997/-	91,00,000/-
2.	Milap Milan Zaveri (Dialogue Writer)	14,83,894/-	15,00,000/-
3.	Sunita Radia(DOP)	24,86,338/-	25,00,000/-
4.	Sameer Brijmohan Arora (Screenplay Writer)	Not submitted	Not Submitted
	Total	1,28,85,229/-	

22.7 From the above table it can be seen that the total payment to various persons by NM Worldwide was only Rs. 1,28,85,229/- against Rs.7.5 crore claimed by SCIPL as expense against the movie Hate Story - 4.

22.8 Hence it is clearly established that SCIPL has claimed inflated expenses on account of payment made to Director, Dialogue Writer, Screenplay Writer Hate Story - 4. The payment to them was only Rs. 1,28,85,229/- as against transfer of 874626 GBP(approx. Rs. 7.5 crore) to NM Worldwide Dubai. Therefore, the CIT(A) was ciorrect in confirming disallowance of excess payment to NM Worldwide Dubai by Super T Films (UK) Ltd over and above what was paid to Director, Dialogue Writer, Screenplay Writer.

22.9 In view of the above observations we upheld the order of CIT(A) confirming the disallowance of Rs. 6,21,14,771 as bogus expenditure for the film Hate Story 4, produced by SCIPL and released on 09.03.2018. Therefore this ground of appeal of assessee is dismissed.

23. The addition of Rs. 8,00,000/- on account of cash income from Co-Branding Activity is challenged for AY 2018-19 by the assessee company. Brief facts of the case are that the WhatsApp chats between Bhushan Kumar and an SCIPL employee, Rajendra Ankula, indicated a deal for a song in the movie Bhoomi valued at Rs. 18 lakh. Rs. 10 lakh paid by cheque and Rs. 8 lakh in cash. While the cheque payment was recorded in SCIPL's books, the cash component was omitted. During the Assessment proceedings, Sh. Bhushan Kumar denied recalling the chats. Since the cheque payment tallied with the chats, the unrecorded cash payment was accepted as genuine. Accordingly, Rs. 8 lakh was added to SCIPL's business income as unaccounted cash.

23.1 The additions so made by the AO in AY 2018-19 were upheld by the CIT(A) by stating that the content of the chat is proved to be correct. As the cheque amount is reflected in the books of accounts of the appellant, therefore, it is established that the cash amount is also received by the appellant but not disclosed in the books of accounts. The relevant paras are reproduced below:-

> *"16.14 The arguments of the Assessing Officer and of the appellant have been seen. It is found that the appellant company entered into an agreement for making of music video for magic moment vodka brand with M/s Radico Khetan Ltd. For making of the video, an amount of Rs.18,00,000/- was agreed upon. The consideration of Rs. 10,00,000/- was to be taken to the appellant in cheque and Rs.8,00,000/- In cash as is evident from the chat reproduced above.*
>
> *16.15 The Issue to be decided in the present ground is whether a presumption can be drawn only on the basis of chats containing numerical*

figures without any corroborating material to reach a conclusion that unaccounted cash Income was earned by the appellant from singers.

16.16 The AO has determined unaccounted cash income of the appellant on the basis of whatsapp chat. It has been presumed by him that the numerical figures appearing in the whatsapp message represent the real income of the appellant from M/s Radico Khaitan Ltd.

16.17 The basis for the entire addition is the whatsapp message reproduced above. The appellant argued that the contents of the chat cannot be the basis of any addition. However, such a contention of the appellant is baseless because the chat has been found from the phone of Shri Bhushan Kumar, the director the appellant company and Shri Rajinder Ankula. Further, the contents of the chat has not been proved to be incorrect at any point of time by the appellant. It is also a matter of fact and record that neither of the two persons have stated that the transactions referred in the chat is incorrect or have not taken place. It is also to be noted that the chat is in respect of receipt of money by the appellant company. Therefore, the contents of the chat is considered as a valid evidence based on which addition can be made.

16.18 In the text of the chat there is clear mention of receipt of money from Radico Khaltan. The document is self-explanatory and the appellant has not furnished any evidence contrary to the evidence on record. The chats establish that the appellant had received monies and it was apparently not disclosed in the books maintained by the assessee. Be otherwise the onus to prove that cash transaction was recorded in the books lies on the assessee. The appellant has miserably failed to explain the same. Therefore, the Assessing Officer was justified in making the addition.

16.19 It is seen that the appellant in his books of accounts has recorded the amount of Rs. 10,00,000/- (plus GST) vide entry dated 14.08.2017. Therefore, the content of the chat is proved to be correct. As the cheque amount is reflected in the books of accounts of the appellant, therefore, it is established that the cash amount is also received by the appellant but not disclosed in the books of accounts.

*16.20 In view of the above discussion, the addition of Rs.8,00,000/- is **confirmed**. Ground No.8 is **dismissed.***

23.2 The Ld. Counsel of the assessee highlighted provisions of section 65B of the Indian Evidence Act, 1872 are to be followed scrupulously. It is the contention of the assessee that any information contained in any electronic record is not admissible as evidence as per the provisions of section 65B of the Indian Evidence Act, 1872 unless the conditions prescribed in sub-section (2) & (4) of section 65B are satisfied in relation to the information and respective electronic device in question. In view of the same the whatsapp messages referred are merely a piece of paper not having any evidentiary value until and unless the conditions stated in section 65B of the Indian Evidence Act, 1872 are satisfied.

23.3 Further the counsel of the assessee relying on the judgement of Hon'ble Supreme court (Three Judge bench) in the case of Anvar V. Basheer, reported in (2014) 10 SCC 473 argued that the requisite certificate from an officer certifying that the print outs in question are from the seized electronic record/device is missing in the present case.

23.4 Further Ld. Counsel of the assessee highlighted that, there is no proof or evidence of the receipt of cash of Rs. 8 lacs as is being alleged. No enquiries have been conducted from M/s Radico Khaitan Ltd. The counter party has not confirmed having made any cash payment to SCIPL. Even the chat mentioned in

the SCN does not specify that any amount in cash has been received. What is mentioned in the chat is the finalised proposal only and not the actual transaction. The material is in the nature of a mere whatsapp Chat containing certain information is not sufficient to derive an inference about undisclosed receipts in cash in the absence of any cogent and corroborating material/evidence and particularly lack of any enquiry from the alleged third party from whom such cash payments have been received. Since the corroborating material/evidence in the present case is completely missing, the impugned addition is required to be deleted.

23.5 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. The Assessing Officer's (AO) addition of Rs. 8,00,000 as unaccounted cash income is premised on Whatsapp Chat extracted from digital data seized between Bhushan Dua and his employee SCIPL, Rajendra Ankulafor production of a music video for the company M/s Radico Khaitan Ltd. for promotion of brand Magic Moments vodka. The WhatsApp chat stipulated a total consideration of Rs. 18,00,000, with Rs. 10,00,000 to be paid by cheque and Rs. 8,00,000 in cash. The chats was retrieved from the phone of SCIPL's Managing director, Shri Bhushan Kumar, and Shri Rajinder Ankula. The AO relied on these chats to conclude that the Rs. 8,00,000 cash payment was unaccounted income not recorded in SCIPL's books as Rs. 10,00,000/- mentioned in the chat corroborated with the books of accounts.

23.6 SCIPL argument relying on the judgement of Supreme Court's in the case of Anvar V. Basheer (2014) 10 SCC 473 that the WhatsApp chats lacked evidentiary value under Section 65B of the Indian Evidence Act, 1872, as no certificate was provided to authenticate the electronic record is rejected as SCIPL failed to disprove the authenticity or content mentioned in the chat retrieved from Bhushan Kumar's phone, explicitly mentioning the receipt of money from M/s Radico Khaitan.

23.7 Further argument of Ld. Counsel of assessee that the chats only reflected a proposed transaction, not an actual cash receipt, and no inquiry was conducted with Radico Khaitan to confirm the payment is rejected as the amount of Rs. 10,00,000/- mentioned in the chat is corroborated with the books of accounts of SCIPL. We have rejected SCIPL's arguments, finding the WhatsApp chats to be valid evidence. Neither Bhushan Kumar nor Rajinder Ankula denied the transactions referenced in the chats. Is is noted that SCIPL recorded the Rs. 10,00,000 cheque payment (plus GST) in its books on 14.08.2017, corroborating part of the chat's content and lending credibility to the claim that the Rs. 8,00,000 cash payment was also received but not disclosed.

23.8 The onus was on SCIPL to demonstrate that the cash transaction was recorded in its books, which it failed to do. Regarding the applicability of Section 65B, we found SCIPL's reliance on Anvar V. Basheer unpersuasive, as the chats' authenticity was not contested by the individuals involved, and their context

clearly supported the AO's findings. The absence of inquiries with Radico Khaitan was deemed immaterial, as the chats were corroborated by cheque entry of Rs. 10,00,000/- and sufficient to establish the receipt of unaccounted cash. Consequently, we upheld the order of CIT(A) confirmingaddition of Rs. 8,00,000 as undisclosed income, therefore assessee of appeal is dismissed.

24. In the appeal for Assessment Year (AY) 2018-19, both the Revenue and the assessee (SCIPL) have raised grounds concerning an addition aggregating to Rs. 1,47,980/- (Assessee Appeal) and Rs. 1,46,50,020/- (Department Appeal) based on alleged cash income and expenditure recorded in a diary belonging to Sudesh Kumari, seized during a search operation.

24.1 Page 15 of the annexure A 10 seized during search proceedings shows some figures which were confronted with Smt. Sudesh Dua in respect of which it was submitted that there is cash expenditure of 35,980/- + 40,000/- + 50,000/- + 22,000/- totalling Rs. 1,47,980/- spent on repair of furniture in Bombay. Based on Page 12 of Annexure A10 seized during search proceedings in which the payment reflecting against the word "Chec" is corroborated with the bank statement, the AO has drawn conclusion that Page 15 is not a Dumb Document and the figures mentioned on Page 15 are also in lakhs and therefore total payment made is Rs. 1,47,98,000 and not 1,47,980/-. Further the AO draws the observation that diary qualifies as "books of account" under Section 2(12A), and Smt. Sudesh Dua failed to explain entries satisfactorily. Resultantly addition of Rs. 1,47,98,000/-

was made as unaccounted expenditure in the total income of SCIPL for AY 2018-19.

24.2 The CIT(A) provided partial relief to the assessee company by holding both the pages and the matter written in them are completely different having no relation with each other. Therefore, no corroborative evidence is available on record in substantiation of figures mentioned at Page No. 15 as figures mentioned in lacs. The CIT(A) on this basis held that the amount written are not in Lakhs and on this basis confirmed the addition of Rs. 1,47,980/- and deleted the addition of Rs. 1,46,50,020/- The relevant paras from the order of CIT(A) are reproduced below:-

> *"17.23 I have carefully considered the assessment order and the written submission of the appellant. The entire dispute in these Grounds of Appeal is about the interpretation of figures mentioned at Page No. 12 and Page No. 15 of the seized annexure A10. The AO in the assessment order has interpreted the figures mentioned at Page No. 12 and Page 15 as figures mentioned in lakhs and made the following additions:*

Addition	AY 2018-19	AY 2019-20
Cash payment made to Director Ved Prakash Chanana. (Page 12 of Annexure A10)	1,50,00,000	1,50,00,000
Cash payment for Bombay Office (Page 15 of Annexure A10)	1,47,98,000	

> *17.24 The AO has questioned the explanation in respect of jottings at Page No. 12 and Page No. 15 of the Annexure A 10. Therefore, the issue to examine would be whether transactions mentioned at Page No. 12 and Page No. 15 are merely rough jottings or amounts mentioned in lakhs.*

17.25 The main argument of the Assessing Officer for making the addition is summarised as under:

I *The assessee was given ample opportunity to explain the contents of rough jottings but the assessee avoiding the notice as well as not supporting any satisfactory evidence in support of the claim made.*

II *Notices issued to Shri Ved Prakash Chanana remain non complied and the reply received from Smt Sudesh Dua werd not supported by any evidence such as invoices etc. Further it was submitted by Smt Sudesh Dua that the same may be considered in SCIPL case instead of her personal case.*

III *In case of Contents mentioned at Page No. 15 of Annexure A 10, assessee himself admitted that cash payment of Rs. 1,47,980/- was made for repair of furniture in Bombay in cash. Further question was whether the amount admitted by the assessee were in thousand or lacs.*

IV *The AO draws an observation that on perusal of Page 12 where it is written that "50 chee" on various instances have been verified from the bank account of Shri Ved Prakash Chanana as 50 lacs and therefore the amounts mentioned at Page 12 and Page 15 are in lacs and not in thousands. Based on the above observations additions of Rs. 1,50,00,000 was made for AY 2018-19 and AY 2019-20 and another addition of Rs. 1,47,98,000 for AY 2018-19.*

V *In Annexure A-15, there is mention of Bombay furniture with date and amount written as 35.98, 40, 50, 22. The Assessing Officer presumed that the amounts are in lakhs and therefore, computed unaccounted expenditure at Rs.14798000/-. In respect of addition of Rs.14798000/-, the appellant during the course of assessment proceedings had stated that an amount of Rs.147980/- was unaccounted expenditure incurred for purchase of furniture at his Bombay office. However, the Assessing Officer made addition on the ground that the figures are in lakhs and consequently made addition of Rs.14798000/-. The Assessing Officer had no evidence contrary to the claim of the appellant that the figures are in lakhs and not in thousands.*

VI *When In respect of amounts mentioned at Page No. 15 of the seized annexure, the appellant himself admitted that the amounts mentioned are in thousands and the said figures are expenses incurred in respect of Furniture at Bombay Office, there is no basis for the Assessing Officer to arrive at different conclusion.*

VII *Moreover, the fact that addition has been made based upon jottings at Page 15 of the Diary and to decipher that the figure is in Lacs the AO had used the jottings made on Page 12 of the diary as reference and assumed that since the figures mentioned on page 12 are in Lacs then the same must be the case for figures on Page 15 is not justified as both the pages and the matter written in them are completely different having no relation with each other. Therefore no corroborative evidence is available on record in substantiation of figures mentioned at Page No. 15 as figures mentioned in lacs.*

VIII *It can be assumed that there may be unaccounted purchase of furniture to the extent of Rs.147980/- in cash. However, it cannot be assumed that someone will sell the furniture of Rs.14798000/- in cash to one party. On furniture, the appellant is eligible to claim depreciation @10%. Apparently, the appellant company is a cash rich company. In such a case, it is very unlikely that furniture worth 1.48 Crores would be purchased in cash and the appellant foregoes his claim of depreciation. On the ground of preponderance of probability, it is highly unlikely that the appellant may have purchase furniture of Rs.1.48 Crores in cash.*

IX *Resultantly, addition of Rs. 1,47,98,000/- made in respect of rough jottings at Page No. 15 of the seized annexure A 10 is restricted to Rs. 1,47,980/-Therefore, the appellant gets relief of Rs.14650020/- and addition of Rs.147980/-u/s 69 C of the Act is confirmed.*

24.3 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that that the Ld.AO has disallowed an amount of Rs. 1,47,98,000 for AY 2018-19, based on entries in Annexure A-15, a seized diary of Sudesh Kumari, which mentioned amounts of 35.98, 40, 50, and 22 alongside "Bombay furniture." The AO presumed these figures represented lakhs, interpreting them as

unaccounted expenditure totaling Rs. 1,47,98,000 for furniture purchased for SCIPL's Bombay office.

24.4 We have evaluated the arguments, evidence, and legal merits to determine the validity of the addition. The AO's addition was based on the assumption that the figures (35.98, 40, 50, 22) in the diary were in lakhs, relying on a reference to page 12 of the same diary where figures were noted in lakhs. The AO concluded that the same explanation applied to page 15, leading to the computation of Rs. 1,47,98,000 as unaccounted expenditure. However, it is found that the AO lacked corroborative evidence to substantiate this presumption. The entries on page 12 were unrelated to those on page 15, as they pertained to different matters, rendering the AO's assumption speculative and unsupported. No additional evidence was presented by the AO to contradict SCIPL's claim that the amounts were in thousands.

24.5 We found merit in SCIPL's arguments as the AO's presumption that the diary figures were in lakhs was not supported by any corroborative evidence, and the reliance on unrelated entries on page 12 was unjustified. It is noted that SCIPL's admission of Rs. 1,47,980 as unaccounted expenditure was consistent with the diary entries when interpreted as thousands, and the AO failed to provide contrary evidence to challenge this claim. Furthermore, it is agreed that a cash purchase of furniture worth Rs. 1.48 crores was implausible for a company like SCIPL, which would likely prioritize recorded transactions to claim depreciation.

The principle of preponderance of probability supported the assessee's position that such a large cash transaction was unlikely. Therefore, the relief provided by CIT(A) is upheld and addition of Rs. 1,47,980/- confirmed by the CIT(A) is upheld and the deletion of addition of Rs. 1,46,50,020/- by CIT(A) is also upheld and both the assessee's and revenue's ground of appeal for AY 2018-19 are dismissed.

25. The addition of Rs. 75,00,000/- on account of cash transaction conducted using the Codewords Sweet/Kg is challenged for AY 2018-19.

25.1 Brief facts of the case are that the WhatsApp chats between Shri Shiv Chanana, Shri Bhushan Kumar, and Ms. Shilpa (CFO, Viiking) revealed that M/s SCIPL received cash, coded as "Kg," for bogus expenses through agencies like Viiking. One chat dated 15.06.2017 records Shiv Chanana acknowledging receipt of Rs. 25 lakhs from Sachin Joshi (Viiking Beverages). The discussions detail deliveries of 25 "Kg" (Rs. 25 lakhs) on 15th June, 29th June, and 30th November, along with Rs. 25 lakhs by cheque, forming a total deal of Rs. 1 crore with Viiking. "Kg" was used as a code for ₹1 lakh in cash. SCIPL's Tally ledger for Viiking Beverages reflected only Rs. 25 lakhs on 23.11.2017 under Advertisement and Publicity. The ledger corroborates the chats, confirming a Rs. 1 crore arrangement, of which Rs. 75 lakhs was received in unaccounted cash and Rs. 25 lakhs through cheque (recorded). The cheque acted as security, with Shilpa requesting confirmation of cash delivery to adjust it. As WhatsApp chats are

admissible electronic evidence, they cannot be dismissed as "dumb documents." The ledger entry further validates their authenticity. Accordingly, Rs. 75 lakhs of unrecorded cash receipts were added to SCIPL's income for A.Y. 2018–19.

25.2 The additions so made by the AO in AY 2018-19 were upheld by the CIT(A) by stating that WhatsApp chat between Shri Shiv Chanana and Mrs Shilpa is corroborated with the books of accounts and the figures mentioned in the chat are in lakhs as per the books of accounts, the other 3 figures are also treated as amount mentioned in lakhs. The total transaction as per WhatsApp chat was for 100KG i.e. 100 Lacs out of which only 25 lacs was found in the books and therefore, the balance amount of Rs. 75 lacs is treated as un accounted income of the appellant company. The relevant paras from the order of CIT(A) are reproduced below:-

> *"19.16 The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground Nos. 13, the appellant has contended that the A.O was not justified in making an addition of Rs. 75,00,000/- on account of alleged unaccounted cash income, in the absence of any inquiries conducted from corresponding parties and lack of corroborating material.*
>
> *19.17 For the assessment year under consideration, the assessing officer has referred various chats found between Shri Shiv Chanana and Mrs. Shilpa (CFO Viiking Beverages Pvt Ltd) and another chat between Shri Shiv Chanana and Shri Bhushan Kumar on different dates.*
>
> *19.18 The AO has determined unaccounted cash income from M/s Viiking Beverages Pvt Itd on the basis of whatsapp chat. The Assessing Officer on the basis of above referred chats has drawn an inference that kg is being used as code word for cash in the chats and 1 kg is equivalent to 1 lacs. It has been found by him that the numerical figures appearing in the*

whatsapp message represent the amount received from M/s Viiking Beverages Pvt Ltd as unaccounted income of appellant company.

19.19 The chat between Shri Shiv Chanana and Mrs Shilpa dated 02.12.2017 shows that 25kg was delivered on 15th June, 25 kg on 29th June, 25 kg on 30th Nov and 25 kg through cheque. Hence using 25 kg against cheque clearly shows that kg is being used as code word for Cash in lakhs. Another chat was also found between Shri Bhushan Kumar and Shri Shiv Chanana dated 15.06.2017, where Shri Shiv Chanana confirms receiving Rs. 25 lakhs from Sachin Joshi (Viiking Beverages). Further, the Ledger of Viikings Beverages Pvt Ltd was found from the seized books which show income of only Rs.25 lakhs to M/s Viikings Beverages Pvt Ltd on 23.11.2017 under the head Advertisement and Publicity. As per chat found in between Shiv Chanana and Mrs Shilpa, AO observed that the total transaction was for 100KG I.e. 100 Lacs out of which only 25 lacs was found in the books and therefore the balance amount of 75 lacs was added to the total Income of appellant company.

19.20 The appellant submitted that the entire basis for the addition is the whatsapp message found during the course of search proceedings. During the course of search action, no other corroborating material has been found to support the inferences drawn by the AO for making the impugned addition. From the assessment order, it is found that no statement of any person involved in the chat with Director Sh. Bhushan Kumar (Managing Director) have been recorded at the time of search u/s 132(4) of the Act or during post search enquiries. It is also found that apart from relying on the whatsapp chat, the AO failed to make any enquiry on the impugned issue during the course of assessment proceedings.

19.21 The appellant highlighting the provisions of section 65B of the Indian Evidence Act, 1872 submitted that requisite certificate from an officer certifying that the print outs in question are from the seized electronic record/device are missing. Further, the appellant also submitted that apart from the reference made in the SCN about the WhatsApp chats and emails, a copy of the same has not been provided during post search investigation or during the assessment proceedings. Therefore, the whatsapp messages, emails, etc being referred to in your SCN are merely a piece of paper not having any evidentiary value until and unless the conditions stated in section 65B of the Indian Evidence Act, 1872 are satisfied.

19.22 In support of the above contention, reliance is made by the appellant on following cases:

1. ITO v. W.D. Estate (P.) Ltd. [1993] 46 TTJ (Bom.) 143
2. Shri Neeraj Goel Vs. ACIT In ITA No. 5951/Del./2017
3. ACIT V Layer Exports P. Ltd. [2017] 184 TTJ 469 (MUM)
4. Nishant Construction Pvt. Ltd. V ACIT in ITA No. 1502/AHD/2015
5. ITO v. Kranti Impex (IT Appeal No. 1229/Mumbai/2013)
6. Asst. CIT v. Karodilal Agarwal 50 TTJ 393

19.23 The primary legal contention of the appellant raised by the appellant that as per the provisions of section 65B of the Indian Evidence Act, 1872, whatsapp messages, emails, etc are merely a piece of paper not having any evidentiary value is first taken up for adjudication.

19.24 We rely on the judgement of Hon'ble Supreme Court in the case of Ambalal Sarabhai Enterprises v KS infraspace LLP Limited in which it was held that WhatsApp chat messages which are virtual verbal communications are a matter of evidence with regard to their meaning and its contents to be proved during the trial by evidence in chief and cross examination. Therefore, it was interpreted that whatsapp chats available on record can-not be treated as dumb document.

19.25 Coming to the merits of the case, chat dated 02.12.2017 between Sh. Shiv Chanana and Mrs Shilpa states that the deal from Beverages was for 100kg of which 25 kg was delivered on 15th June, 25 kg on 29th June, 25 kg on 30th Nov and 25 kg through cheque. Hence using 25 kg against cheque clearly shows that kg is being used as code word for Cash. Further as per another chat between Shri Bhushan Kumar and Shri Shiv Chanana dated 15.06.2017 Shri Shiv Chanana confirms receiving Rs. 25 lakhs from Sachin Joshi who also belongs to Viiking Beverages. Lastly, the Ledger of Viikings Beverages Pvt Ltd was found from the seized books which show Income of only Rs. 25 lakhs to M/s Viikings Beverages Pvt Ltd on 23.11.2017 under the head Advertisement and Publicity. The appellant has not been able to establish as to what was the item referred to in chats in Kg which was delivered. The onus was on the appellant to explain the chat with evidence which the appellant has not been able to demonstrate.

19.26 Since the WhatsApp chat between Shri Shiv Chanana and Mrs Shilpa is corroborated with the books of accounts and the figures mentioned in the chat are in lakhs as per the books of accounts, the other 3 figures is also treated as amount mentioned in lakhs. The total transaction as per

WhatsApp chat was for 100KG i.e. 100 Lacs out of which only 25 lacs was found in the books and therefore the balance amount of Rs. 75 lacs is treated as un accounted income of the appellant company.

19.27 In view of the above it is submitted that the addition of of Rs. 75,00,000/- made based on whatapp chat with Shri Shiv is hereby confirmed.

25.3 The AO referred WhatsApp chats between Shri Shiv Chanana, Mrs. Shilpa (CFO, Viiking Beverages), and Shri Bhushan Kumar, used to infer unaccounted cash income. The AO concluded from the chats that "Kg" is a code for cash (1 Kg = Rs. 1 lakh), interpreting numerical figures as unaccounted income from Viiking Beverages.

25.4 A chat dated 02.12.2017 between Shiv Chanana and Shilpa details 25 Kg (Rs. 25 lakhs) delivered on 15th June, 29th June, 30th November, and Rs. 25 lakhs via cheque, totaling a Rs. 100 lakh deal. Another chat (15.06.2017) confirms Chanana received Rs. 25 lakhs from Sachin Joshi (Viiking). The ledger shows only Rs. 25 lakhs recorded on 23.11.2017 under Advertisement and Publicity, leading to the AO adding Rs. 75 lakhs as unaccounted income.

25.5 The predominant judicial view is that no arbitrary addition to the income can be made by the Assessing Officer based on the dumb documents, loose papers containing scribbling, rough/vague notings in the absence of any corroborative material, evidence on record and finding that such dumb documents had materialized into transactions giving rise to income of the assessee which had

not been disclosed in regular books of account by the assessee, as argued by the Ld. AR.

25.6 The well settled legal position is that a non-speaking document referred to as a "Dumb Document" without any corroborative material, evidence on record and finding that such document has materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by such assessee, has to disregarded for the purposes of assessments to be framed u/s 153A and 153C of the Act, as further argued by the Ld. AR.

25.7 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. We have reviewed the assessment order and the appellant's submissions, where the appellant challenged the AO addition of Rs. 75,00,000/- as unaccounted cash income from M/s Viiking Beverages Pvt. Ltd. The AO's addition was based on WhatsApp chats between Shri Shiv Chanana and Mrs. Shilpa (CFO, Viiking Beverages) and Shri Bhushan Kumar, interpreting "kg" as a code for cash, with 1 kg equating to Rs. 1 lakh. A chat dated 02.12.2017 indicated a transaction of 100 kg (Rs. 100 lakhs), with 25 kg (Rs. 25 lakhs) paid via cheque and recorded in the seized ledger on 23.11.2017 under "Advertisement and Publicity," while the remaining 75 kg (Rs. 75 lakhs) was treated as unaccounted income. Another chat dated 15.06.2017 confirmed receipt of Rs. 25 lakhs from Sachin Joshi of Viiking Beverages.

25.8 From the Assessment Order and the CIT(A) order it emrges that, in chat dated 02.12.2017 between Sh. Shiv Chanana and Mrs Shilpa (CFO Viking Beverages), states that the deal from Beverages was for 100kg of which 25 kg was delivered on 15th June, 25 kg on 29th June, 25 kg on 30th Nov and 25 kg through cheque. Hence using 25 kg against cheque clearly shows that kg is being used as code word for Cash. Further as per another chat between Shri Bhushan Kumar and Shri Shiv Chanana dated 15.06.2017 Shri Shiv Chanana confirms receiving Rs. 25 lakhs from Sachin Joshi who also belongs to Viiking Beverages. The Ledger of Viikings Beverages Pvt Ltd shows Income of Rs. 25 lakhs booked by the assessee under the head Advertisement and Publicity. The assessee has not been able to establish as to what was the item referred to in chats in Kg which was delivered. The onus was on the assessee to explain the chat with evidence which the assessee has not been able to demonstrate.The argument of the Ld Counsel that the addition made by the AO relying solely on WhatsApp chats without corroborative evidence and further stating that no statements were recorded u/s 132(4), and further no inquiries were conducted is rejected as the chat is duly corroborated by the ledger of Viking showing entry of Rs. 25 lakhs against advertising and publicity income. This corroborates the chat where in 75 lacs is received in cash and 25 lacs in cheque.

25.9 Since the WhatsApp chat between Shri Shiv Chanana and Mrs Shilpa is corroborated with the books of accounts and the figures mentioned in the chat are

in lakhs as per the books of accounts, the other 3 figures is also treated as amount mentioned in lakhs. The total transaction as per WhatsApp chat was for 100KG i.e. 100 Lacs out of which only 25 lacs was found in the books and therefore the balance amount of Rs. 75 lacs is to be treated as unaccounted income of the assessee company.

25.10 Further the contention of the appellant that the chats lacked evidentiary value under Section 65B of the Indian Evidence Act, 1872, due to the absence of a certificate authenticating the electronic records and non-provision of chat copies during proceedings is also rejected in view of the Supreme Court's ruling in Ambalal Sarabhai Enterprises v. KS Infraspace LLP Limited, in which held that WhatsApp chats are not "dumb documents" and can be admissible, subject to proving their contents through evidence.

25.11 As a result the addition of Rs. 75,00,000/- confirmed by the CIT(A) upheld. Consequently, this ground of appeal of the assessee is dismissed.

Un-Common Grounds for AY 2019-20

26. Under this ground of appeal the addition of Rs. 4,97,000/- on account of salary paid in Cash – Ms Priya Gupta and Sonal Gupta is challenged for AY 2019-20 by the assessee company**.** Brief facts of the case are that WhatsApp chats seized during the search between Shri Bhushan Dua and Sonal (Music Manager) showed a request for a cash salary component of Rs. 2,40,000, while another chat

with Priya Gupta reflected a similar request for Rs. 2,57,000. Based on these chats, a total of Rs. 4,97,000 was added to SCIPL's income. The assessee argued that WhatsApp chats lack evidentiary value under Section 65B without certification. However, relying on the Supreme Court's decision in *Ambalal Sarabhai Enterprises v. KS Infraspace LLP,* it was held that WhatsApp chats, being virtual verbal communications, have evidentiary value subject to proof at trial and cannot be treated as "dumb documents."

26.1 The additions so made by the AO in AY 2019-20 were upheld by the CIT(A) by stating that the addition made based on whatsapp chat with Ms Sonal and Ms Priya for their alleged cash component of salary amounting to Rs. 4,97,000/- during AY 2019-20. The relevant paras are reproduced below:-

> *"17.7 The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground No. 8, the appellant has contended that the A.O was not justified in making an addition of Rs. 4,97,000/- during AY 2019-20 on account of unaccounted income on account of alleged unaccounted cash income received/paid.*
>
> *17.8 For the assessment year under consideration, the assessing officer has referred various chats on different dates which are re produced as under:*
>
> *From: 919820151838@s.whatsapp.net Sonal Music Manager*
> *Timestamp: 01-11-2018 17:02:59(UTC+0)*
> *Source App: WhatsApp*
> *Body:*
> *Sir can I take my cash salary from u tomw? Need for diwali.*
> *March- october.*
> *30k X 8 months = 2.40*

Last time 5k was extra. So minus tht.

From: 919820219359@s.whatsapp.net Priya Gupta Tseries
Timestamp: 28-05-2018 04:20:54(UTC+0)
Source App: WhatsApp
Body:

Hi Bhushanji. How are u? I was away to Kedarnathji & Badrinathji past week & then I fell sick due to the tough Yatra. Wanted to check with you when I could come and meet u. My cash component of 17 days Rs 2.57 Lakhs is due. Bhushanji I had accepted cash only as u wanted it. For me it was always a part of salary. I hope and I know you will be fair to me for not withholding this money that is fairly due to me. Also I have been following up with Samir past 3 months much before I left on my car reimbursement payment but he just tells me it's coming today but it never comes. This is the last two sums due for my final settlement. Request you to please tell him to clear my dues. Thank you.

From: From: 9198214442221@s.whatsapp.net Bhushan Kumar
Timestamp: 28-05-2018 04:41:09(UTC+0)
Source App: WhatsApp
Body:
I will tell him

17.9 The issue to be decided in the present ground is whether a presumption can be drawn only on the basis of chats containing numerical figures without any corroborating material to reach a conclusion that unaccounted cash income / Expenses were earned /incurred by the appellant.

17.10 The AO has determined unaccounted cash expenses were incurred for salary payment to Ms Sonal and Ms Priya on the basis of whatsapp chat. The basis for the entire addition is the whatsapp message reproduced above. During the course of search action, no other corroborating material has been found to support the inferences drawn by the AO for making the impugned addition. From the assessment order, it is found that no

statement of any person involved in the chat with Director Sh. Bhushan Kumar (Managing Director) have been recorded at the time of search u/s 132(4) of the Act or during post search enquiries. It is also found that apart from relying on the whatsapp chat, the AO failed to make any enquiry on the impugned issue during the course of assessment proceedings.

17.11 The appellant submission that whatsapp chat of Sonal making request for cash salary of Rs. 2,40,000/- on 01.11.2018 was never replied by Shri Bhushan ji. There is no corroborated response on record to prove that the cash salary of Rs. 2,40,000/- was paid to Ms Sonal. From the chat, it is evident that Ms. Sonal was promised a cash salary of Rs.30,000/- per month apart from the salary paid by way of cheque. Ms. Sonal is continuing in the appellant company till date. If the salary in cash was not paid, in that case there was no reason for her to continue in the organization. Because Ms. Sonal is continuing in the appellant organization till date, therefore, it is presumed that the transaction referred to in the chat was fulfilled and completed.

17.12 In view of the above, addition of ***Rs. 2,40,000/- is upheld.***

17.13 Further, in case of Priya Gupta from the chat she was asking Mr. Bhushan Kumar about her pending cash component of the salary amounting to Rs.2.57 lakhs. In response, Shri Bhushan Kumar did not say no to her request but told that he will tell Mr. Sameer about her pending cash component of salary. Since, Mr. Bhushan Kumar has not out rightly denied her claim in respect of cash salary of Rs. 2.75 lakhs and that he informed the HR head about the same indicates that it was paid to her. Therefore, it is held that the transaction referred to in the chat was fulfilled and completed.

17.14 In view of the above, addition of Rs. 2,57,000/- is upheld.

17.15 In view of the above it is held that the addition made based on whatsapp chat with Ms Sonal and Ms Priya for their alleged cash component of salary amounting to Rs. 4,97,000/- during AY 2019-20 is hereby confirmed."

26.2 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. We have examined the

Assessing Officer's (AO) addition of Rs. 4,97,000 as unaccounted cash expenditure for Assessment Year (AY) 2019-20, based on WhatsApp chats involving SCIPL's Managing Director, Shri Bhushan Kumar, with Sonal (Music Manager) and Priya Gupta. The chats, dated 01.11.2018 and 28.05.2018, referenced cash salary payments of Rs. 2,40,000 (Sonal, for eight months at Rs. 30,000/month) and Rs. 2,57,000 (Priya Gupta, for 17 days), respectively. The AO inferred these as unaccounted expenses, as they were not recorded in SCIPL's books. SCIPL argued that the chats, as "dumb documents," lacked corroborative evidence under Section 65B of the Indian Evidence Act, 1872, and no payment was confirmed, as Bhushan Kumar did not respond to Sonal's request, and no further inquiry was conducted.

26.3 The submission of Ld Counsel is that whatsapp chat of Sonal making request for cash salary of Rs. 2,40,000/- on 01.11.2018 was never replied by Shri Bhushan ji. There is no corroborated response on record to prove that the cash salary of Rs. 2,40,000/- was paid to Ms Sonal. From the chat, it is evident that Ms. Sonal was promised a cash salary of Rs.30,000/- per month apart from the salary paid by way of cheque. Ms. Sonal is continued to be employed in the assessee company till date. If the salary promised in cash was not paid, in that case she would have left the job. Because Ms. Sonal is continuing in the assessee company till date, therefore, the transaction referred to in the chat was fulfilled

and completed and she was paid cash salary of Rs. 2,40,000/- which has not been recorded in the books of accounts.

26.4 Further, in case of Priya Gupta from the chat she was asking Mr. Bhushan Kumar about her pending cash component of the salary amounting to Rs.2.57 lakhs. In response, Shri Bhushan Kumar did not say no to her request but told that he will tell Mr. Sameer about her pending cash component of salary. From the chat it is clear that Mr. Bhushan Kumar has not out rightly denied claim of Ms Priya Gupta in respect of cash salary of Rs. 2.75 lakhs and that he informed the HR head about the same. Which clearly means that cash amount of Rs. 2.75 Lakhs was paid to her. Therefore, it is held that the transaction referred to in the chat was fulfilled and completed.

26.5 Therefore, in view of the above discussion the addition of Rs. 4,97,000/- confirmed by the CIT(A) is upheld. Consequently, this ground of appeal of assessee is dismissed.

Un-Common Grounds for AY 2019-20

27. Under this ground of appeal the addition of Rs. 34,67,000/- on account of cash found during search is challenged for AY 2019-20 by the assessee company. Brief facts of the case are that during a search at SCIPL's Film City-Noida office, cash of Rs. 55,00,369/- was found, out of which Rs. 34,67,000/- was seized. When summoned under Section 131(1A) of the Income Tax Act, 1961, SCIPL failed to explain the source of the seized cash. The company claimed that Rs.

18,00,000/- belonged to promoter Shri Krishan Kumar, but no supporting documents in substantiation of this claim, such as a written agreement, were provided during the post search proceedings. This claim was held untenable under Sections 292C and 132(4A). SCIPL further stated that Rs. 16,47,000/- came from scrap sales, but no bills or vouchers were produced. Consequently, the entire seized sum of Rs. 34,67,000/- was treated as unexplained money under Section 69A and added to SCIPL's total income, taxable under Section 115BBE.

27.1 The additions so made by the AO in AY 2019-20 was upheld by the CIT(A) by stating that the scrap sales or submission of appellant that money belong to SH. Krishan Kumar was unsupported by evidence with no proof of cash movement or scrap transactions. The relevant paras are reproduced below:-

> *"19.6 The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground No. 10, the appellant has contended that the A.O was not justified in making an addition of Rs. 34,67,000/- during AY 2019-20 on account of un accounted cash found during the search proceedings from the premises of appellant company.*
>
> *19.7 The issue to be decided in the present ground of appeal is whether cash found during the search proceeding is duly accounted for in the books or not. Cash amounting to Rs. 55,00,369/- found during search proceedings out of which cash of Rs. 34,67,000/-was seized and balance cash, Rs. 20,33,369/- was released being cash shown in books. In respect of balance cash of Rs. 34,67,000/- an explanation was submitted during assessment and appellate proceedings that cash Rs. 18,00,000/- belongs to Shri Krishan Kumar who is a family member and close relative of Shri Bhushan Kumar. Further in respect of balance cash of Rs. 16,67,000/- it was submitted that the said cash pertains to cash proceedings from scrap sale which is pending for book entries.*

19.8 The appellant also submitted copy of financials of Shri Krishan Kumar for the year ended 31.03.2018 and 31.03.2019 showing cash balance of Rs. Rs. 49,78,210/- as on 31.03.2018 and Rs. 18,52,210/- as on 31.03.2019. Shri Krishan Kumar lives in Mumbai and his accounts and cash balances are in Mumbai. The cash was found at Delhi office of the appellant. No corresponding entry of cash given to the appellant was shown in the books of Shri krishan Kumar. There is no explanation regarding movement of cash from Mumbai to Delhi. Therefore, the argument of the appellant that cash found from his premise belonged to Shri Krishan Kumar is not tenable.

19.9 Further no explanation in respect of balance cash of Rs. 16,67,000/- is furnished during assessment or appellate proceedings. No bills, vouchers, documents in substantiation of scrap sales were furnished. In view of the same the cash of Rs. 16,67,000/- is treated as un explained cash and the addition made on account of cash found during the course of search proceedings to the extent of Rs. 16,67,000/- is hereby confirmed.

19.10 In view of the above it is held that the Assessing Officer was justified in making addition of Rs. 34,67,000/- u/s 69A of the Act in respect of cash found at the premise of the appellant.

19.11 Accordingly, Ground No. 10 is Dismissed."

27.2 The Ld. Counsel of assessee argued that during the search proceedings cash amounting to Rs. 55,00,369/- was found from office premises of appellant company located at Plot No. 1, Film City Noida, 201301. Out of total cash found Rs. 55,00,369/-, cash amounting to Rs. 34,67,000/- was seized and balance cash was released. From the cash seized of Rs. 34,67,000/- cash totalling Rs. 18,00,000/- belongs to Krishan Kumar who is brother of Shri Gulshan Kumar (father of Shri Bhushan Kumar). The family relations are so close that only verbal agreements are enough for the decisions and actions to be taken. Since the relations between Shri Bhushan Kumar and Shri Krishan Kumar are like close

families, there was no paper agreement made for the cash kept in the strong room. A verbal talk between them is more than enough for the transactions to be undertaken.

27.3 Further the counsel of assessee also submitted the source of cash being statement of affairs of Shri Kishan Kumar as on 31.03.2018 and 31.03.2019 reflecting cash balance as on 31.03.2019 was Rs. 18,52,210/- in substantiation of the fact that cash of Rs. 18,00,000/- found in the strong room from the appellant company premises was belonging to Krishan Kumar. The statement of affairs of Sh. Krishan Kumar

27.4 Further the counsel of assessee in respect of balance cash of Rs. 16,47,000/- submitted that the same pertains to cash received by the appellant company from scrap dealers on sale of scrap.

27.5 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It is seen from the records that the Ld.AO has made addition of Rs. 34,67,000 as unaccounted cash under Section 69A of the Income Tax Act, 1961, based on cash found during a search at SCIPL's premises. The total cash found was Rs. 55,00,369, of which Rs. 20,33,369 was released as it was accounted for in SCIPL's books, while Rs. 34,67,000 was seized.

27.6 SCIPL claimed that Rs. 18,00,000 belonged to Shri Krishan Kumar, a family member of Shri Bhushan Kumar, and Rs. 16,67,000 pertained to unrecorded proceeds from scrap sales. To support the claim regarding Krishan Kumar, SCIPL submitted his financials, showing cash balances of Rs. 49,78,210 as on 31.03.2018 and Rs. 18,52,210 as on 31.03.2019. However, it is found this explanation untenable, as Krishan Kumar resided in Mumbai, and no evidence of cash movement to SCIPL's Delhi office or corresponding entries in his books was provided. Futher the proof of availability of cash with Mr. Krishan Kumar is as on 31.03.2019 as per the statement of affaris of Mr. Krishan Kumar. Whereas the cash was seized on date of search which is 29.11.2018. Hence the availability of cash with Mr. Krishan Kumar on 29.11.2018 which was the date of search is not established form this. The assessee has not furnished any evidence like bank statement of Sh. Krishan Kumar to show withdtawl of cash. Hence this argument of the assessee is not acceptable. As regards the contention that cash of Rs. 16,67,000 was from sale of scapr outside the books of accounts. The assessee has failed to furnish any bills, vouchers, or documents substantiating the scrap sales. It is held that the AO was justified in treating the entire amount of Rs. 34,67,000 as unexplained cash under Section 69A, as SCIPL's explanations lacked corroborative evidence. As a result, the addition of Rs. 34,67,000/- confirmed by the CIT(A) is upheld. Consequently, this ground of appeal raised by assessee for AY 2019-20 is dismissed.

28. Under this ground of appeal the addition of Rs. 1,25,00,000/- on account of cash transaction conducted using the Codewords Sweet/Kg is challenged by the department for AY 2019-20. Brief facts of the case are that the WhatsApp chats between Shri Shiv Chanana and Shri Bhushan Kumar, recovered during search, show that a request was made by "Luv" through Shiv Chanana for 0.5 kg of sweets on 09.11.2018, which Shri Bhushan Dua did not confirm. Another chat on 12.11.2018 shows Shiv requesting 0.75 kg of sweets, again with no response from Shri Bhushan Dua. The Assessing Officer interpreted "kg" as lakhs and added ₹1,25,00,000 to SCIPL's total income.

28.1 The appellant contended before the AO that WhatsApp chats lack evidentiary value under Section 65B unless certified. However, the AO draws the observations that relying on the Supreme Court decision in Ambalal Sarabhai Enterprises v. KS Infraspace LLP, WhatsApp chats are considered virtual verbal communications with evidentiary value, subject to proof at trial, and cannot be treated as "dumb documents."

28.2 The additions so made by the AO in AY 2019-20 were deleted by the Ld. CIT(A) by stating that the action of the AO in making addition of Rs. 1,25,00,000/- based on the chat without any basis and justification, since there is no confirmation as to whether the actual delivery took place or not. The relevant paras are reproduced below:-

"16.20 The contents of the assessment order and the submissions of the appellant have been carefully considered. Coming to the merits of the case and Ground Nos. 7, the appellant has contended that the A.O was not justified in making an addition of Rs. 1,25,00,000/- on account of alleged unaccounted cash income, in the absence of any inquiries conducted from corresponding parties and lack of corroborating material.

16.21 For the assessment year under consideration, the assessing officer has referred various chats found between Shri Shiv Chanana and Mr. Bhushan Dua on different dates. The said chats are reproduced as under:

From: 919769077000@s.whatsapp.net Shiv Chanana Bom
Timestamp: 12-11-2018 07:25:14(UTC+0)
Source App: WhatsApp
Body:
Sir luv is saying give .75 kg today balance tomorrow is fine. He has commitment for today.

From: 919769077000@s.whatsapp.net Shiv Chanana Bom
Timestamp: 12-11-2018 07:31:45(UTC+0)
Source App: WhatsApp
Body:
Ok sir

From: 919769077000@s.whatsapp.net Shiv Chanana Bom
Timestamp: 09-11-2018 07:42:57(UTC+0)
Source App: WhatsApp
Body:
Sir luv has asked half kg of sweets can be arranged today.

From: From: 919821444221@s.whatsapp.net Bhushan Kumar
Timestamp: 09-11-2018 08:54:45(UTC+0)
Source App: WhatsApp
Body:
Tell him till Monday nothing can happen

From: 919769077000@s.whatsapp.net Shiv Chanana Bom
Timestamp: 09-11-2018 08:55:40(UTC+0)
Source App: WhatsApp
Body:
Ok sir

16.22 It is prima facie visible that chat dated 12.11.2018 is a continuing chat of 09.11.2018 which means that "half a kg of sweets" is part of 0.75kg of sweets and therefore alleged addition of 50 lacs is completely baseless. Further, the proposal of Shiv Chanana dated 12.11.2018 for 0.75 kg of sweets was also not confirmed by Shri Bhushan Kumar.

16.23 It is pertinent to point out in this regard that no enquiries have been conducted from Luv Ranjan. The counter party has not confirmed having received any cash payment from SCIPL. Even the chat mentioned in the SCN does not specify that any amount in cash has been received. What is mentioned in the chat is the term "Kgs". Therefore, it is presumptuous to treat "Kgs" as lacs and resultantly the addition made in assessment order without any basis. Further the assessment of Sh. Luv Ranjan was with the same Assessing Officer and no addition of receipt of cash based on this chat has been made in the hands of Sh. Luv Ranjan nor any enquiry conducted by the Assessing Officer from Sh. Luv Ranjan.

16.24 The appellant submitted that the entire basis for the addition is the WhatsApp message found during the course of search proceedings. During the course of search action, no other corroborating material has been found to support the inferences drawn by the AO for making the impugned addition. From the assessment order, it is found that no statement of any person involved in the chat with Director Sh. Bhushan Kumar (Managing Director) have been recorded at the time of search u/s 132(4) of the Act or during post search enquiries. It is also found that apart from relying on the whatsapp chat, the AO failed to make any enquiry on the impugned issue during assessment proceedings.

16.25 The appellant highlighting the provisions of section 65B of the Indian Evidence Act, 1872 submitted that requisite certificate from an officer certifying that the print outs in question are from the seized electronic record/device are missing. Further, the appellant also submitted that apart from the reference made in the SCN about the WhatsApp chats and emails, a copy of the same has not been provided during post search investigation or during the assessment proceedings. Therefore, the whatsapp messages, emails, etc being referred to in your SCN are merely a piece of paper not having any evidentiary value until and unless the conditions stated in section 658 of the Indian Evidence Act, 1872 are satisfied.

16.26 In support of the above contention, reliance is made by the appellant on following

1. *ITO v. W. D. Estate (P) Ltd. [1993] 46 TTJ (Bom.) 143*
2. *Shri Neeraj Goel Vs. ACIT in ITA No. 5951/Del./2017*
3. *ACIT V Layer Exports P. Ltd. [2017] 184 TTJ 469 (MUM)*

4. *Nishant Construction Pvt. Ltd. V ACIT in ITA No. 1502/AHD/2015*
5. *ITO v. Kranti Impex (IT Appeal No. 1229/Mumbai/2013)*
6. *Asst. CIT v. Karodilal Agarwal 50 TTJ 393*

16.27 The primary legal contention of the appellant raised by the appellant that as per the provisions of section 65B of the Indian Evidence Act, 1872, whatsapp messages, emails, etc are merely a piece of paper not having any evidentiary value is first taken up for adjudication.

16.28 We rely on the judgement of Hon'ble Supreme Court in the case of Ambalal Sarabhai Enterprises v KS infraspace LLP Limited in which it was held that WhatsApp chat messages which are virtual verbal communications are a matter of evidence with regard to their meaning and its contents to be proved during the trial by evidence in chief and cross examination. Therefore, it was interpreted that whatsapp chats available on record can-not be treated as-dumb document.

16.29 Coming to the merits of the case, chat dated 09.11.2018 was not confirmed by Shri Bhushan Kumar and therefore the alleged transaction of half a kg of sweets never took place. Further chat dated 12.11.2018 where shri Shiv Chanana ask again Shri Bhushan Kumar for 0.75 kg to be given to Shri Luv Ranjan was never confirmed. Shri Shiv Chanana was asking permission for the same which was never confirmed and therefore this transaction was never materialised.

16.30 Since the WhatsApp chat between Shri Shiv Chanana and Shri Bhushan Kumar is not corroborated with any other evidence available on record, the figures mentioned in the chat can-not be treated as figures mentioned in lakhs. Further, both the chat dated 09.11.2018 and 12.11.2018 are interlinked to each other which establishes that Rs. 50 lakhs which was mentioned in chat dated 09.11.2018 was doubly added in the income of appellant.

16.31 The AO has determined unaccounted cash expenditure to Shri Luv Ranjan on the basis of whatsapp chat. The Assessing Officer on the basis of above referred chats has drawn an inference that kg is being used as code word for cash in the chats and 1 kg is equivalent to 1 crore. It has been found by him that the numerical figures appearing in the whatsapp message represent the amount paid to Shri Luv Ranjan as unaccounted expenditure of appellant company.

16.32 Firstly it is not clear that cash payment allegedly by SCIPL to film director Luv Ranjan is on what account and for what purpose. Further, the first chat dated 09.11.2018 i.e. Friday in which Shiv Chanana was requesting Bhushan Kumar for arrangement of half a kg of sweets, in response to which Shri Bhushan Kumar replied and asked Shiv that the arrangement could not be done till Monday i.e. 12.11.2018 can-not be ignored. The AO has interpreted that 1 would mean 1 crore and accordingly the figures mentioned in chat dated 09.11.2018 i.e. half kg sweets is equivalent to 50 Lakhs. Based on the same the AO considered 50 Lakhs for addition from this chat.

16.33 Further continuing to next chat dated 12.11.2018 i.e. Monday between Shiv Chanana and Bhushan Kumar dated 12.11.2018, where Shri Shiv Chanana is asking Shri Bhushan Kumar, permission for 0.75 kg to be given to Luv Ranjan in response to which there is no reply by Shri Bhushan Ji but instead there is another message by Shiv Chanana to Shri Bhushan Kumar stating "Ok" which has been reproduced. In this chat there is no confirmation by Shri Bhushan Kumar. Based on this chat the Assessing Officer made addition of Rs. 75,00,000/-.

16.34 From the chats reproduced above firstly it is seen that both the chats cannot be read in isolation and have to be read together. In the first chat Shiv Chanana is asking from Mr. Bhushan that Luv has asked for half kg sweets for today i.e. 09/11/2018 which was Friday. Mr. Bhushan replied that nothing can be done till Monday. Therefore, against this chat even if the assumption of the Assessing Officer that "sweets" represent cash and one kg is equivalent to 1 crore is taken as correct then also since no actual payment was made no addition can be made against this chat. The concept of real income applies when undisclosed income is determined. When no actual delivery was made then there is no question of any addition. Therefore, the Assessing Officer was not justified in making addition of Rs.50,00,000/-.

16.35 In the second chat made on Monday 12.11.2018, what has been reproduced is message written by Mr. Shiv Chanana. Firstly Mr. Shiv Chanana has written that Mr. Luv is saying that.75 KG be given today, and balance tomorrow is fine. Then there is another message of Mr. Shiv Chanana which has been reproduced in the message Mr. Shiv Chanana has written to Mr. Bhushan "Ok Sır". There is no message from Mr. Bhushan to Mr. Shiv Chanana on 12.11.2018 which has been reproduced. It seems that this message is in continuation of chat dated 09.11.2018 wherein Mr. Shiv has written to Mr. Bhushan that Luv has asked for half a KG sweet to

which Mr. Bhushan replied that nothing can be done till Monday (12.11.2018). In continuation of this chat the messages written by Mr. Shiv Chanana on 12.11.2018 have been reproduced. As per the chats of 09.11.2018 no payment was made to Mr. Luv as discussed in para-No. 16.34 above. Similarly, in the chats dated 12.11.2018 there is no confirmation for the same from Shri Bhushan Kumar. The Assessing Officer has only reproduced the message sent by Mr. Shiv where he is saying to Mr. Bhushan that Mr. Luv is asking for 0.75 KG sweets for today and balance tomorrow. There is no reply from Mr. Bhushan on this message and it seems an incomplete communication. The context of the chat "ok" from Shivam Chanana to Bhushan Kumar was for another matter not having any link with the Chat in reference to arrangement of 0.75 Kg for Luv Ranjan. In this case, there is no evidence even in the chat that the transaction mentioned has actually been carried out or Shri bhushan Kumar has given a nod to go ahead with the transaction. Therefore, the action of the AO in making addition of Rs. 75,00,000 based on this chat without any basis and justification, since there is no conformation as to whether the actual delivery took place or not.

16.36 In view of the above it is held that the addition of Rs. 1,25,00,000/- made based on whatapp chat with Shri Shiv Chanana is deleted.

16.37 Ground No. 7 of this appeal is Allowed."

28.3 The CIT(A) draws the observation that WhatsApp chat of 12.11.2018 continues from the 09.11.2018 chat, indicating that "half a kg of sweets" is part of the 0.75 kg request, rendering the Rs. 50 lakh addition baseless. Both requests by Shiv Chanana were unconfirmed by Bhushan Kumar, and no inquiries were made with Luv Ranjan or SCIPL to verify any cash payment. The term "kg" does not explicitly indicate cash, so equating it to lakhs is speculative. No corroborating evidence or statements were recorded, and copies of chats/emails were not provided to SCIPL when requested.

28.4 Further the CIT(A) relied on legal precedents in the case of ITO v. W.D. Estate, Shri Neeraj Goel vs. ACIT, ACIT v. Layer Exports, Nishant Construction, ITO v. Kranti Impex, Asst. CIT v. Karodilal Agarwal in which it was established that WhatsApp messages are inadmissible under Section 65B without certification. The Supreme Court in Ambalal Sarabhai Enterprises held that WhatsApp chats are verbal communications requiring proof through evidence and cross-examination, not standalone documents. Since the chats were unconfirmed, lacked corroboration, and were linked (showing double counting), the addition of Rs. 1.25 crore (Rs. 50 lakh + Rs. 75 lakh) based solely on WhatsApp messages is deleted.

28.5 The Ld. Counsel of assessee submitted that total alleged expenditure incurred during the year under consideration by using the keywords "Sweets, kg" amounting to Rs. 1,25,00,000/- cannot be treated as un-accounted expenditure in view of the fact that first chat is dated 09.11.2018 i.e. Friday in which Shiv Chanana was requesting Bhushan Kumar for arrangement of half a kg of sweets. In response to the said chat Shri Bhushan Kumar replied and asked Shiv that the arrangement could not be done till Monday i.e. 12.11.2018. Therefore, no transaction was made in response to chat dated 09.11.2018. Therefore, no addition of alleged half KG of sweets treated as Rs.50,00,000/- unaccounted cash payment can be made. Next as per second chat between Shiv Chanana and Bhushan Kumar dated 12.11.2018, Shiv Chanana is continuing the same chat

dated 09.11.2018 for which arrangement could not be made on 09.11.2018 and asking Shri Bhushan ji permission for 0.75 kg to be given to Luv Ranjan. In response to that said chat there is another message by Shiv Chanana to Bhushan Kumar stating "Ok". Here it is highlighted that there is no confirmation for the same from Shri Bhushan Kumar ji. The context of the chat "ok" from Shivam Chanana to Bhushan Kumar was for another matter not having any link with the Chat in reference to arrangement of 0.75 Kg for Luv Ranjan. Further Sh. Bhushan Kumar has not replied to the question asked by Shiv Chanana regarding permission for 0.75 kg sweets to be given to Luv. Therefore the action of the AO in treating the same as income of the appellant is without any basis and justification.

28.6 The Ld. Counsel of assessee highlighted that it is prima facie visible that chat dated 12.11.2018 is a continuing chat of 09.11.2018 which means that "half a kg of sweets" is part of 0.75kg of sweets and therefore alleged addition of 50 lacs is completely baseless and liable to be deleted. Further, the proposal of Shiv Chanana dated 12.11.2018 for 0.75 kg of sweets was also not confirmed by Shri Bhushan Kumar and therefore the addition made based only on the WhatsApp chat is nothing but a dumb document and therefore the addition made is liable to be deleted.

28.7 Further the counsel of the assessee submitted that there is no proof or evidence of the payment of cash of Rs. 75 lacs and 50 lacs as alleged in the

assessment order. It is also not clear that such cash payment allegedly by SCIPL to film director Luv Ranjan is on what account and for what purpose. It is submitted that inspite of specific request being made the assessee has not been provided with a copy of the printout of the complete transcript of the whatsapp chat referred for making the addition.

28.8 The Ld. Counsel of assessee argued that the addition has been made on the presumption that the assessee paid amounts mentioned in the chat to Luv Ranjan, based upon chat between Mr. Bhushan Kumar and Mr. Shiv Chanana. However, there is no chat between Mr. Luv Ranjan with either Mr. Bhushan Kumar or Mr. Shiv Chanana wherein he had made such request asking cash from either of the two. In fact, the Ld Counsel pointed out that a search happened on Mr. Luv Ranjan also and no chats were recovered from his phone to this effect. Further no enquiries have been conducted from Luv Ranjan. The counter party has not confirmed having received any cash payment from SCIPL. Even the chat referred does not specify that any amount in cash has been received. What is mentioned in the chat is the term "Kgs". Therefore, it is presumptuous to treat "Kgs" as lacs and resultantly the addition made in assessment order is liable to be deleted.

28.9 The Ld. Counsel of assessee submitted that the well settled legal position is that a non-speaking document without any corroborative material, evidence on record and finding that such document has materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of

account by such assessee, has to disregarded for the purposes of assessments to be framed pursuant to search and seizure action. From the search and seizure perspective, such non speaking seized documents are referred to as ”Dumb Documents”.

28.10 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that that the Ld.AO has disallowed the impugned amount of Rs. 1,25,00,000 as unaccounted cash expenditure based on WhatsApp chats dated 09.11.2018 and 12.11.2018 between Shiv Chanana and Shri Bhushan Kumar, SCIPL’s Managing Director. The AO interpreted references to “half a kg” and “0.75 kg of sweets” in the chats as code for cash payments to Luv Ranjan, equating 1 kg to Rs. 1 crore, and added Rs. 50,00,000 and Rs. 75,00,000, respectively, as unaccounted expenditure.

28.11 SCIPL argued that the chats were “dumb documents” lacking evidentiary value under Section 65B of the Indian Evidence Act, 1872, due to the absence of a certifying officer’s certificate and failure to provide copies of the chats during proceedings. It is seen that chat dated 09.11.2018 was not confirmed by Shri Bhushan Kumar and therefore the alleged transaction of half a kg of sweets never took place. Further chat dated 12.11.2018 where Shri Shiv Chanana again asked Shri Bhushan Kumar for 0.75 kg to be given to Shri Luv Ranjan was also never confirmed. Shri Shiv Chanana was asking permission for the same which was

never confirmed and therefore this transaction never materialised. Further the WhatsApp chat between Shri Shiv Chanana and Shri Bhushan Kumar are not corroborated with any other evidence available on record, therefore the assumption of the AO that amounts mentioned are in Lacs is without any basis and not supported by any corroborative evidence. Therefore, the figures mentioned in the chat cannot be treated as figures mentioned in lakhs. Further, both the chat dated 09.11.2018 and 12.11.2018 are interlinked to each other which establishes that Rs. 50 lakhs which was mentioned in chat dated 09.11.2018 was doubly added in the income of appellant.

28.12 The AO has determined unaccounted cash expenditure to Shri Luv Ranjan on the basis of whatsapp chat. The Assessing Officer based on above referred chats has drawn an inference that kg is being used as code word for cash in the chats and 1 kg is equivalent to 1 crore. It has been found by him that the numerical figures appearing in the whatsapp message represent the amount paid to Shri Luv Ranjan as unaccounted expenditure of appellant company. The AO has not been able to establish that the alleged cash payment by SCIPL to film director Luv Ranjan was on what account and for what purpose. The first chat dated 09.11.2018 i.e. Friday in which Shiv Chanana was requesting Bhushan Kumar for arrangement of half a kg of sweets, in response to which Shri Bhushan Kumar replied and asked Shiv that the arrangement could not be done till Monday i.e. 12.11.2018 cannot be ignored. The AO has interpreted that 1 would

mean 1 crore and accordingly the figures mentioned in chat dated 09.11.2018 i.e. half kg sweets is equivalent to 50 Lakhs. Based on the same the AO considered 50 Lakhs for addition from this chat. Continuing to next chat dated 12.11.2018 i.e. Monday between Shiv Chanana and Bhushan Kumar dated 12.11.2018, where Shri Shiv Chanana is asking Shri Bhushan Kumar, permission for 0.75 kg to be given to Luv Ranjan in response to which there is no reply by Shri Bhushan Ji but instead there is another message by Shiv Chanana to Shri Bhushan Kumar stating "Ok" which has been reproduced. In this chat there is no confirmation by Shri Bhushan Kumar. Based on this chat the Assessing Officer made addition of Rs. 75,00,000/-.From the chats firstly it is seen that both the chats cannot be read in isolation and have to be read together. In the first chat Shiv Chanana is asking from Mr. Bhushan that Luv has asked for half kg sweets for today i.e. 09/11/2018 which was Friday. Mr. Bhushan replied that nothing can be done till Monday. Therefore, against this chat even if the assumption of the Assessing Officer that "sweets" represent cash and one kg is equivalent to 1 crore is taken as correct then also since no actual payment was made no addition can be made against this chat since no actual payment was made.

28.13 In the second chat made on Monday 12.11.2018, what has been reproduced is message written by Mr. Shiv Chanana. Firstly Mr. Shiv Chanana has written that Mr. Luv is saying that.75 KG be given today, and balance tomorrow is fine. Then there is another message of Mr. Shiv Chanana which has been reproduced

in the message Mr. Shiv Chanana has written to Mr. Bhushan "Ok Sır". There is no message from Mr. Bhushan to Mr. Shiv Chanana on 12.11.2018 which has been reproduced. It is clear that this message was in continuation of chat dated 09.11.2018 wherein Mr. Shiv has written to Mr. Bhushan that Luv has asked for half a KG sweę to which Mr. Bhushan replied that nothing can be done till Monday (12.11.2018). In continuation of this chat the messages written by Mr. Shiv Chanana on 12.11.2018 have been reproduced. As per the chats of 09.11.2018 no payment was made to Mr. Luv as discussed above. Similarly, in the chats dated 12.11.2018 there is no confirmation for the same from Shri Bhushan Kumar. The Assessing Officer has only reproduced the message sent by Mr. Shiv where he is saying to Mr. Bhushan that Mr. Luv is asking for 0.75 KG sweets for today and balance tomorrow. There is no reply from Mr. Bhushan on this message and it was an incomplete communication. The context of the chat "ok" from Shivam Chanana to Bhushan Kumar was for another matter not having any link with the Chat in reference to arrangement of 0.75 Kg for Luv Ranjan. In this case, there is no evidence even in the chat that the transaction mentioned has actually been carried out or Shri bhushan Kumar has given a nod to go ahead with the transaction. Therefore, the action of the AO in making addition of Rs. 75,00,000 based on this chat is without any basis and justification, since there is no conformation as to whether the actual delivery took place or not.

28.14 The Ld. Counsel has further contended that no payment was confirmed, as Bhushan Kumar did not approve the transactions, and no inquiries were made with Luv Ranjan, whose assessment was made by the same AO. In fact a search action had also taken place on Luv Ranjan and no chats related to this eere recovered from his phone. The absence of inquiries with Luv Ranjan and lack of other material evidence further weakens the AO's case.

28.15 Based on the discussion above it is held that deletion of the addition of Rs. 1,25,00,000/- on this ground by CIT(A) required no interference. Consequently, the addition of Rs. 1,25,00,000 deleted by CIT(A) is upheld and the ground of appeal of revenue is dismissed.

ITA No. 1845/Del/2024 (A.Y. 2019-20) Departmental appeal in Luv Ranjan:

29. In ITA No. 1845/Del/2024 for A.Y. 2019-20 in the case of Luv Ranjan the Revenue raised this particular deletion of addition of Rs. 1,25,00,000/- before us. We note that the observation made by us on this issue while dismissing the ground of appeal raised by Revenue is applied mutatis mutandis. This appeal is, thus, dismissed.

Departmental appeal - ITA Nos. 2510, 2509, 2950, 2951 & 279/Del/2023 (A.Y. 2013-14 to 2017-18) & ITA Nos. 280 & 281/Del/2024 (A.Y. 2018-19 & 2019-20) in case of BHUSHAN DUA

30. Brief facts of the case are that the appellant is the managing director of company M/s Super Cassettes Industries Pvt Ltd (SCIPL) which is engaged in

the business of selling and distribution of music and production of films during the assessment year under appeal. For its music business, SCIPL acquires copy rights in various sound recordings from film producers, composers and artists. It also produces in house music albums/ songs by engaging singers, composers and lyricists. The sound recordings so acquired or created in house are thereafter commercially exploited through physical and digital medium. The commercial exploitation of sound recordings through physical medium is carried out by sale of CDs, cassettes and pen drives. The commercial exploitation through digital medium is carried out through licensing arrangements with FM Radio Stations, Satellite TV Channels, streaming service providers like Sportify, Kanha.com, Savvan etc. and social media platforms such as YouTube and Face Book etc.

31. A search action u/s 132 of the Income Tax Act was conducted on Super Cassettes Industries Pvt Ltd (SCIPL group) including the assesseeon 29.11.2018. Subsequently the case of the assessee company along with assessee was centralised to the charge of PCIT, Central Delhi - I by and under the order under section 127(1) dated 10.12.2018. Based upon the search action, assessment orders were passed u/s 153A in the case of SCIPL for A.Y. 2013-14 to 2018-19 and u/s 143(3) for A.Y. 2019-20. During the post-search proceedings, certain additions made in the assessment of Super Cassettes Industries Pvt. Ltd. on substantive basis were also made in the assessee's hand on a protective basis. The additions

made in the hands of the assessee on protective basis in all the years were deleted by the CIT(A). The revenue has preferred an appeal against the same.

32. A perusal of the grounds of appeals, would indicate that there are certain common grounds, in Revenue's appeals which are as follows–

i. Addition on account of Diversion of Income in Dubai through Bollywood Digital Music Limited for AY 2013-14 to 2014-15.

ii. Addition on account of Diversion of Income in Dubai through BKK Investment LLC FZ (Dubai) for AY 2015-16 to AY 2019-20

iii. Addition on account of diversion of Income in Bollywood Digital FZE by investing in property of London for AY 2016-17 and 2017-18.

iv. Addition on account of retention of Income in Dubai through M/s Highpath Limited for AY 2017-18 to AY 2019-20.

v. Addition on account of bogus expenses claimed for production of Roy / RaabtaMovie for AY 2016-17 and AY 2017-18.

The common grounds are addressed first as under:

Common Grounds

33. Addition on account of income retained in BDML. Under this ground of appeal the department has challenged the protective addition deleted by CIT Appeal, on account of alleged income of the assessee retained in BDML Dubai.

Assessment Year	Amount of Income retained

2013-14	2,43,45,103
2014-15	7,12,97,129

33.1 The revenue raised this common issue regarding Income of SCIPL Retained in BDML UAE in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2013-14 and AY 2014-15 (ITA Nos. 2510/DEL/2023, 2509/DEL/2023). The decision for the assessee's appeals for Assessment Years 2013-14 will beapplicable for AY 2014-15, as the issues are identical and no new circumstances exist.

33.2 Brief facts of the case are that in order to increase the music licensing income from commercial exploitation of music from sources outside India, a foreign entity by the name of Bollywood Digital Music Limited (BDML) was incorporated on 03.04.2006 as Jebel Ali Free Zone Company in Dubai. At the time of its incorporation the entire shareholding comprising of 10,000 shares of AED 100 each were fully held by Shri Bhushan Kumar as single shareholder. For international licensing of music, BDML entered into a licensing arrangement with SCIPL vide agreement dated 10.04.2006 which gave a license to BDML to commercially exploit the copyrighted contents of SCIPL in the form of audio and audio visual sound recordings by giving further license to users in territory outside India. Pursuant to this licensing arrangement, BDML entered into further licensing agreements with various parties. The revenue earned from granting licenses to these parties were shared between BDML and SCIPL in the ratio of

50% each. This revenue sharing agreement between SCIPL and BDML was treated as diversion of income of SCIPL in the hands of BDML in a tax-free jurisdiction by the assessing authorities in the assessment orders passed for A.Y. 2007-08 to A.Y. 2014-15 pursuant to search action undertaken on SCIPL on 29.11.2018. The operations of BDML and the arrangement between SCIPL and BDML was later discontinued, A.Y. 2014-15 being the last year. Hence, from assessment year 2015-16 onwards the entire exploitation of its copyrighted content outside territory of India was carried out by SCIPL on its own. Details of additions made from AY 2007-08 to AY 2014-15 on this issue is tabulated as under:

Assessment year	**Royalty Received**
2007-08	3,69,88,901
2008-09	5,70,15,876
2009-10	1,17,62,546
2010-11	51,87,893
2011-12	3,40,78,168
2012-13	3,89,95,596
2013-14	2,43,45,103
2014-15	7,12,97,129

33.3 The AO has made the above additions referred to in all the years on substantive basis in the hands of SCIPL and on protective basis in the hands of assessee.

33.4 The additions made on a substantive basis in the hands of SCIPL were deleted by the Commissioner of Income Tax (Appeals) [CIT(A)], who determined

that sufficient evidence was adduced to establish that M/s BDML was not a sham entity and possessed an independent existence, justifying its autonomous operations from Dubai. Additionally, the protective addition made in the hands of the assessee to safeguard the revenue's interest was also deleted by the CIT(A), on the grounds that the substantive addition in the hands of SCIPL was not sustainableon merits, since it was held that BDML was not a sham entity, thereby warranting the deletion of the protective addition in the assessee's case.

33.5 The Learned Counsel for the assessee contended that the matter was adjudicated on a substantive basis in the case of Super Cassettes Industries Pvt. Ltd. (SCIPL). It was emphasized that the Commissioner of Income Tax (Appeals) [CIT(A)] had deleted the addition after a thorough examination of its merits in SCIPL's case. Consequently, as the addition has been deleted on substantive grounds, it is not legally sustainable on a protective basis in the hands of the assessee.

33.6 Further the Ld. Counsel of the assessee submitted that this ground of appeal is already covered in case of SCIPL by the order of ITAT G Bench Delhi Dated 18.09.2024 for AY 2007-08 to AY 2012-13 in ITAs Numbers ITAs No.214, 215, 216, 1290, 1291 & 1292/Del/2023 in which the additions made on account of income retained in BDML in the hands of SCIPL on substantive basis were completely deleted and the order of the CIT(A) upheld for these years.

33.7 We have heard the respective submissions made by the parties; we have

also perused the relevant materials available on record. It appears from the records that the substantive addition made in the hands of SCIPL is already dealth on merits and the same has been deleted by the CIT (A) in AY 2013-14 and 2014-15 (Relevant para of appeal order of AY 2013-14 is 102 Page 74). Further the order of CIT(A) deleting the additions made in AY 2007-08 to AY 2012-13 in ITAs No.214, 215, 216, 1290, 1291 & 1292/Del/2023) has been upheld by the coordinate bench vide order dated 18.09.2024. The facts of the present year are identical to the Assessment Years 2007-08 till 2012-23.

33.8 The Protective addition was merely made in the hands of the assessee under consideration to protect the interest of revenue. The AO made protective addition only in the hands of the assessee on the presumption that if substantive addition is made in the hands of M/s. SCIPL accepted, the protective addition may be made in the hands of the assessee and, therefore, it was imperative to protect the interest of revenue to avoid the possibility of leakage of revenue and to deal with the contingent situation till the substantive addition gets finalized. We note that since the substantive addition has been deleted in the hands of the SCIPL for Assessment Years 2007-08 till 2012-13 on merits by the Coordinate Bench, then no protective addition can be susntained in the hands of the assessee. The protective addition can only be made when *prima facie* it appears to the revenue that income has been diverted either by M/s. SCIPL or by assessee

under consideration, then it would be open to the Income Tax Authorities either to tax the income in hands of M/s. SCIPL or in the hands of the assessee under consideration. In view of the above the addition for AY 2013-14 and 2014-15 deleted by the CIT (A) in the case of the assessee is upheld since the same has been deleted on merits in the hands of SCIPL as discussed above.

33.9 In the result, the appeal of the revenue is **dismissed**.

34. Under this ground of appeal, protective addition on account of diversion of Income in Dubai through BKK Investment FZ is challenged by the Department. Details of additions made over the years are tabulated as under:

Assessment Year	Expenses Incurred
2015-16	6,14,08,363
2016-17	86,88,235
2017-18	2,12,02,003
2018-19	7,92,18,696
2019-20	4,29,32,219

34.1 The Department raised this common issue regarding addition on account of Diversion of Income in Dubai through BKK Investment LLC FZ (Dubai) in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 (ITA No. 2950/DEL/2023, 2951/DEL/2023, 279/DEL/2023, 280/Del/2024 and 281/Del/2024). The decision for the Department's appeals for Assessment Years

2015-16, will be applicable for AY 2016-17, AY 2017-18, 2018-19 and 2019-20, as the issues are identical and no new circumstances exist.

34.2 Brief facts of the case are that funds were provided by BDML and Bollywood Digital FZE to BKK to make the investment without charging any interest. All these entities are based out in Dubai and the controlling interest in these entities is with Bhushan Kumar and not with SCIPL. The shareholders of BKK are Bollywood Digital FZE (99%) and Sh. Bhushan Dua (1%). The AO in the assessment order of SCIPL draws the observation that main purpose of BDML is diversion of income by the SCIPL in respect of copyright income and resultantly funds provided by BDML and Bollywood Digital FZE to BKK Investment is also diversion of income. Further AO added the above-mentioned amounts to the total income of SCIPL alleging that funds remitted through BDML and Bollywood Digital FZE to BKK Investment are logically foreign income of SCIPL retained outside India to avoid taxes in India. In order to protect the interest of revenue, same additions were also made in the hands of assessee on protective basis.

34.3 The additions made were deleted by the Commissioner of Income Tax (Appeals) [CIT(A)] on the facts and circumstances, by concluding that sufficient evidence and rationale were provided to demonstrate that BDML was incorporated for legitimate purposes and was not a sham entity. Consequently, the

investment made by BKK Investment in property through funds channeled via BDML does not constitute a diversion of income.

34.4 The Ld. Counsel of the assessee argued that it has already been held in the case of SCIPL by the coordinate bench in AY 2007-08 to AY 2012-13 in ITA Nos 214, 215, 216, 1290, 1291, 1292 for Assessment Year 2007-08 till 2012-13 that BDML from whom funds were remitted to BKK for property acquisition is not a sham entity and possessed an independent existence, justifying its autonomous operations from Dubai.

34.5 The ld. counsel for the assessee contended that the matter was adjudicated on a substantive basis in the case of SCIPL. It was emphasized that the CIT(A) had deleted the addition after examination of its merits in SCIPL's case. Consequently, as the addition has been deleted on substantive grounds, it is not legally sustainable on a protective basis in the hands of the assessee.

34.6 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that the substantive addition made in the hands of SCIPL is already deleted on merits by the CIT (A) for AY 2015-16 to AY 2019-20 (Relevant para of appeal order of AY 2015-16 is 36 Page 28). Further the addition was premised on the legal and independent existence of BDML from which funds were remitted to

BKK for property acquisition which is already established by the coordinate bench in the SCIPL case in AY 2007-08 to AY 2012-13 in ITAs No.214, 215, 216, 1290, 1291 & 1292/Del/2023.We observed that BDML is not a sham entity and possessed an independent existence, justifying its autonomous operations from Dubai and therefore funds remitted from BDML from to BKK for property acquisition are also legible.

34.7 The Protective addition was merely made in the hands of the assessee under consideration to protect the interest of revenue. The AO made protective addition only in the hands of the assessee on the presumption that if substantive addition is made in the hands of M/s. SCIPL accepted, the protective addition may be made in the hands of the assessee and, therefore, it was imperative to protect the interest of revenue to avoid the possibility of leakage of revenue and to deal with the contingent situation till the substantive addition gets finalized. We note that since the substantive addition has been deleted in the hands of the SCIPL, then no protective addition should be susntained in the hands of the assessee. The protective addition can only be made when *prima facie* it appears to the revenue that income has been diverted either by M/s. SCIPL or by assessee under consideration, then it would be open to the Income Tax Authorities either to tax the income in hands of M/s. SCIPL or in the hands of the assessee under consideration. In view of the above the addition for AY 2015-16 to 2019-20

deleted by the CIT (A) in the case of the assessee is upheld since the same has been deleted on merits in the hands of SCIPL as discussed above.

34.8 In the result, the appeal of the revenue is **dismissed**.

35. Under this ground of appeal, protective addition on account of diversion of Income in Dubai through Bollywood Digial FZE is challenged by the Department. Details of additions made over the years are tabulated as under:

Assessment Year	Amount of addition
2016-17	4,47,30,282
2017-18	13,34,86,898

35.1 The department raised this common issue regarding addition on account of diversion of Income in Bollywood Digital FZE by investing in property of London in order to avoid payment of taxes in India, which is present in appeals for Assessment Years 2016-17 and 2017-18 (ITA Nos. 2951/DEL/2023 and 279/DEL/2023). The decision for the appeal for Assessment Years 2016-17 will be applicable for AY 2017-18 as the issues are identical and no new circumstances exist.

35.2 Under this ground of appeal addition is made by the AO holding that ultimate control of Bollywood Digital FZE which is the Subsidiary of BDML is with SCIPL. Based on the above observations of the AO, profits declared by Bollywood Digial FZEin the audited financials for AY 2016-17 and AY 2017-18

were added to the total income of the SCIPL on substantive basis and in the hands of assessee on protective basis. Details of the additions made are tabulated as under:

Assessment Year	Profit In USD	Conversion rate	Addition Amount
2016-17	675276	66.24	4,47,30,282
2017-18	20,59,983	64.80	13,34,86,898

35.3 The additions so made were deleted by the CIT(A) by appreciating thefacts and circumstances and concluding that there was sufficient explanation orthe reason to substantiate that operation, management and control of Bollywood Digital FZE was not in India. Documents placed on record including Audited Balance Sheet showing revenue and expenditure earned, Presence of employee in UAE to whom salary was paid, Copy of lease agreement for registered office and invoices for admn. office., Copies of invoices for legal expenses, audit fees, Details of physical presence of Bhushan Dua in UAE for taking management decisions, Auditors certificate giving classification of revenue earned by BD FZE during AY 2016-17 and 2017-18 prooves that BD FZE fuctions independently in UAE. Since the substantive addition in the hands of SCIPL was deleted on merits, the same warrents deletion of the protective addition in the assessee's case.

35.4 The learned counsel for the assessee contended that the matter was adjudicated on a substantive basis in the case of Super Cassettes Industries Pvt.

Ltd. (SCIPL). It was emphasized that the Commissioner of Income Tax (Appeals) [CIT(A)] had deleted the addition after examination of its merits in SCIPL's case. Consequently, as the addition has been deleted on substantive grounds, it is not legally sustainable on a protective basis in the hands of the assessee.

35.5 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that the substantive addition made in the hands of SCIPL is already dealth on merits and the same has been deleted by the CIT (A) in AY 2016-17 and 2017-18 (Relevant para of appeal order of AY 2016-17 is 82 Page 60).Documents placed on record including audited balance sheet, employee details in UAE, lease agreement for registered office and invoices for admn. office. In UAE, invoices for legal expenses incurred, audit fees, details of physical presence of Bhushan Dua in UAE for taking management decisions adequately prooves that BD FZE fuctions independently in UAE.

35.6 The Protective addition was merely made in the hands of the assessee under consideration to protect the interest of revenue. The AO made protective addition only in the hands of the assessee on the presumption that if substantive addition is made in the hands of M/s. SCIPL accepted, the protective addition may be made in the hands of the assessee and, therefore, it was imperative to protect the interest of revenue to avoid the possibility of leakage of revenue and to deal with the contingent situation till

the substantive addition gets finalized. We note that since the substantive addition has been deleted in the hands of the SCIPL, then no protective addition should be susntained in the hands of the assessee. The protective addition can only be made when *prima facie* it appears to the revenue that income has been diverted either by M/s. SCIPL or by assessee under consideration, then it would be open to the Income Tax Authorities either to tax the income in hands of M/s. SCIPL or in the hands of the assessee under consideration. In view of the above the addition for AY 2016-17 and 2017-18 deleted by the CIT (A) in the case of the assessee is upheld since the same has been deleted on merits in the hands of SCIPL as discussed above.

35.7 In the result, the appeal of the revenue is **dismissed**.

36. Under this ground of appeal, protective addition on account of retention of income in Dubai through M/s Highpath Limited is challenged by the department. Details of additions made over the years are tabulated as under:

Assessment Year	Amount
2017-18	63,11,784
2018-19	89,29,050
2019-20	1,24,42,299

36.1 The department raised this common issue regarding addition on account of retention of Income in Dubai through M/s Highpath Limited in order to avoid

payment of taxes in India, which is present in appeals for Assessment Years 2017-18, 2018-19 and 2019-20 (ITA Nos. 279/DEL/2023, 280/DEL/2024 and 281/DEL/2024). The decision for the appeals for AY 2017-18 will be applicable for AY 2018-19 and 2019-20 as the issues are identical and no new circumstances exist.

36.2 Brief facts of the case are that during the search proceedings on SCIPL premises signed agreement was found between Highpath Ltd and SCIPL for sharing of revenue in the territories of Pakistan. Further, M/s HighPath Limited had another agreement with M/s Media Master Pakistan for distribution of music rights in Pakistan. The AO observed that the bank account of Highpath Ltd shows credit of USD 97,344 which is equivalent to AED 357252. Relying on this argument, the assessing officer observed that income received in Highpath Ltd have been retained in Dubai.

36.3 The additions so made were deleted by the CIT(A) by appreciating the facts and circumstances and concluding that there was sufficient explanation or the reason for which BDML was incorporated in Dubai and further Highpath Limited existed and functioned independently in Dubai. Extending to Highpath, absence of Bhushan Kumar's ownership / directorship / employee involvement confirms its UAE-based control.

36.4 The Ld. Cousel of the assessee argued that BDML’s independent

existence in Dubai is already established by coordinate bench in prior years (2007-08 to 2012-13, per ITA Nos. 214, 215, 216, 1290, 1291, 1292), and additions treating BDML's income as SCIPL's diversion deleted by CIT(A) are upheld. Thus, the current addition of taxing income of Highpath in the hands of the assessee is not at all justified and without any basis, more so in this case the assessee or its directors have no stake or control in Highpath which is anindependent entity.

36.5 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that the substantive addition made in the hands of SCIPL is already dealth on merits and the same has been deleted by the CIT (A) in AY 2017-18 to 2019-20 (Relevant para of appeal order of AY 2017-18 is 13.35 Page 77). This stand is upheld by coordinate bench in ITAs No.214, 215, 216, 1290, 1291 & 1292/Del/2023. Extending to Highpath, absence of Bhushan Kumar's ownership / directorship / employee involvement confirms its independent UAE-based control.

36.6 The Protective addition was merely made in the hands of the assessee under consideration to protect the interest of revenue. The AO made protective addition only in the hands of the assessee on the presumption that if substantive addition is made in the hands of M/s. SCIPL accepted,

the protective addition may be made in the hands of the assessee and, therefore, it was imperative to protect the interest of revenue to avoid the possibility of leakage of revenue and to deal with the contingent situation till the substantive addition gets finalized. We note that since the substantive addition has been deleted in the hands of the SCIPL, then no protective addition should be susntained in the hands of the assessee. The protective addition can only be made when *prima facie* it appears to the revenue that income has been diverted either by M/s. SCIPL or by assessee under consideration, then it would be open to the Income Tax Authorities either to tax the income in hands of M/s. SCIPL or in the hands of the assessee under consideration. In view of the above the addition for AY 2017-18, 2018-19 and 2019-20 deleted by the CIT (A) in the case of the assessee is upheld since the same has been deleted on merits in the hands of SCIPL as discussed above.

36.7 In the result, the appeal of the revenue is **dismissed**.

37. Under this ground of appeal the protective addition made being bogus expenses claimed in the production of film Roy and Raabta has been challenged. Details of additions are tabulated as under:

Assessment Year	Particulars	Amount
2016-17	Enhancement done on account of Roy Movie Expenses	26,81,39,398

2017-18	Enhancement done on account of Raabta Movie Expenses	8,73,51,431

37.1 The revenue raised this common issue regarding addition made during assessment proceedings in respect of Roy Movie / Raabta Movie Expenses being bogus in nature, which is present in appeals for Assessment Years 2016-17 and 2017-18 (ITA Nos. 2951/DEL/2023 and 279/DEL/2023).

37.2 Brief facts of the case are that for AY 2015-16, the SCIPL a film titled "Roy" which was released on 13.02.2015. The main cast of the said film included Ranbir Kapoor, Arjun Rampal and Jaqueline Fernandez and it was directed by Vikramjit Singhthe. SCIPL had shown and claimed expenditure of Rs. 78,25,37,440/- in respect of this film for the Financial Year ended 31.03.2015 relevant to Assessment Year 2015-16. The AO in case of SCIPL made a disallowance of Rs. 26,81,39,398/- in the Assessment Year 2016-17 by disallowing part of the expenses incurred on foreign shooting of the film "Roy". In order to protect the interest of revenue protective addition was made in the hands of assessee. In the First Appellate proceedings the Assessment Year 2016-17 SCIPL argued before the CIT (A) that the disallowance of Rs. 26,81,39,398/- for the Assessment Year 2016-17 is not sustainable since these expenses were never debited and claimed in the Assessment Year 2016-17. The CIT(A) after considering the submission of the assessee deleted the disallowance made in the Assessment Year 2016-17. Similarly on the same grounds that substantive

addition was deleted in the hands of SCIPL, protective addition was also deleted by the assessee.

37.3 FurtherAO had disallowed amount of Rs 8,73,51,431/- being inflated production expenses of film 'Raabta' in A.Y 2017-18. SCIPL in appellate proceedings for Assessment Year 2017-18 before the CIT(A) submitted that disallowance should not be made in AY 2017-18 since these expenses do not pertain to A.Y 2017-18 and were never claimed in the P&L Account for the year ended 31.03.2017 but were incurred during AY 2018-19 and debited in the Profit & Loss Account for the Assessment Year 2018-19. The CIT(A) after considering the submission of the assessee deleted the disallowance made in the Assessment Year 2017-18. Similarly on the same grounds that substantive addition was deleted in the hands of SCIPL, protective addition was also deleted by the assessee.

37.4 The learned counsel for the assessee contended that the matter was adjudicated on a substantive basis in the case of Super Cassettes Industries Pvt. Ltd. (SCIPL). It was emphasized that the Commissioner of Income Tax (Appeals) [CIT(A)] had deleted the addition after a thorough examination of the facts that the production expenses to be bogus were not claimed in the year in which the addition is made and eince the expense were never claimed in the year in which addition was made the same were deleted by the CIT(A).

37.5 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It appears from the records that the substantive addition made in the hands of SCIPL is already dealt on merits and the same has been deleted by the CIT (A) in AY 2016-17 and 2017-18 (Relevant para of appeal order of AY 2016-17 is 97 Page 71). Since the expenses incurred for production of Film Roy were debited in the profit and loss account of AY 2015-16 instead of AY 2016-17, the same was deleted. Further the expenses incurred for production of Film Raabta were debited in the profit and loss account of AY 2018-19 instead of AY 2017-18, and the same were deleted.

37.6 The Protective addition was merely made in the hands of the assessee under consideration to protect the interest of revenue. The AO made protective addition only in the hands of the assessee on the presumption that if substantive addition is made in the hands of M/s. SCIPL accepted, the protective addition may be made in the hands of the assessee and, therefore, it was imperative to protect the interest of revenue to avoid the possibility of leakage of revenue and to deal with the contingent situation till the substantive addition gets finalized. We note that since the substantive addition has been deleted in the hands of the SCIPL, then no protective addition should be susntained in the hands of the assessee. The protective addition can only be made when *prima facie* it appears to the

revenue that income has been diverted either by M/s. SCIPL or by assessee under consideration, then it would be open to the Income Tax Authorities either to tax the income in hands of M/s. SCIPL or in the hands of the assessee under consideration. In view of the above the addition for AY 2016-17 and 2017-18 deleted by the CIT (A) in the case of the assessee is upheld since the same has been deleted on merits in the hands of SCIPL as discussed above.

37.7 In the result, the appeal of the revenue on the instant ground is **dismissed**.

38. Now coming to grounds which are not common over the year and therefore the same are addressed yearwise as under:

Un-Common Grounds for AY 2017-18

39. Under this ground of appeal the protective addition of Rs. 5,50,00,000/- on account of disallowance of expenses of production of film TUM BIN-2 considering them as bogus expense is challenged for AY 2017-18 by the revenue.

39.1 SCIPL has entered into a film commissioning agreement dated 22/01/2016 with T Series Films UK for production of the film Tum Bin 2. The company has transferred Rs. 18.67 Crore to T Series UK ltd out of which it transferred 674150 Pounds equivalent to 7 Crores to Magus Consultancy Dubai for providing services of Anubhav Sinha Director and writer of the film. The AO has stated that out of the same Magus only paid Rs. 1.5 Crore to Anubhav Sinha. It is to be noted that the SCIPL was supposed to bear the amount of cost involved in

making of the film and T Series UK was only supposed to execute the project and the cost of Directors fees was paid by SCIPL to T Series UK Ltd. SCIPL has claimed inflated expenses on account of payment made to Sh. Anubhav Sinha Director of Tum Bin 2. The payment to Sh. Anubhav Sinha was only Rs. 1.5 Crore as against transfer of 674150 Pounds to Magus. Therefore, the excess payment to Magus by T Series UK over and above what was paid to Anubhav Sinha is to be disallowed.

39.2 The additions so made in AY 2017-18 were partly upheld by the Ld. CIT(A) by holding that accrual amount transferred to Magus Consultancy Dubai for providing services of Anubhav Sinha Director and writer of the film was 6,74,00,000/- (674150 pound converted in INR) instead of Rs. 7,00,00,000/- claimed in the assessment order. Further Magus consultancy Dubai has paid 1,50,00,000/- only to Anubhav Sinha and therefore and therefore SCIPL inflated its expenditure for production of Film Tum Bin 2 to the extent of Rs. 5,24,00,000/- i.e. Rs. 6,74,00,000/- less 1,50,00,000/- and accordingly addition to the extent of Rs. 5,24,00,000/- was confirmed and relief of Rs. 26,00,000/- was provided.

39.3 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It has come on record that the substantive addition on this ground of appeal is already confirmed on merits by the CIT(A) in the hands of SCIPL vide appeal order dated 07.11.2023 in ITA

No. 23/10394/ 2016-17 at Para No. 14.26 Page 88. That being the position, protective assessment of the same amount at the hands of the assessee would amounts to double taxation.

39.4 In view of the foregoing discussions, the appeal of department is dismissed.

Un-Common Grounds for AY 2018-19

40. Under this ground of appeal the protective addition of **Rs. 6,21,14,771/-** on account of disallowance of expenses of production of Film Hate Story-4 considering them as bogus expense is challenged for **AY 2018-19**by revenue.

40.1 Brief facts of the case are that M/s SCIPL produced "Hate Story 4," released on 09.03.2018, with major filming in the UK through Super T Films (UK) Ltd. which outsourced the payments in respect of cast, crew, and technicians to NM Worldwide Ltd in Dubai. The Assessing Officer (AO) noted SCIPL transferred Rs. 19,56,92,500 to Super T Films (UK) Ltd for foreign shooting, of which 874,626 GBP (approx. Rs. 7.50 crores) was sent to NM Worldwide Ltd (line producer) for payments to the Director, Dialogue Writer, and Screenplay Writer. On Investigation by the Investigation Wing it was found that out of Rs. 7.50 crores remitted to NM Worldwide Limited, an amount of Rs. 1,28,85,229/- was actually paid by NM Worldwide to cast, crew, and technicians,

etc. and resultantly Rs. 6,21,14,771/- being Rs. 7.50 crores transferred to NM Worldwide less Rs. 1,28,85,229 actually paid by NM Worldwideis added to the total income of SCIPL being bogus expenses claimed on account of production of movie "Hate Story 4". In order to protect the interest of revenue, same additions were also made in the hands of assessee on protective basis.

40.2 The CIT (A) in the case of SCIPL upheld the addition made in the assessment order, rejecting SCIPL's contention that all payments were governed by valid commercial agreements. The CIT(A) found that SCIPL transferred Rs. 19,56,92,500 to Super T Films for production expenses, out of which 874,626 GBP (approximately Rs. 7,50,00,000) was further transferred to NM Worldwide for payments to the Director, Dialogue Writer, and Screenplay Writer. However, upon investigation, it was determined that NM Worldwide disbursed only Rs. 1,28,85,229 to the Director, Dialogue Writer, and Screenplay Writer, thereby justifying the disallowance of the excess amount. Resultantly the CIT(A) deleted the substantive addition in the hands of assessee as the addition in the hands of SCIPL is confirmed.

40.3 We have heard the respective submissions made by the parties; we have also perused the relevant materials available on record. It has come on record that the substantive addition on this ground of appeal is already confirmed on merits

by the CIT(A) in the hands of SCIPL vide appeal order dated 10.11.2023 in ITA No. 23/10295/ 2017-18 at Para No. 13.37 Page 66. That being the position, protective assessment of the same amount at the hands of the assessee would amounts to double taxation.

40.4 In view of the foregoing discussions, the appeal of department is dismissed.

45. To sum up in the case of Super Cassettes Industries Pvt. Ltd., assessee's appeals for A.Y. 2015-16 to 2019-20 are partly allowed and the Revenue's appeals for A.Y. 2013-14 to 2019-20 are dismissed. Departmental appeal ITA No. 1845/Del/2023/Del/2023 for A.Y. 2019-20 is dismissed. Departmental appeals in the case of Bhushan Dua for A.Y. 2013-14 to 2019-20 are dismissed.

Order pronounced in the open court on 25.09.2025.

Sd/-	**Sd/-**
(NAVEEN CHANDRA)	**(MADHUMITA ROY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 25.09.2025.
MP
Copyforwarded to:

Appellant
Respondent
CIT
CIT(A)
DR

Asstt.Registrar,ITAT,New Delhi