



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

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

आयकर अपील सं./ITA Nos. 513 & 519 to 521/JP/2025  
निर्धारण वर्ष / Assessment Years : 2016-17 & 2018-19 to 2020-21

Sunil Kumar Agarwal 395, Narnoli Mansion, Outside Sanganeri Gate, Jaipur	बनाम Vs.	ACIT, Central Circle-2, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABRPA9601M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITSS No. 03/JP/2025  
निर्धारण वर्ष / Assessment Year : 2015-16

Sunil Kumar Agarwal 395, Narnoli Mansion, Outside Sanganeri Gate, Jaipur	बनाम Vs.	ACIT, Central Circle-2, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABRPA9601M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S. L. Poddar, Adv.  
राजस्व की ओर से / Revenue by : Mrs. Anita Rinesh, JCIT, Sr-DR

सुनवाई की तारीख / Date of Hearing : 06/08/2025  
उदघोषणा की तारीख / Date of Pronouncement: 14/10/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present bunch of five appeals were preferred by the above-named assessee - appellant against the order of Commissioner of Income Tax (Appeal), Jaipur - 4 [ for short CIT(A)] for the assessment years 2015-16 to 2016-17 & 2018-19 to 2020-21 dated 29.03.2025 & 16.05.2025. The said order of the Id. CIT(A) arise as against the order dated 29.09.2021 passed under section 153A & 143(3) of the Income Tax Act, 1961 [ for short Act ] by ACIT, Central Circle-2, Jaipur [ for short AO ].

2. All these five appeals were argued together and with the consent of the parties were heard together and thereby we dispose of these appeals with common order.

3. First, we take up the appeal of the assessee in ITA no. 521/JP/2025 for assessment year 2020-21. In this appeal the assessee has taken following grounds of appeal;

1. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the action of the Learned AO in applying the GP rate of 10% on following unaccounted sales declared by the assessee against 5% declared by the assessee Rs. 20,35,000/- (para 11.1, page no. 17 of exhibit-14) (ii) Rs. 45,30,000/-(para 11.2, page no. 44 of exhibit -8) (iii) Rs. 5,10,380/- (para 11.3, page no. 43 of exhibit -8) (iv) Rs. 11,14,200/-(para 11.4. page no. 41 of exhibit -8)

2. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the action of the Learned AO treating the interest income Rs. 20,34,000/- on the basis of rough calculation and estimation on page no. 11 of exhibit-14 (para 14 of assessment order).
  3. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 29,498/-by 3 estimating the GP @ 10% on unaccounted sales of Rs. 2,94,983/- on the basis of seized document in exhibit -9 page no. 1 and exhibit -8.
  4. Under the facts and Circumstances of the case the Learned CIT(A) has erred in not giving clear cut finding regarding setoff of income surrendered and addition sustained by the Learned CIT(A).
  5. Under the facts and Circumstances of the case the Learned CIT(A) has erred in rejecting the request for not adjusting the money lying in PD A/c against advance tax liability/self-assessment tax and charging of interest u/s 234B & 234C of the Income Tax Act 1961 for Rs. 19,08,302/- and Rs. 40,656/-which is contrary to the provisions of law where the specific request was made by the assessee in the return filed u/s 139 of the Act.
  6. Under the facts and Circumstances of the case the Learned CIT(A) has erred in not allowing benefit of telescoping against the income surrendered/ addition sustained by the Learned CIT(A).
  7. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.
  8. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 4,49,744/-made by the Learned AO on account of excess stock which have been duly explained to the AO.
  9. Under the facts and circumstances of the case the Learned CIT(A) has erred in confirming the action of the Learned AO in treating the following amount as unaccounted sales for the year under consideration and thereafter applying 10% NP rate- (i) Rs. 73,23,750/- (para 11.6 page no. 45 of exhibit-8) (ii) Rs. 14,75,000/- (para 12 on the basis of papers found from Nikhil Kumar Goyal) (iii) Rs. 4,18,58,330/- (para 13 on the basis of papers found from Nikhil Kumar Goyal).
4. The brief facts relating to the present appeal are that a search and seizure action u/s 132 of the Act was carried out by the Income Tax

Department on the members of Narnoli Group on 28-06-2019 of which the assessee is one of the members. On account of the search the jurisdiction over the case was assigned to Central Circle - 2, Jaipur by the Pr. Commissioner of Income Tax, Jaipur-II, Jaipur by an order u/s 127 of the Act dated 26.06.2020. The assessee filed the return of income for the year under consideration on 10.01.2021 declaring total income at Rs. 2,64,82,110/-. The assessee primarily derives his income under the head of House Property, Business, Capital Gain and other sources. Statutory notices as required under the law were issued from time to time and the assessee in response to those notices furnished the information which was after examining them placed on record as noted by the Id. AO.

5. During the course of search cash of Rs. 1,52,05,090/- was found and out of that a sum of Rs. 1,21,50,000/- was seized. Since the assessee has disclosed the income to the extent of the cash found Id. AO accepted the explanation furnished by the assessee. Similarly, jewellery for an amount of Rs. 4,95,86,054/- was found and were seized for an amount of Rs. 3,11,35,331/-. On that aspect of the matter also the Id. AO satisfied with the explanation on the investment made and thereby no addition were proposed. Similarly, the excess stock and foreign currency Id. AO made some additions after considering the explanation of the assessee.

Ld. AO noted that the assessee made surrender on account of cash sales based on the documents seized. During the post search enquires the assessee was asked about the purchaser and seller parties with whom the unaccounted transactions were made. With regard to the details of persons mentioned on the documents, the assessee submitted that "they are unable to provide the names & addresses of the persons to whom unaccounted sales were made or from whom unaccounted purchases were made. The reason for that all the unaccounted transactions were made by the individual brokers generally from the Mohamadden community who carries the good personally with them and the transactions were made in cash. Since the transaction is closed in one shot without any further action, the name and address of the actual buyer or seller is not known to the assessee". During the search proceedings, assessee submitted that he is unable to explain this page and also stated that he will furnish all details during the post search proceeding. During the post search enquiry, assessee has accepted that the page represents the sale of Rs. 20,35,000/- which is not recorded in the books of accounts. Therefore, the assessee voluntarily surrendered the amount of Rs. 20.35,000/- for taxation. During the course of assessment proceedings, a query was raised on the issue. In response, assessee replied that raised in notice in which

you have require to explain the contents of various loose papers & documents were seized and inventoried as Exhibit-14, page no. 17 seized from the premises Plot No. 5, Ahimsa Marg, Mahaveer Nagar, Jaipur. This paper is related to offer for sale to Mr. Saheed Bhai and Wahid Bhai for particular lot of 185 kg rough @ Rs. 11000/- per kg for total sale consideration of Rs. 20,35,000/-. This sales offer was not materialized because the payment condition was only for 2 months and the buyer has not accepted the condition of payment before two months. But to avoid litigation and purchase peace of mind we have already included the profit earn assuming unaccounted sale of Rs. 2035000/- in assessment year 2020-21 exhibit-14 page no. 17. This amount of Rs. 2035000/- has been taken and considered in unaccounted sales for assessment year 2020-21 at serial no. 1 out of total sales of Rs. 8032613/-. Ld. AO perused ITR of the assessee. It shows that though assessee had income under the head 'Income From Business or Profession', the same was in the nature of remuneration and interest from his partnership concerns. The A/R of the assessee submitted a working of GP rate of M/s. K. Sunil Narmoli, Mis. Namoli Emeralds and M/s. DTA Jewels as per which the average GP rate over FY 2015-16 to FY 2019-20 is 7.89, 7.41 and 6.47 respectively. The average GP rate of the three concerns comes to 7.26. However, it is held

that this GP rate cannot be applied to the undeclared sales of the assessee for the reason that such sales have evaded sales taxes/GST etc. and thereby dodged the authorities. Therefore, seeing the totality of the things, a GP rate of 10% is justified on such unaccounted sales. The reply of the assessee has been considered. The GP @10% on such sales is added to the returned income of the assessee for an amount of Rs. 2,03,500/-.

Similarly, 10 % of the profit was added on the following page which were seized and the same is tabulated herein below ;

Sr.No.	Reference to the seized material	Amount of sales Rs.	10% of profit in Rs.
1.	Page no. 17 of Exhibit 15 of the party1 [ discussed as above]	20,35,000	2,03,500
2.	Page 44 Exhibit 8 of the party no 3	45,30,000	4,53,000
3.	Page no. 43 of exhibit 8 of party no 3	5,10,380	51,038
4.	Page no. 41 of Exhibit-8 of party no 3	11,14,200	1,11,420
	<b>Total</b>		<b>8,18,958</b>

6. The Id. AO also noted that certain documents were seized from the office of the Narnoli Group i.e. 395, Narnoli Mansion, Sanganeri Gate, Jaipur which were inventoried as Annexure AS, Exhibit-8, Page no. 45. In the assessment proceedings, a query was raised on the issue intimating the assessee that as per the post search enquiries it was revealed that the

amount of Rs. 73,23,750/- was his unrecorded sales different from the recordings of bill no. 77 dated 24-06-2019 as claimed by him. The assessee required to provide assessment year wise details of the same and show cause why this amount of Rs. 73,23,750/- should not be considered as his undisclosed income for the relevant assessment year. In response to the query, assessee submitted a reply saying that page no. 45 of exhibit-8 is a calculation and offer for sale which was subsequently materialized in some lesser quantity of goods. Page no. 45 is for the 22 gm, 24 gm, 450gm quantity but the buyer has purchased only 46 gm and 550 gm quantity with the same rates on 24.06.2019. Copy of bill issued for the same offered sale was placed on record. Therefore, there was no unaccounted sales as per paper no. 45 of exhibit-8. Copy of bill for sales made to M/s Kasatia International was placed on record. Ld. AO noted that the reply of the assessee perused but not found acceptable. Because the total value of the sales recorded on page no. 45 is Rs. 73,23,750/- whereas the bill no. 077 dated 24.06.2019 is of Rs. 65,17,503/- only. This shows that bill no. 077 dated 24.06.2019 is not issued for sales recorded on page no. 45. This bill is a different transaction of sale. Page no. 45 contains sales made of three different articles whereas bill no. 077 records two different kind of articles. Further the quantity of articles sold at rate of Rs. 95,000/-

per unit is 46 grams as per bill 077 whereas the same is 24 grams in the sales recorded on page no. 45. Similarly, the quantity of articles sold at rate of Rs. 3875/- per unit is 550 grams as per bill 077 whereas the same is 450 grams in the sales recorded on page no. 45. Further the item sold at Rs. 1,50,000/- is recorded on page no. 45 whereas the same do not even, appear on the bill no. 077. The above points show that sales recorded on page no. 45 is different from what has been recorded in bill no. 077 dated 24.06.2019. The sales of Rs. 73,23,750/- recorded on page no. 45 is not recorded in the books of accounts. It is merely an attempt on part of the assessee link it with bill no. 077 for self-serving purpose. Accordingly, addition of gross profit @10% on unaccounted sales in the hands of the assessee for FY 2019-20 was made for an amount of Rs. 7,32,375/-.

7. While search proceedings at the residential premises of Shri Nikhil Kumar Goyal S/o. Shri Balram Sawroop Goyal at 84 Vasundhara Colony, Tonk Road, Jaipur and business premises at 1841, Chaubiyon Ka Chowk, Banji Thokyo Ki Dharamshala, Ghee Walon Ka Rasta, Jaipur were also covered, and certain incriminating loose papers/slips were found and seized. These pages were inventorized as Annexure AS Exhibit 2, 3 & 6 of Party 9 and Annexure AS Exhibit 20 & 26 of Party 10. While post-search enquiry, Shri Nikhil Kumar Goyal admitted that these pages are part of

cash book which is not accounted / recorded in the regular books of accounts. Therefore, assessee was required to furnish that these cash sales made to Shri Nikhil Kumar Goyal was recorded in his books of accounts. He was also required to show cause as to why these cash sales should not be considered as his undisclosed income for the various years under consideration. In response to the query, assessee submitted that, 'We are unable to explain the entries recorded in above documents. As these documents are seized from third person. We have not entered into any such transaction with Shri Nikhil Kumar Goyal or other person which are entered in the above documents. You are requested to provide us the details that how you have reached on this conclusion that the above figures are noted in seized documents are in coded form and two zeros are suppressed from the figures. Whether any statement was recorded and in which statement Shri Nikhil Kumar Goyal has admitted this fact. Therefore first you provide the copy of statement of Nikhil Kumar Goyal or any other person who has accepted this fact. Thereafter you are requested to provide us opportunity for cross examination of that person because the facts are totally wrong and assessee has not made any cash sales to Mr. Nikhil Kumar Goyal.' The reply of the assessee was considered and the documents pertaining to the above stand of the department were provided

along with statement of Shri Nikhil Kumar Goyal. Thereafter assessee did not furnish any reply on the issue. In absence of any proper reply, it is held the assessee has accepted that the same is undeclared sales of Shri Sunil Kumar Narnoli/Shri Sunil Kumar Agarwal for the various AY 2018-19, AY 2019-20 and AY 2020-21. Accordingly, addition to the total income was made on account of undeclared sales. The GP @10% (as discussed above) on such sales was added to the returned income of the assessee for Rs. 1,47,500/-.

8. While search proceedings at the residential premises of Shri Nikhil Kumar Goyal S/o. Shri Balram Sawroop Goyal at 84 Vasundhara Colony, Tonk Road, Jaipur and business premises at 1841, Chaubiyon Ka Chowk, Banji Thokyo Ki Dharamshala, Ghee Walon Ka Rasta, Jaipur were also covered and certain incriminating loose papers/slips were found and seized. These loose papers/slips are inventorized as Annexure 22, 26 & 31 of party 10. While post-search enquiry, Shri Nikhil Kumar Goyal admitted that these slips/pages are related to cash sales which is not accounted / recorded in the regular books of accounts. He admitted that he has played a role of broker in the sale/purchase transactions recorded on these pages/slips. He also voluntarily surrendered the brokerage income earned through these cash sales transactions. Mainly sale transactions between

Sh. Sunil Kumar Agarwal (his concerns) & other parties are recorded on these papers/slips. During post search enquires and investigations, the tally data was verified and these sales made by Shri Sunil Kumar Narnoli to other parties are not reflected in the books maintained by Shri Sunil Narnoli. All such transactions were tabulated at Page 25 of the AO. During assessment proceedings, the assessee was required to furnish evidence that these cash sales made through Shri Nikhil Kumar Goyal had been duly recorded in his books of accounts. He was also required to show cause as to why these cash sales should not be considered as his undisclosed income for the various years under consideration. In response, assessee filed a reply stating that, 'We are unable to explain the entries recorded in above documents. As these documents are seized from third person. We have not entered any such transaction with Shri Nikhil Kumar Goyal or other person which are entered in the above documents. You are requested to provide us the details that how you reached this conclusion that the above figures are noted in seized documents are in coded form and two zeros are suppressed from the figures. Whether any statement was recorded and in which statement Shri Nikhil Kumar Goyal has admitted this fact. Therefore, first you provide the copy of statement of Nikhil Kumar Goyal or any other person who has accepted this fact. Thereafter you are

requested to provide us opportunity for cross examination of that person because the facts are totally wrong and assessee has not made any cash sales to any person through Mr. Nikhil Kumar Goyal.

The reply of the assessee was considered and the documents pertaining to the above stand of the department were provided along with statement of Shri Nikhil Kumar Goyal.

After that assessee did not furnish any reply on the issue. In absence of any proper reply, it was held that the assessee has accepted that the same is undeclared sales of Shri Sunil Kumar Narnoli/ Shri Sunil Kumar Agarwal for the various AY 2016-17, AY 2018-19, AY 2019-20 and AY 2020-21. Accordingly, addition to the total income was made on account of undeclared sales. The GP @10% on such sales was added to the returned income of the assessee for an amount of Rs. 41,85,833/-.

9. During the search proceedings page No.11 of exhibit-14 of party-1 was found and seized from the residential premises of Shri Sunil Kumar Agrawal 5, Ahimsa Marg, Mahaveer Nagar, Jaipur. While post search enquiry, Shri Nikhil Kumar Goyal admitted that these slips/pages are related to cash sales which is not accounted / recorded in the regular books of accounts. He admitted that he has played a role of broker in the

sale/purchase transactions recorded on these pages/slips. He also voluntarily surrendered the brokerage income earned through these cash sales transactions. Mainly sale transactions between Sh. Sunil Kumar Narnoli (his concerns) & other parties are recorded on these papers/slips. The tally data was verified and these sales made by Shri Sunil Kumar Narnoli to other parties are not reflected in the books maintained by Shri Sunil Narnoli. During the search, premises of Sh. Nikhil Kumar Goyal were also covered and during statements he admitted that he earns income by way of brokerage through sales/purchase of semi-precious gems stone. During the search proceedings page No.8 of exhibit-26 of party-10 was found and seized from the office premises of Nikhil Kumar Goyal (1841, Chaubiyon Ka Chowk, Banji Thokyo Ki Dharmasha Ghee Walon Ka Rasta, Jaipur). It is pertinent to mention here that during the search proceedings Shri Nikhil Kumar Goyal explained that the total of the amounts written on the page is written as "234784.31" which is suppressed by '00' or 'double zero'. He stated that the actual amount is Rs. 2,34,78,431/-. He further stated that amounts on the document are written in coded form such as 20 is written for 20 lakhs. On co-relating both the above pages, it was clearly evident that the transaction amount of Rs. 2,34,78,431/- recorded in coded form as 234784.31 on the page seized from business premise of Shri Nikhil

Kumar Goyal is mentioned verbatim/exactly at Sl. No. 4 at the bottom of page No. 11 seized from the residential premises of Shri Sunil Kumar Agrawal. It implies that the pattern of recording the transactions in coded forms is exactly same in both the above incriminating pages. Further, the handwriting on both the documents appears to be of the same person. Considering the above facts, the amounts of sales recorded on page-11, the total was calculated at Rs. 16,60,61,663/-. On that issue assessee was required to show cause why the sales made of Rs. 16,60,61,663/- should not be considered as his undisclosed income for relevant assessment year (i.e. A.Y 2020-21). Further following the similar patterns of transactions it is seen that you have made sales through Shri Arvind Jain also. The same is also evident from documents seized. In response, assessee filed a reply submitting that you have mentioned that the transaction in coded form is exactly same in both the documents. You have further mention that the sales recorded in those documents are not recorded. This allegations are not correct because the number of entries are repeated entries firstly and the entries recorded in the bottom of the paper page no. 11 exhibit-14 are regarding imports made by the assessee which are duly recorded in the books of accounts of the assessee group.

Now for clarification we can assume that the same document was prepared only as planning for payment of import liabilities. Assessee explained that by way of table at Rs. 30, 31 & 32 the assessment order. So the Id. AO noted this document which is exhibit -14 page 11 is nothing but planning for collection from debtors for outward payment of import liabilities. The amount mentioned at sr.no. 16 to 21 are import bills and are verifiable from the import advice which are duly recorded in the books of accounts. Copy of all the import advice which were exactly of the same figure and date mentioned in seized papers were submitted. The Id. AO noted that the reply of the assessee has been perused and the same was acceptable to the extent that the entries on page No.8 of exhibit-26 of party-10 are repeated entries of page No. 11 of exhibit-14 of party-1 with regard to import bill of value Rs. 2,34,78,431 and planning of its sale over various dates by Shri Nikhil Kumar Goyal. It is also acceptable that the lower part of page no. 11 exhibit-14 of party 1 has record of various import bills of Shri Sunil Kumar Agarwal. Further assessee has claimed that these import advices are duly recorded in books of accounts. However, on perusal of page no. 8 of exhibit 26 of party 10 shows working of interest on delayed sales. Regarding the import advice of value Rs. 2,34,78,431, the split of interest totals up to Rs. 12,34,646. Further on the lower part of the

same document, this figure has been deducted from overall interest on delayed sales for Rs. 20,34,000 Thus it is held that assessee has interest income on delayed sales for Rs. 20,34,000 which was out of book income. Accordingly, the same was brought to tax.

10. While search proceeding, certain documents were seized from the office of the Narnoli Group i.e. 395, Narnoli Mansion, Sanganeri Gate, Jaipur which were inventorised as Annexure AS, Exhibit-8 page no. 39 and page no. 1 to 10 of Annexure -AS exhibit 9. During the post search enquiries assessee has explained these to be unaccounted sales of Rs. 44,40,208/- for AY 2018-19 yet to be recovered from various persons. Exhibit-9, page no. 1 also records the same amount minus 2% discount at Rs. 43,51,403/- (44,40,208 minus 2% discount = 43,51,403/-). Certain details totaling to Rs. 45,63,148/- are also exhibited in pages 1 to 10 of Exhibit no. 9 where individual account of each buyer was mentioned. While assessment proceedings, a query was raised on this by mentioning that considering the method of recording previous transactions it is seen that same is your unaccounted sale of Rs. 90,03,356/- made to some parties. Assessee was required to provide assessment year wise details of the same and you are also required to show cause why this amount of Rs. 90,03,356/- should not be considered as undisclosed income for the

relevant assessment years. In response, assessee filed a reply that, 'In this regard we would like to submit that the entries recorded on page no 39 of exhibit-8 are related to unaccounted sales of Rs. 44,40,208/- which we have already accepted and declared as unaccounted sales for assessment year 2018-19 at serial no. 1. Regarding page no. 1 to 10 of exhibit-9 the fact was that it records amount recovered from various persons against sales made to them as per documents page no. 9 of exhibit-8. It is clearly mentioned on the top of page no. 9 of exhibit-8 that is due for five months. In exhibit-9 on page no. 2 Sumit Bhai is mentioned which is same entry on serial no. 5 dated 23.03.2018 for Rs. 264047/-. Likewise page no. 3 Vkastiya is same entry as serial no. 6 on 19.03.2018 for Rs. 617477. Page no. 4 Damodar Bhai is same entry as serial no. 2 on 04-02-2018 for Rs. 12,00,414/-. On page no. 5 DP Bhai is same entry in exhibit-8 at serial no. 4 with other partner Arvind Chabra, But the amount is same (Approx). On page no. 6. Rajesh Musal Bhai which is same at serial no. 3 of page no. 39 of exhibit-8. On page no. 7 the name of Mr. Ram Sahai Ji is mention which is the same entry at serial no. 1 of Page No. 39 of exhibit-8 for on 05.01.2018 for Rs. 18,31,378/-. On Page no. 8 of exhibit-9 Akhil Bhai Vineet Bhai name is mentioned which is not matching with page no. 39 of exhibit-8 and we have offered additional unaccounted sales Rs. 2,94,983/-

at serial no. 5 of unaccounted sales for assessment year 2020-21. The surrender of unaccounted sales for page no. 39 of exhibit-8 for assessment year 2018-19 was made for Rs.44,40,208/- at serial no. 1. Assessee's reply has been considered and found to be acceptable. The GP @ 10% (as discussed above) on such sales is added to the returned income of the assessee for Rs. 29,498/-.

Accordingly, against the returned income of Rs. 2,64,82,100/- the assessed income was determined at Rs. 3,59,54,390/-.

11. The assessee challenged the findings so recorded in the above order of assessment passed on 29.09.2021 before the Commissioner of Income Tax, Appeals-4, Jaipur. Apropos to the various grounds of appeal raised by the assessee the Id. CIT(A) has considered the grievance of the assessee in part. The relevant finding of the Id. CIT(A) is reiterated below:

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

As per facts noted in assessment order, an addition of Rs.4,49,744/- was made on account of excess stock. During appellate proceedings, the appellant has contended that difference of Rs.4,49,744/- was negligible considering the total stock found of Rs.30,62,78,537/-.

However, the contention of the appellant that difference in stock of Rs.4,49,744/- is meager is not acceptable as from reply furnished by the appellant it is obvious that all the claims that was made by the appellant were allowed by the Id. AO at the values as claimed by the appellant. After allowing the claim, there still remaining difference of Rs.4,49,744/-. In view of this discussion, this ground of appeal is dismissed.

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

First issue (addition of profit on admitted unaccounted sale):-

On the issue the following year wise additions have been done in the assessment orders:-

	A.Y 2016-17	AY 2018-19	A.Y 2019-20	A.Y 2020-21	Total
GP addition on admitted unaccounted sales	----	222010	66250	732375	1020635

As per the facts noted in assessment orders, it was found that assessee has made unaccounted sales. The appellant has declared this unaccounted sales in its ITR filed u/s 153A for the respective A.Y. However, the assessee declared GP at the rate of 5% on such sale. Considering the average of GP rate of three concerns of assessee i.e. M/s K. Sunil Narnoli, M/s. Narnoli Emeralds and M/s DTA Jewels. (average GP rate of these firms over FY 2015-16 to 2019-20 was 7.89, 7.41 and 6.47 respectively), Id. AO held that this GP rate cannot be applied to the undeclared sales of the assessee for the reason that such sales have evaded sales taxes/GST etc and thereby dodged the authorities and compliance costs etc. Accordingly, Id. AO applied GP rate of 10% on these unaccounted sales and made the following additions (for the increased profit):-

A.Y 2018-19	A.Y 2019-20	AY 2020-21	Total
222010	66250	732375	1020635

During appellate proceedings, the appellant contended that action of Id. AO is not based on sound business principles and customary practices and in unaccounted transactions, the NP is compromised because of bulk dealings and no taxation.

The average GP rate over FY 2015-16 to FY 2019-20 of three concerns M/s K. Sunil Narmoli, M/s Narmoli Emeralds and M/s DTA Jewels was declared as 7.89, 7.41 and 6.47 respectively and average GP rate of these three concerns taken together came to 7.26. It is general practice that GP rate of a concern may not be less than the average of last three years. Further, the observation of Id. AO that undeclared sales have evaded sale taxes/GST etc and thereby dogged the authorities. It is undisputable fact that due to non payment of taxes/GST, the seller make good profit in unaccounted sales. It is undisputed legal principle as seen from the various judgements that higher gross profit is earned on the unaccounted sales as the various compliance costs, taxes, octroi, etc. are saved and even the purchases made from the grey market for such unaccounted sales is also generally at lower prices in comparison to the billed sales having GST etc. The appellant contention that NP was compromised because of bulk dealings and no taxation is not acceptable because in bulk dealing also there is only tax part is not included and benefit of same is not passed on to buyer. The appellant has not submitted list, amount of various expenses (if any) are to the GP, and whether they are over and above the indirect expenses already recorded in the books of accounts and whether such indirect expenses are actually incurred and whether the various technical disallowance is provisions are attracted or not, etc. The indirect expenses generally do not increase with the sale/turnover and that is why these are called indirect expenses and in the absence of evidences from the side of the appellant it is to be believed and held that the indirect expenses already recorded in the books of accounts are the total indirect expenses incurred by the appellant including for the unaccounted transactions. That this contention of the appellant is merely self-serving statement and not supported with any evidences. The appellant has not produced the buyers for the cross examination by the learned AO.

Hon'ble Supreme Court of India in the case of CIT Vs British Paints India Ltd (1991) 188 ITR 44 (SC) has held that it is the duty of the assessing officer to determine the taxable income by making such computation as he considers appropriate in the given situation.

It is held by the Hon'ble Supreme Court in the case of Commissioner of Sales Tax v. H.M. Esufali H.M. Abdulali [1973] 90 ITR 271 as under:-

"In estimating any escaped turnover, it is inevitable that there is some guesswork. The assessing authority while making the best judgment assessment, no doubt, should arrive at his conclusion without any bias and on a rational basis. That authority should not be vindictive or capricious. If the estimate made by the

assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not anyone else's. The High Court cannot substitute its best judgment for that of the assessing authority."

It is held by the Hon'ble Supreme Court in the case of Kachwala Gems vs. Joint Commissioner of Income-tax, Jaipur [2007] 158 Taxman 71 (SC)/[2007] 288 ITR 10 (SC)/[2006] 206 CTR 585 (SC) (14-12-2006) as under:-

"11. It is well-settled that in a best judgment assessment, there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts.....

The Hon'ble Punjab and Haryana High Court in case of Tara Singh V ITO [2017] 81 taxmann.com 293 (Punjab & Haryana) held that the assessing officer in a best judgment assessment can resort to a bona fide estimate based on a rational basis.

It is held by the Hon'ble Rajasthan High Court in the case of Chaturbhuj Manoj Commissioner of Income-tax [2017] 82 taxmann.com Kumar (Rajasthan)/[2016] 388 ITR 194 (Rajasthan) [29-07 2016] as under:-103

"14. Once there is a clear cut finding by the Assessing Officer as well as the Tribunal that the books version cannot be relied on at all and the entire accounts were manipulated, the Assessing Officer or/and the Tribunal, in our view, had correctly gone into some estimation/guess work by invoking provisions of section 145(3) or in a case of a best judgment assessment under section 144, some guess work will always have to be resorted to by the authorities. However, the same should also be based on some material and should not be arbitrary or without

.....

16. We have already expressed earlier that when the books of account are rejected under section 145(3) and in a best judgment assessment under section 144 some guess work is required to be applied to come to a reasonable conclusion and it should be on some basis/reasoning.....

The Hon'ble Andhra Pradesh High Court in the case of Rajnik & Co. v. Assistant Commissioner of Income-tax [2001] 117 Taxman 675 (Andhra Pradesh) held as under:-

10. According to the various decisions including the decision of the Supreme Court, there must be some material before the ITO on which to base his estimate, but no hard and fast rule can be laid down by the Court to define what sort of material is required on which his estimate can be founded. It was pointed out by the House of Lords in Sun Insurance Office v. Clark 1912 AC 443 where it becomes necessary to have recourse to some form of estimate by the Income-tax Department, that method should be adopted which approximates most near to the truth. It is also emphasized the fact that the rule of thumb may be very desirable but could not be substituted for the only rule of law that he knew of, namely, that the true gains were to be ascertained as nearly as it could be done. The Supreme Court also held in the case of CIT v. K.Y. Pilliah & Sons [1967] 63 ITR 411 that "in this view of the matter, the power to estimate the turnover, etc., where the accounts are unreliable, must be exercised not arbitrarily but judicially in the light of relevant materials."

It is held by the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax [1954] 26 ITR 775 (SC) [29-10-1954] as under-

"..... We think that both the Income-tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It is thus a fit case for the exercise of our power under article 136.

In the result we allow this appeal, set aside the order of the Tribunal and remand the case to it with directions that in arriving at its estimate of gross profits and sales it should give full opportunity to the assessee to place any relevant material on the point that it has before the Tribunal, whether it is found in the books of account or elsewhere and it should also disclose to the assessee the material on which the Tribunal is going to found its estimate and then afford him full opportunity to meet the substance of any private inquiries made by the Income-tax Officer if it is intended to make the estimate on the foot of those enquiries. It will also be open to the department to place any evidence or material on the record to support the estimate made by the Income-tax Officer or by the Tribunal in its judgment. The Tribunal if it thinks fit may remit the case to the Income-tax Officer for making a fresh assessment after taking such further evidence as is

furnished by the assessee or by the department. The costs of these proceedings will abide the result."

In view of above discussion, the Id. AO was justified in applying GP rate of 10% and thus making addition at the rate of 5% after deducting the gross profit at the rate of 5% declared by the appellant.

Accordingly first part of the ground is hereby dismissed

In similar situation an addition of Rs. 29,498 has been done in the hands of the appellant for the assessment year AY 2020-21. As the facts are parimateria with the facts discussed in the above discussion, the decision in the above discussion shall also apply to this issue of addition of Rs. 29,498 and accordingly such addition is also upheld. Accordingly this ground of appeal (GoA No.5 of AY 2020-21) is also liable to be dismissed.

Second issue (unaccounted sales through Shri Nikhil Goyal):-

On the issue the following year wise additions have been done in the assessment orders:-

	A.Y 2016-17	AY 2018-19	A.Y 2019-20	A.Y 2020-21	Total
GP addition @ 10% of sale on the unaccounted sales (search on Shri Nikhil Kumar Goyal)	1678625	531250	1415230	4185833	7589688

Further as per facts noted in assessment order, brief facts on the issue involved in ground of appeal is that during search action in the case of Sh. Nikhil Kumar Goyal, certain incriminating loose papers/slips were found and seized which were admitted by Sh. Nikhil Kumar Goyal during the course of post search enquiry to be related to cash sales which was not accounted/recorded in the regular books of accounts. He admitted that he had played role of broker in the sale/purchase transactions recorded on these pages and voluntarily surrender the brokerage income earned on these transactions.

As noted by the Ld. AO mainly sale transactions between Sh. Sunil Kumar Agarwal (his concern) & other parties were found recorded on these paper/slips. During post search enquiries and investigations, the tally data was verified and these sales made by Shri Sunil Kumar Narnoli to other parties were not reflecting in the books maintained by Shri Sunil Narnoli. Assessee was asked to furnish the evidence that these cash sales made through Shri Nikhil Kumar Goyal had been duly recorded in his books of accounts. During assessment proceedings, Sh. Sunil Kumar Agarwal submitted that he was unable to explain the entries recorded in these documents as these were seized from the third person and denied to have entered into any transaction with Shri Nikhil Kumar Goyal and also requested to provide the basis of arriving that figures in seized documents are in coded form and two zeroes are suppressed and requested for copy of statement of Nikhil Kumar Goyal or any other person who has accepted this fact.

All the material was provided to the appellant. However, no further reply was furnished by the assessee. Therefore, considering the documents and statement of Sh. Nikhil Kumar Agarwal the same was held as undeclared sales of appellant for various A.Y. and considering the GP rate applied @ 10% on the basis of average rate of three concern i.e. M/s K. Sunil Narnoli, M/s. Narnoli Emeralds and M/s DTA Jewels and an increase in GP rate was factored in for the reason that such sales have evaded sales taxes/GST, etc. The undeclared profit was worked out as under:-

Financial Year	Undeclared sales (Amount in Rs.)	Undeclared Profit @ 10% GP (Amount in Rs.)
2015-16	1,67,86,250/-	16,78,625
2017-18	53,12,500/-	5,31,250
2018-19	1,41,52,295/-	14,15,230
2019-20	4,18,58,330/-	41,85,833

During appellate proceedings, the appellant has contended that incriminating page under consideration are rough and dumb papers and does not contain name of the assessee and on what basis the transaction noted on paper has been treated as sale, is not known. Further to whom the sales has been made is also not on record and in absence of same, addition made in hands of appellant has been taken on basis of conjectures and guess work.

However, the contention of the appellant is not acceptable for the reason that entries were found recorded in loose papers/slips which were found and seized during search action and the same were found related to unaccounted cash sales and Sh. Nikhil Kumar Goyal categorically admitted that he played a role of broker in the sale/purchase transactions recorded on these pages. He further admitted that mainly sale transactions between Sh. Sunil Kumar Agarwal (appellant's concern) & other parties are recorded on these paper/slips on these papers/slips. During assessment proceedings, the copy of statement recorded of Sh. Nikhil Kumar Goyal and the stand of department on this issue was provided to him as per his request. However, the appellant neither submitted his reply on the issue nor raised any objection. When the appellant himself accepted the documents received during the course of assessment proceedings and did not submit any reply or objection after the receipt of statement and documents of the learned AO, the question of further objection in the appeal does not arise especially in view of the fact that the appellant has not stated and not justified as to why no submission was made after the receipt of document and statement from the learned AO.

Appellant has also not made any categorical denial that no transaction was done by him through or with the help of Sh. Nikhil Kumar Goyal. The inference to be drawn is that the appellant had made transactions through Sh. Nikhil Kumar Goyal. In the appeal the appellant has contended that the papers are dumb documents as certain details are not mentioned on these papers. However since the documents are pertaining to the appellant, it is the appellant who was required to explain the documents and the appellant has failed in this regard. Appellant has not made any categorical denial that he did not know Sh. Nikhil Kumar Goyal. If the appellant had transactions through or with Sh. Nikhil Kumar Goyal then he should have produced Sh. Nikhil Kumar Goyal before the learned AO for cross examination.

Further the addition made by the learned AO is not solely on the basis of statement. The addition has been made on the basis of seized material pertaining to the appellant as have been found from the premises of Sh. Nikhil Kumar Goyal. Further the documents cannot be disregarded merely on the reason that these have been found from the premises of third person has in such a kind of interpretation renders the entire scheme of assessment u/s 153C as otiose.

Whether in a particular case, the particular party should have the right to cross-examine or not depends upon the facts and circumstances of a particular case. This is so, because the right to cross-examine is not necessarily a part of

reasonable opportunity, as ruled by the Hon'ble Calcutta High Court in the case of Mahindra Nath Chatterjee vs. Collector (1977) TLR 1751.

Identical is the view of the Hon'ble High Court of Madras, in the case of T. Devasahaya Nadar vs. CIT (1964) 51 ITR 20 (Mad), and it has been held that:

"It cannot be laid down as a general proposition of law that the IT Department cannot rely upon any evidence which has not been subjected to cross-examination.

An ITO occupies the position of a quasi-judicial Tribunal and is not bound by the rules of the Evidence Act, but he must act in consonance with natural justice, and one such rule is that he should not use any material against an assessee without giving the assessee an opportunity to meet it. He is not bound to divulge the source of his information. There is no denial of natural justice if the ITO refuses to produce an information for cross-examination though if a witness is examined in the presence of the assessee, the assessee must be allowed to cross-examine him."

It would be pertinent to mention here that the Hon'ble Apex Court, in the case of Kanungo & Co. vs. Collector of Customs (1983) ELT 1486 (SC) (as observed by the Hon'ble ITAT, Bombay 'E' Bench in the case of GTC Industries Ltd. vs ACIT: (1998) 65 ITD 380], has rejected plea of the assessee that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them and held that

In our opinion, the principles of natural justice do not require that in matters like this the persons who have been given Information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statement made before the customs authorities. Accordingly, we hold that there is no force in the third contention of the appellant.

There is no force in the second point because we do not read the impugned order as having wrongly placed the burden on the appellant. What the impugned order does is that it refers to the evidence on the record which militates against the version of the appellant and then states that the appellant had not been able to meet the inferences arising therefrom. In our opinion, the High Court was right in holding that the burden of proof had shifted on to the appellant after the Customs authorities had informed appellant of the results of the enquiries and investigations.

It is held by the Hon'ble M.P. High Court in the case of Vijay Jain v. Commissioner of Income-tax (Appeals), Ujjain [2019] 107 taxmann.com 313 (Madhya Pradesh)/[2019] 265 Taxman 81 (Madhya Pradesh) (MAG)[22-03-2018] as under:-

#### Headnotes

Section 69 of the Income-tax Act, 1961- Unexplained investment (Immovable property) - Assessment year 2006-07-Whether wherefrom statement of one SKL it was evident that assessee engaged in construction business had entered into an agreement with original owner of land and paid Rs.20 lakhs towards advance (bayana) for purchase of said land, Tribunal rightly upheld addition of Rs.20 lakhs as unexplained investment under section 69 Held, yes Whether, findings recorded by authorities being findings of fact based on agreement of purchase of land, it could not be said that authorities committed an error by relying upon statements of SKL Held, yes [Paras 9 and 10][In favour of revenue]

It is also important to note that Sh. Nikhil Kumar Goyal also voluntarily surrendered the brokerage income which was earned on these sale transactions which further fortifies the correctness of the sales and also the addition made in the case of the appellant.

Therefore, the contention of the appellant that addition was made on the basis of document found from the third party without providing opportunity for cross examination is also not acceptable.

The average GP rate over FY 2015-16 to FY 2019-20 of three concerns M/s K. Sunil Narmoli, M/s Narmoli Emeralds and M/s DTA Jewels was declared as 7.89, 7.41 and 6.47 respectively and average GP rate of these three concerns taken together came to 7.26.

It is general practice that GP rate of a concern may not be less than the average of last three years. Further, the observation of Id. AO that undeclared sales have evaded sale taxes/GST etc and thereby dogged the authorities. It is a matter of common knowledge that higher gross profit percentage is earned in the great market sale as the various taxes, legal compliances and associated costs are saved and also the purchases are at lower prices in comparison to the properly billed purchases due to evasion of various taxes, saving of compliances costs etc.

Hon'ble Supreme Court of India in the case of CIT Vs British Paints India Ltd (1991) 188 ITR 44 (SC) has held that it is the duty of the assessing officer to determine the taxable income by making such computation as he considers appropriate in the given situation.

It is held by the Hon'ble Supreme Court in the case of Commissioner of Sales Tax v. H.M. Esufali H.M. Abdulali [1973] 90 ITR 271 as under:-

"In estimating any escaped turnover, it is inevitable that there is some guesswork. The assessing authority while making the best judgment assessment, no doubt, should arrive at his conclusion without any bias and on a rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not anyone else's. The High Court cannot substitute its best judgment for that of the assessing authority."

It is held by the Hon'ble Supreme Court in the case of Kachwala Gems vs. Joint Commissioner of Income-tax, Jaipur [2007] 158 Taxman 71 (SC)/[2007] 288 ITR 10 (SC)/[2006] 206 CTR 585 (SC)[14-12-2006] as under:-

"11. It is well-settled that in a best judgment assessment, there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts.

The Hon'ble Punjab and Haryana High Court in case of Tara Singh V ITO [2017] 81 taxmann.com 293 (Punjab & Haryana) held that the assessing officer in a best judgment assessment can resort to a bona fide estimate based on a rational basis.

It is held by the Hon'ble Rajasthan High Court in the case of Chaturbhuj Manoj v. Commissioner of Income-tax[2017] 82 taxmann.com 103 (Rajasthan)/[2016] 388 ITR 194 (Rajasthan) [29-07 2016] as under:-Kumar

\*14. Once there is a clear cut finding by the Assessing Officer as well as the Tribunal that the books version cannot be relied on at all and the entire accounts were manipulated, the Assessing Officer or/and the Tribunal, in our view, had correctly gone into some estimation/guess work by invoking provisions of section 145(3) or in a case of a best judgment assessment under section 144, some guess work will always have to be resorted to by the authorities. However, the same should also be based on some material and should not be arbitrary or without any material....

16. .... We have already expressed earlier that when the books of account are rejected under section 145(3) and in a best judgment assessment under section 144 some guess work is required to be

.....

applied to come to a reasonable conclusion and it should be on some basis/reasoning.....

The Hon'ble Andhra Pradesh High Court in the case of Rajnik & Co. v. Assistant Commissioner of Income-tax[2001] 117 Taxman 675 (Andhra Pradesh) held as under:-

10. According to the various decisions including the decision of the Supreme Court, there must be some material before the ITO on which to base his estimate, but no hard and fast rule can be laid down by the Court to define what sort of material is required on which his estimate can be founded. It was pointed out by the House of Lords in Sun Insurance Office v. Clark 1912 AC 443 where it becomes necessary to have recourse to some form of estimate by the Income-tax Department, that method should be adopted which approximates most near to the truth. It is also emphasized the fact that the rule of thumb may be very desirable but could not be substituted for the only rule of law that he knew of, namely, that the true gains were to be ascertained as nearly as it could be done. The Supreme Court also held in the case of CIT v. K.Y. Pilliah & Sons [1967] 63 ITR 411 that "in this view of the matter, the power to estimate the turnover, etc., where the accounts are unreliable, must be exercised not arbitrarily but judicially in the light of relevant materials."

It is held by the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax [1954] 26 ITR 775 (SC)[29-10-1954] as under:-METAX DEPAN

We think that both the Income-tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It is thus a fit case for the exercise of our power under article 136.

In the result we allow this appeal, set aside the order of the Tribunal and remand the case to it with directions that in arriving at its estimate of gross profits and sales it should give full opportunity to the assessee to place any relevant material on the point that it has before the Tribunal, whether it is found in the books of account or elsewhere and it should also disclose to the assessee the material on which the Tribunal is going to found its estimate and then afford him full opportunity to meet the substance of any private inquiries made by the Income-tax Officer if it is intended to make the estimate on the foot of those enquiries. It will also be open to the department to place any evidence or material on the record to support the estimate made by the Income-tax Officer or by the Tribunal in its judgment. The Tribunal if it thinks fit may remit the case to the Income-tax Officer for making a fresh assessment after taking such further evidence as is furnished by the assessee or by the department. The costs of these proceedings will abide the result."

In view of above discussion, the Id. AO has rightly applied GP rate of 10%.

Accordingly, this ground of appeal is hereby dismissed.

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

I have decided the similar issue in the case of appellant in ground no. 2 (first issue) of this appeal where the ground of appeal has been dismissed with findings after detailed adjudication. Material facts of the present ground of appeal in the relevant ground of appeal being pari-materia with the facts of the appeal. However, on perusal of assessment order, it is seen that no profit was offered by the appellant on these admitted sales. The findings of the appeal order in the case of assessment year 2020-21 in the ground of appeal number 2 (first issue) will apply mutatis-mutandis to the present ground of appeal and it is held accordingly.

Accordingly, this ground of appeal is dismissed.

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

As per facts noted in assessment order, Id. AO has referred to page No.8 of Exhibit-26 of Party-10 which was found and seized from the office premises of Sh. Nikhil Kumar Goyal. The Id. AO found that page no.8 of exhibit 26 of party 10 shows working of interest on delayed sales and with regard to the import advice of value Rs.2,34,78,431, the split of interest totals up to Rs. 12,34,646. Further, on the lower part of the same document, this figure was deducted from overall interest on delayed sales for Rs.20,34,000. In view of this, Id. AO held that assessee has interest income on delayed sales for Rs.20,34,000 which is an out of book income and accordingly made addition of same.

During appellate proceedings, the appellant contended that when entire bills of Rs.2,34,78,431/- is recorded in the books of account, then such purchases are bound to have accepted by the Id. AO and the papers have been found fully explained, the question of charging of interest does not arise. These papers do not have any mention of the word "interest".

The contention of the appellant is not acceptable for the reason that on perusal of said page provided by appellant as part of reply. The transactions are noted on said page as under:-

234784.31	27.9	
6.76323	23.1-118	292.62
20	29.1-124	909.33

The above noting may be explained as under:-

234784.31 on the seized page stands for 2,34,78,431/- which was outstanding on 27.9 i.e. 27<sup>th</sup> September

6.76323	stands for receipt of payment of Rs. 6 lacs and Rs. 76323 (out of the total outstanding of Rs. 2,34,78,431 which was outstanding since 27 Sep.)
23.1	stands for 23 January when this payment (Rs. 6,76,323) was received
118	stands for 118 days (3 days of sep. + 31 days of Oct. + 30 days of Nov + 31 days of Dec + 23 days of Jan)
292.62	This is the interest amount of Rs. 29,262

Similarly another example:-

20	stands for receipt of payment of Rs. 20 lacs (out of the total outstanding of Rs. 2,34,78,431 which was outstanding since 27 Sep.)
29.1	stands for 29 January when this payment (Rs. 20 lakhs) was received
124	stands for 124 days (3 days of sep. + 31 days of Oct. + 30 days of Nov + 31 days of Dec + 29 days of Jan)
909.33	This is the interest amount of Rs. 90,933

In this way interest calculated of Rs. 12436,46 and it has been reduced by 20340.00 which stands for 20,34,000.

Thus, on perusal of calculation noted on this page, it is clear that the said page is fully explained and the calculations noted on this page pertain to interest and appellant has received interest on delayed payment.

As regards appellant contention that Id. AO has violated the principles of equity and justice in making addition without affording opportunity to the assessee and no opportunity to cross-examine Shri Nikhil Kumar Goyal was also allowed, this contention of the appellant has been dealt in appeal of assessee in A.Y. 2016-17 in ground no.3 where appellant has requested for statement of Sh. Nikhil Kumar Goyal which was provided to him but further no reply or objection was filed by the

appellant. Even no request for cross examination was made before the assessing authority.

Accordingly this ground of appeal is hereby dismissed.

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

The issue involved in this ground of appeal has been discussed and adjudicated and dismissed in detail in ground no.2 (first issue) of this appeal and same is not being reproduced here for the sake of brevity. Accordingly, this ground of appeal is dismissed.

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

In this ground of the appellant has requested for the set off of the application/expenditure tax by the learned AO out of the incomes which have been taxed in the assessment order. The appellant has contended that the Id.AO has earned in making additions on the one hand by treating income on account of various unexplained expenditure and on the other hand on account of income by way rate application on unaccounted sales, and that the addition is two-fold, first by way of expenditure and second by way of income, and that the same is not in accordance with the settled principles of accountancy and that the Id. AO was required to give the benefit of telescoping of income against expenditure/asset. The appellant has placed reliance on number of judgements.

It is held by the Hon'ble Rajasthan High Court in the case of Commissioner of Income-tax v. Tyaryamal Balchand [1987] 32 Taxman 64 (Rajasthan)/[1987] 165 ITR 453 (Rajasthan)/[1987] 62 CTR 216 (Rajasthan) [28-04-1986] as under:-

Section 68 of the Income-tax Act, 1961 Cash credits On account of certain unexplained cash credits ITO made addition of Rs. 16,950 as income from undisclosed sources in income of assessee made addition of Rs. 18,117 to trading results of assessee It was an He also admitted fact that in preceding 3 years, substantial additions amounting to Rs. 32,797 had been added Whether in view of aforesaid fact, Tribunal was right in treating unexplained cash credit entries to extent of Rs. 16,950 as covered by added gross profit in sum of Rs. 18,117 and, thus, deleting addition of Rs. 16,950-Held, yes

**Judgement Extracts:-**

"7.....However, in the present case, the respondent was well within his rights to plead that this amount of Rs. 16,950 is covered from the intangible income assessed at Rs. 18,117 and added in the income of the firm and apart from this, since for the last preceding 3 years, substantial additions amounting to Rs. 32,797 have been added, the amount of Rs. 16,950 could be taken as having come out of such intangible additions. In the case of Anantharam Veerasinghaiah & Co. (supra), their Lordships of the Supreme Court have held that the additions made to the book profits in earlier years are the real income and can be treated as available for use in subsequent years or even in the same year. In the case of S. Nelliappan (supra), their Lordships of the Supreme Court have held that the Tribunal can permit the appellant to raise grounds not set forth even in the memorandum of appeal at the time of arguments and in this case, these grounds were taken even before the A AC also.

8. We are, therefore, of the considered opinion that the question raised in this reference should be answered in favour of the respondent and against the revenue and we hold that on the facts and in the circumstances of the case, the Tribunal was right in treating the unexplained cash credit entries to the extent of Rs. 16,950 as covered by added gross profit in the sum of Rs. 18,117 on the basis of the estimate."

It is held by the Hon'ble Madras High Court in the case of Commissioner of Income-tax v. K.S.M. Guruswamy Nadar & Sons [1984] 19 Taxman 533 (Madras)/[1984] 149 ITR 127 (Madras) [20-06-1983] as under:-

"5. The Supreme Court, however, proceeded to say that:

"Where there is an unexplained credit, it is open to the Income-tax Officer to hold that it is income of the assessee, and no further burden lies on the Income-tax Officer to show that that income is from any particular source. It is for the assessee to prove that, even if the cash credit represents income, it is income from a source which has already been taxed." (p. 194)

As per the decision of the Supreme Court, it is open to the assessee to prove that the cash credits came from the suppressed profits towards which an addition has already been made and, therefore, there should be telescoping of one with the other.

6. The decision of the Supreme Court reported in CIT v. S. Nelliappan [1967] 66 ITR 722, also in a way, supports the case of the assessee. In that case also, there were two additions, one towards bogus cash credits and other towards

profits suppressed. It was found by the Tribunal that there is a connection between the profits withheld by the assessee in the account books and the cash credit entries found therein and, therefore, it can be concluded that only one addition could be made. When the matter came to this Court, this Court rejected the reference and the matter was taken to the, Supreme Court.

The Supreme Court dismissed the appeal holding that:

"... It is true that there is no direct evidence of any connection between the cash credit entries and the income withheld from the books of account by the assessee. But if the Tribunal inferred that there was a connection between the profits withheld from the books and the cash credit entries, it cannot be said that the conclusion is based upon speculation...." (P. 725)

7. It is, thus, clear that the view taken by the Tribunal in this case that the additions towards the suppressed book profits should be telescoped with the additions towards the cash credit is legally tenable. The questions are, therefore, answered in the affirmative and against the revenue. The assessee will have its costs from the revenue. Counsel's fee Rs. 500.

It is held by the Hon'ble Madras High Court in the case of S. Kuppaswami Mudaliar v. Commissioner of Income-tax [1964] 51 ITR 757 (Madras) [10-12-1962] as under-

Headnotes:-

Section 143 of the Income-tax Act, 1961 [Corresponding to section 23(1) of the Indian Income-tax Act, 1922] - Assessment - Additions to income Assessment years 1949-50 and 1950-51 Whether where additions are made on estimate basis, department cannot contend, that amount of addition is not real income but something which assessee may not have earned Held, yes Whether it is wholly illogical for department to contend that addition was only for purposes of taxation and that it should never be taken as true income of assessee - Held, yes - Whether assessee is either liable to tax or not, and if he is really liable to tax he cannot get rid of it by pleading equity or by invoking sympathy of assessing authority - Held, yes d, yes

Judgement Extract:-

"The question in issue is quite simple and yet the Tribunal misdirected itself and went wrong. It is a hard fact that for the two years 1947-48 and 1948-49 a total addition of Rs. 52,230 was made by the department in computing the assessable income. This was, therefore, treated as the real income of the assessee for the years in question. There was nothing notional or fictional about it. However convenient it might be to describe the addition as "intangible" as has been done by the department and the Tribunal, the fact is that it was found to have accrued to the assessee and was not merely supposed to have been earned by him. Once the addition is made the department is fixed to the position that the assessee earned the amount in the relevant year. There can be no relaxation from that position and we have no doubt that the department cannot deviate from or wriggle out of it without departing from ordinary standards of justice and fairplay. If in such a case the assessee points to that addition as the source from which he got a particular amount which he is called upon to explain, the department is bound to accept it as exceedingly likely and probable, consistent with its previous act in treating the addition as income, unless it be that it is possible to say that the source was not available to the assessee. The onus of proving this would be on the department. Otherwise, it would amount to the department saying, "heads I win, tails you lose".

.....

The order of the Tribunal shows that it has missed the real point for decision. The only question that the Tribunal had to decide was whether the assessee could have derived the amount of Rs. 52,230 from the prior years which according to the department the assessee did earn. The Tribunal does not say, nor would the materials on record enable it to say, that the sum was not available to the assessee either to advance the mortgage loan in the name of Murugesu Mudaliar or for the other advances. If there had been any evidence to show that the assessee devoted that amount for other purposes it may well be that the mortgage loan and other advances were made from an unexplained or undisclosed source. But that is not so in the present case. The Tribunal's conception of "intangible additions" is somewhat queer and we confess our inability to appreciate it. The Tribunal observes in its order: "Intangible additions, as the name itself suggests, are purely matters of estimate which may err on the wrong side for the department. For want of proper evidence, additions on account of deficiency of gross profit or other defects may be made but this would not mean putting in possession of the assessee their equivalent in hard cash available for expenditure or investment. It may be said that having suffered a harsh assessment in a particular year, the assessee's case should be considered

sympathetically in the subsequent year when an investment of the nature we are discussing is brought to light."

Additions are no doubt made very often on estimate basis. But it can never be said, or at any rate the department cannot contend, that the amount of the addition is not the real income but something which the assessee may not have earned. It is wholly illogical for the department to contend that the addition was only for purposes of taxation and that it should never be taken as true income of the assessee. We must point out that the Tribunal is wrong in thinking that an assessee suffers a "harsh assessment" when his income is computed by making additions. Such an assessment is perfectly within the four corners of the Act and there is no reason to suppose that it is in any way inequitable or unjust. We are also unable to understand the real scope of a sympathetic treatment of the assessee in the matter of assessment to tax. The assessee is either liable to tax or not, and if he is really liable to tax he cannot get rid of it by pleading equity or by invoking the sympathy of the assessing authority. The faulty reasoning of the Tribunal was certainly not conducive to a correct conclusion in the matter."

Hon'ble Gujarat High Court in case of Commissioner of Income-tax, Gandhinagar v. Jagatkumar Satishbhai Patel (2014) 45 taxmann.com 441 (Gujarat) held as under:

Headnote extract:-

Section 68 of the Income-tax Act, 1961 Cash credits (Principle of telescoping) Assessment year 2000-01 During assessment proceedings, Assessing Officer made addition of Rs. 10.09 lakhs under section 68-Tribunal noted that only Rs. fifty thousand were received in year under consideration and remaining amount was opening balance in account of assessee - Tribunal, thus, set aside addition. As regards, amount of Rs. fifty thousand, by applying principles of telescoping, Tribunal deleted said addition also on ground that it had independently confirmed addition of Rs. 1.58 lakhs - Whether on facts, no substantial question of law arose from Tribunal's order Held, yes [Para 4] [In favour of assessee]

Hon'ble Gujarat High Court in case of Principal Commissioner of Income-tax v. Aliasgar Anvarali Varteji [2018] 96 taxmann.com 231 (Gujarat) (17-07-2018) held as under:

Headnote extract:-

Section 69, read with section 132, of the Income-tax Act, 1961 Unexplained investment (Benefit of telescoping) Assessment year 2009-10 During search, assessee disclosed unaccounted income Assessing Officer found negative cash

balance in cash book of assessee and made addition of peak of negative cash balance Assessee explained that such negative balance was on account of payment made out of unaccounted income, and argued that when entire unaccounted income found during search was offered as a part of overall disclosure, negative cash balance could not be added in total income as undisclosed investment - Whether when entire unaccounted income, which was found during search, was offered as part of overall disclosure, assessee was entitled to benefit of telescoping of negative cash balance against disclosure made and no addition could be made on basis of negative balance in books of account - Held, yes [Para 3] [In favour of assessee]

In view of the ratio of the above judgements, the legal contention of the appellant is found to be correct. Accordingly this ground of appeal is allowed to the extent the additions made in the assessment order with respect to the incomes and the applications have been upheld in this order.

10.2 In this ground, the appellant has raised issue in respect of charging of interest u/s 234B and 234C. In this regard it is stated that charging of interest is mandatory and consequential in nature, therefore the AO is directed to give effect of the same on the income determined vide this appellate order. Further, as regards appellant submission regarding non adjustment of money lying in PD a/c against advance tax, without going into the merits or otherwise of the contention, the contention of the appellant is not acceptable because as can be seen from the submissions of the appellant there is no reference to any request to the Id. AO in this regard. When no request was made to the Id. AO, the question of filing appeal on the issue does not arise. Thus this ground is liable to be dismissed on this technical aspect. Further, Finance Act, 2013 has inserted the Explanation 2 to section 132B and in view of the same the contention of the appellant is liable to be dismissed. Also, as per proviso to section 132B(1), the assessee is required to make application to the Id. AO within thirty days from the end of the month in which the asset was seized. However there is no reference to any such application and thus the contention of appellant is not as per law. Accordingly, the ground of appeal raised by the appellant on this issue is dismissed.

12. Feeling aggrieved with the finding so recorded in the order of the Id. CIT(A), the assessee has preferred the present appeal before this tribunal raising therein as much as 9 grounds of appeal. Before us in support of the

grounds of appeals so raised the Id. AR of the assessee supported the detailed written submission so filed before the Id. CIT(A). The relevant submission so filed by the assessee is reiterated herein below :

The assessee is carrying out business activity in partnership firm M/s K Sunil Narnoli and M/s Gulmohar Developers from which he has received remuneration, share of profit & interest on capital. The assessee was also having income under the head "income from house property" "capital gains" and "other sources" during the year under consideration.

2. Search and seizure operations u/s 132 of the Income Tax Act, 1961 were carried out in "Narnoli Group" of cases on 28/06/2019, in which the assessee was also covered. For Assessment Year 2020-21, the assessee has filed return of income declaring total income of Rs.2,64,82,110/- on 10/01/2021. Notice u/s 14e(3) of the IT Act, 1961 was issued on 01/03/2021. Copy of acknowledgment of return of income and computation of income are available on paper book page no. 1 to 8. The Learned Assessing Officer has completed the assessment u/s 143(3) of the IT Act 1961 on 29.09.2021 determining the total income at Rs.1,23,75,950/- as against returned income of Rs.2,89,47,315/-. Aggrieved with the order of the learned Assessing Officer the assessee is in appeal before your honour.

The individual grounds of appeal are as under :-

Ground No. 1

Under the facts and circumstances of the case, the learned Assessing Officer has erred in making the addition of Rs.4,49,744/- on account of excess stock which has been duly explained to the AO.

The Id. AO has discussed the position of precious and semi-precious stones found during the course of search vis-à-vis book position of the stock. This has been discussed in para 9 of the assessment order. The Id.AO has drawn a chart of the stock reflecting the book position as well as the position stock physically found during search. As per this chart, excess stock was noticed of Rs.4,86,26,574/-. During the course of assessment proceedings, the assessee explained that at the level of Investigation Wing, the stock was explained full and only a meagre difference of Rs.4,49,744/- remained. It was stated that the difference of Rs. 4,49,744/- was negligible considering the total stock found of Rs.30,62,78,537/-. The difference was just around 0.15%. Such difference occurs on account of calculation mistakes, mistakes in taking weight as well as in

applying rates varying to various qualities. Therefore, such difference needed to be ignored. The chart is reproduced below :-

S.NO	NAME	ITEM	AS PER BOOKS			PHYSICAL FOUND & VALUATION MADE BY REGISTERED VALUER			
			WEIGHT	UOM	TOTAL VALUE	WEIGHT	UOM	TOTAL VALUE	
1	DTA JEWELS	DIAMOND	41.1	CTS	1,027,500.00	41	CTS	820,000.00	
2	NARNOLI EMERALDS	STONES	7339180	CTS	91,502,255.43	185743	CTS	11,784,540.00	
	<b><i>Found At House</i></b>	STONES	0		-	8229523	CTS	76,266,175.00	
	<b><i>Found At 3 Sethani Ji Ka bagh</i></b>	STONES	0		-	93675	CTS	217,061.00	
						<b>8508941</b>	<b>Total</b>	<b>88,267,776.00</b>	
3	K SUNIL NARNOLI	STONES	12303601.5	CTS	162,398,806.92	12157313.25	CTS	209,731,242.00	
4	VIPUL NARNOLI HUF	STONES	150	CTS	450,000.00	154	CTS	4,620,000.00	
5	VIPUL NARNOLI	DIAMOND	103.26	CTS	2,273,400.00	100	CTS	2,000,000.00	
		GOLD	0		-	242.987	GRM	839,519.00	
<b>TOTAL</b>					<b>257,651,962.35</b>	<b>Total</b>			<b>306,278,537.00</b>

DIAMOND	144.36	3,300,900.00	141	2,820,000.00
STONE	19642931.5	254,351,062.35	20666408.25	302,619,018.00
GOLD	0	-	<b>242.987 (GRMS)</b>	<b>839,519.00</b>
			<b>Difference</b>	<b>48,626,574.65</b>

Calucation mistake in narnoli emralds **11,708,928.00**

Difference b/w sale price and cost price of k sn n new lots From Lot No 01©2017-18 to 06(b)2019-20 **8,313,467.00**

Difference b/w sale preice and cost price of ksn Old lots. Diffrence B/W cost and sales price of old lots of ksn is more as these lots are very old and came to the firm through its partners form his old firm And its costing is of before 2010 after that there has been subsequent increasing in the pricing of material. **17,874,720.00**

Difference b/w sale price and cost price of NE lots **5,270,196.57**

Difference b/w sale price and cost price of cut stone in Vn Huf **4,170,000.00**

This is the amount of gold which was considered under stock but it is old family kada inheited from forefathers. **839,519.00**

<b>Total</b>	<b>48,176,830.57</b>
<b>Difference</b>	<b>449,744.08</b>

**Narnoli  
Emeralds**

- 1 Calculation mistake in the Narnoli Emeralds stock. In S.No 2 amount is RS 10,32,11,183.43 by calculation mistake it was taken Rs 9,15,02,255.43 which can be verified again by adding stock statement present with It Dept.
- 2 Narnoli Emeralds weight as per books 73,39,180.00 Cts & As in valuation 3 parts total 85,08,941.00  
\* 185743 Cts Found At Office  
\* 8229523 Cts Found At Mahaveer Nagr:- There is some calculation mistake as stock found as Mahaveer Nagar Home around 1500 kg & they have taken it 1645 Kg  
\* 93675 Cts Found at Sethani Ka Bagh:- This is entirly in K Sunil Narnoli Books taken here by mistake in Narnoli Emeralds.
- 3 There Is diffrence in valuation as per books its 10.32 Cr & as per value its 8.82 Cr but you can see that all the lots are recently purchased

**K Sunil Narnoli**

Weight as per books is 12303601.50 & found is 12157313.25 & the difference is 146288.25. Cut stone weight not added in calculation sheet of books - 306974 cts

1

Total weight as per books is 12610576 Cts now total difference is 453262 CTs

Stock found at sethani ji ka bagh 93675.00 to be added in k sunil narnoli & deducted from narnoli emeralds.

1

valuation as per books is 16.23 cr & as per valuer 20.97 difference is 4.74 cr

2

In view of the smallness of difference, which is only 0.15% of the total stock found, the same deserves to be ignored. The addition may kindly be deleted.

**Ground No. 2**

Under the facts and circumstances of the case, the learned Assessing Officer has erred in treating the following amounts as unaccounted sales for the year under consideration and thereafter applying 10% NP rate :-

- (i) Rs.73,23,750/- (Para 11.6 Page No. 45 of Exhibit 8)
- (ii) Rs.14,75,000/- (Para 12 on the basis of papers found from Nikhil Kumar Goyal)
- (iii) Rs.4,18,58,330/- (Para 13 on the basis of papers found from Nikhil Kumar Goyal)

- (I) Rs.73,23,750/- (Para 11.6, Page No. 45 of Exhibit 8)

The Id.AO has made addition of Rs.7.32.375/- by applying GP rate of 10% on alleged unaccounted sales found noted on Page 45 of Exhibit 8 which is scanned below :-



The perusal of the paper reveals that :

(a) It is undated, hence Id. AO could not have considered it in AY 2020-21 without giving any ground for it.

(a) It is unsigned. The paper is not signed by anybody, hence, the same is to be treated as a rough paper.

(c) The writer of the paper is not known. It is settled position of law that unless the writer of the paper is known and examined, the paper has to be treated as a rough paper. It is only the writer who can tell and give a meaning to the paper. It is a settled position of law that unless the writer is examined, no cognizance of such paper can be taken. In the assessment order, the Id. AO has not mentioned as to who is the writer of this paper and what do the details noted on this paper speak. In view of the above, the paper has to be treated as a rough paper.

(d) It is also not known that how the figure of 73,23,750/- has been treated as a figure of sale. The Id. AO has not conducted any inquiry regarding this paper and has failed to link the same with the business of the assessee.

Alternately, it is submitted that during the course of assessment proceedings, it was submitted by the assessee that -

*“... page No.45 of Exhibit 8 is a calculation and offer for sale which has been subsequently materialized in some lesser quantity of goods. The page No. 45 is for the 22 gm, 24 gm, 450 gm quantity but the buyer has purchased only 46 gm and 550 gm quantity with the same rates on 24/06/2019. Copy of bill issued for the same offered sale is enclosed herewith. Therefore, there is no unaccounted sales as per Paper Mo.45 of Exhibit-8. Copy of bill for sales made to M/s Kasatia International is enclosed herewith (Page 143).”*

This reply of the assessee was summarily rejected by the AO. The Id. AO has failed to appreciate that Page No. 45 was only a rough paper, having calculations for prospective purposes, hence, it was not linkable with any specific transaction. The Id. AO has also failed to link the same with any person. The addition has been made on the basis of a rough paper which deserves to be deleted.

(ii) Rs.14,75,000/- (Para 12 on the basis of papers found from Nikhil Kumar Goyal)

(iii) Rs.4,18,58,330/- (Para 13 on the basis of papers found from Nikhil Kumar Goyal)

It is submitted that the Income Tax department conducted search in the case of Shri Nikhil Kumar Goyal, at 84, Vasundhara Colony, Tonk Road, Jaipur. His business premises 1841, Choubiyon Ka Chowk, Banji Thokyo Ki Dharmshala, Gheewalon Ka Rasta, Jaipur was also covered under search. From there, certain papers were found and seized as per Exhibit 2, 3, 6, 20 & 24 (Party No.9) and Annexure 22, 26 & 31 of Party No.10. On the basis of these papers, addition has been made in the case of the assessee that sales of Rs. 14,75,000/- and Rs.4,18,58,330/- were made unaccounted through Shri Nikhil Kumar Goyal, broker. In this regard, the statement of Shri Nikhil Kumar Goyal was also recorded. On the basis of the loose paper and the statement of Shri Nikhil Kumar Goyal, the Id. AO applied GP rate of 10% on aforesaid sales of Rs. 14,75,000/- and Rs.4,18,58,330/- and made addition by working out GP of Rs. 1,47,500/- and Rs. 41,85,833/- purely on the basis of a rough paper found at a third place and also on the basis of statement of Shri Nikhil Goyal which has not gone through the test of cross-examination. In the circumstances, the addition made is totally unlawful, unjust and illegal. The same is assailed as under :-

(1) Seized Papers are rough

Some of the loose papers are scanned below :-

Page No. 4 of Exhibit 31 (Party 10)

S (4)

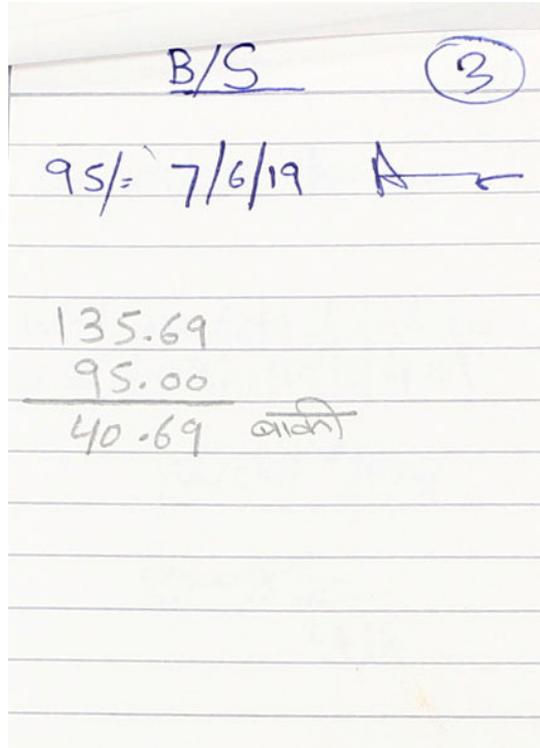
50/ 27/6/19 A

W-1 mukesh Sharma.  
W-2 एडमिनिस्ट्रेटिव

Nitish Goyal

29/6

Page No. 3 of Exhibit 31 (Party No. 10)



The perusal of the aforesaid papers reveal that these papers are unsigned. Further, the amount mentioned in these papers has been decoded by the Id. AO by adding five zeros (e.g. the figure of 50 appearing on page 4 of Annexure 31 has been taken by the Id. AO as 50,00,000/-). In this regard, it is submitted that no uniform method has been adopted by the Id. AO. He has been erratic. Somewhere he has added two zeros to the figures found noted on rough papers. At times, he has added one zero and at some times, nothing has been added. This shows the wavering mind set of the Id. AO. He has not explained in the assessment order as to how the figure of Rs. 50/- found noted on Page No. 4 of Annexure 31 has been considered as Rs. 50,00,000/-. In these circumstances, it is submitted that the very action of the Id. AO in calculating and adopting the figures of sales is arbitrary and not logical. It is not based on sound principles. Therefore, the very foundation of making addition is unlawful, illegal and unjust and the additions made deserve to be deleted.

It is not the case of the Id. AO that Shri Nikhil Kumar Goyal decoded the figures or he was examined on this issue. It is further relevant to submit that in the statement recorded of Shri Nikhil Kumar Goyal on 25/10/2019, (copy available on Paper Book from Page No. 9-12), he has not mentioned the name of the assessee anywhere. Shri Nikhil Kumar Goyal has not stated that the papers seized as per Exhibit 236, 20 & 26, 31 pertain to sales made which belong to

the assessee. It is not clear as on what basis the Id. AO has presumed that these papers contain sales made by the assessee through Shri Nikhil Kumar Goyal. In these circumstances, the addition made deserves to be deleted. Since these papers were seized from the residence of Shri Nikhil Kumar Goyal, it was he alone who could explain the contents of these papers. The perusal of his statement recorded on 25/10/2019 reveals that the revenue authorities did not put any question regarding the sales made by the assessee through Shri Nikhil Kumar Goyal. In view of this, the very base of the addition made by the Id. AO is knocked down and the addition deserves to be deleted. The papers have to be treated as rough and dumb.

It is also not on record nor mentioned in the assessment order as to whom this sales have been made and whether any action has been taken by the department in the hands of the purchaser. In the absence of all this, the action in the hands of the assessee has been taken purely on the basis of conjectures and guess work. The paper is totally a rough and dumb paper. The same deserves to be ignored. The addition made on the basis of this paper deserves to be deleted.

(II) Cross examination of Sh. Nikhil Kumar Goyal

not allowed

It is submitted that it is only on the basis of statement of Shri Nikhil Kumar Goyal that addition has been made in the hands of the assessee. It is the case of the Id.AO that during post-search inquiries, Shri Nikhil Kumar Goyal admitted that these papers pertain to unaccounted sales conducted on brokerage. However, Shri Nikhil Kumar Goyal has never stated that he made any unaccounted purchases for the assessee. Further, it is settled principle of law that addition cannot be made on the basis of statement of a third party unless such statements are put to cross-examination. In this case, specific request was made to the Id. AO to allow cross-examination of Shri Nikhil Kumar Goyal, but the same was not done. In view of this, the addition made is vitiated and deserves to be deleted. There are several judicial pronouncements, wherein it has been held that third party statements cannot be put to use against the assessee unless such statements are allowed to be cross-examined.

Case-laws in support are quoted as under :

(i) The Apex Court has observed that not allowing cross examination is a serious flaw and makes the order nullity. Andman Timber Ind. Vs. Commission of Central Excise (2015) 281 CTR 211 (SC). “not allowing the assessee to cross examine the witness by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order, is a serious flaw which

makes the order nullity in as much as it amounted to violation of principle of natural justice because of which the assessee was adversely affected.

(ii) COMMISSIONER OF INCOME TAX vs. BIJU PATNAIK HIGH COURT OF ORISSA 190 ITR 0396

Although answers can be recorded either in favour of the Department or against it, ultimately each answer would again become inconclusive on account of the final findings of fact of the Tribunal that ITO has not given reasonable opportunity to the assessee to rebut the statements recorded ex parte under s. 131 of the Act and to furnish explanation to some of the materials. It is true that Tribunal has not given due weight to the relevant and admissible evidence while recording the findings of fact. However, the findings of the Tribunal on such fact are also vulnerable as they may require reconsideration. If answers in respect of each of the questions are indicated in the absence of reasonable opportunity being afforded to the assessee, they would be of academic interest inasmuch as the answers against the assessee would become vulnerable on account of the need to undo the absence or reasonable opportunity. A clear and conclusive finding binding on the parties can be given only after reasonable opportunity is given to the assessee as found by the Tribunal. No answer should be given in advisory jurisdiction which would not finally decide the issue since final finding can be arrived at only after giving reasonable opportunity to the assessee and explanation given by the assessee would have material bearing on the finding. It is necessary that the Assessing Officer gives opportunity to the assessee. Tribunal has not considered the evidence in its proper perspective while rendering the decision in appeal and accordingly, the findings of the Tribunal are vitiated in law. As the final fact-finding forum, the Tribunal has to consider the same again. Since Tribunal has recorded a finding that reasonable opportunity has not been given to the assessee to give rebuttal evidence and explanation, this can effectively be done by the Assessing Officer. The reference applications are disposed of as above leaving it to the Tribunal to pass consequential orders.

(iii) PRAKASH CHAND NAHTA vs. COMMISSIONER OF INCOME TAX (HIGH COURT OF MADHYA PRADESH) (2008) 301 ITR 0134 :

Assessment—Validity—Opportunity of being heard vis-a-vis statements of third party—Unaccounted silver ornaments and utensils were found and seized during the search at the assessee's premises—Assessee explained that the said silver items were purchased from one R & Co.—AO made addition to the income of the assessee after recording the statement of M, proprietor of R & Co., behind the back of the assessee—Not justified—AO has heavily relied upon the statement

of M and has ignored the subsequent affidavit filed by M which is in variance of his original statement—Since the statement of M was used against the assessee and an affidavit was filed controverting the same, it was obligatory on the part of the AO to allow the prayer of assessee for cross-examination of M—AO having not summoned M under s. 131 in spite of the request of the assessee, evidence of M could not have been used against the assessee—Therefore, the assessment order is vitiated

(iv) HEIRS AND LRS OF LATE LAXMANBHAI S. PATEL vs. COMMISSIONER OF INCOME TAX (HIGH COURT OF GUJARAT ) (2010) 327 ITR 0290

Opportunity of being heard—During search of one R, key of bank locker along with two packets containing six promissory notes were recovered—Out of those six promissory notes, one was in the sum of Rs. 8,78,358 executed by one K in the capacity of partner of firm DCI—In his statement recorded during search, R stated that the key of locker and the two envelopes were handed over to him by the assessee—K also admitted in his statement recorded on the same day at 2.00 AM midnight that he had executed the pronote and signed it on behalf of DCI after obtaining a sum of Rs. 8,78,358—Later, K filed an affidavit that his statement was recorded at late hours in the night under coercion and pressure—Subsequently, K along with two other partners of DCI, made a voluntary disclosure of a sum of Rs. 11 lacs including the amount of Rs. 8,78,358 and same was assessed in the hands of the three partners—Relying on the statement of R and the retracted statement of K, AO made addition of Rs. 8,78,358 under s. 68 in the hands of assessee also and the same was confirmed by CIT(A) and Tribunal—Not justified—Apparently, there was a violation of principles of natural justice as the statement of one of the important witnesses, namely, R on which heavy reliance was placed by the AO is neither referred to in the assessment order nor copy thereof was given to the assessee nor the assessee was given an opportunity of cross-examining the said R—Authorities could not be absolved from doing so on the ground that the facts stated by R were admitted by the assessee—K had not only retracted his earlier statement but also made a voluntary disclosure, along with two other partners of DCI, in the sum of Rs. 11 lacs which included the amount of pronote of Rs. 8,78,358—Legal effect of the statement recorded behind the back of the assessee and without furnishing the copy thereof to the assessee or without giving an opportunity of cross-examination, is that if the addition is made, the same is required to be deleted on the ground of violation of the principles of natural justice—Orders of all the three authorities set aside and addition deleted.

(v) COMMISSIONER OF INCOME TAX vs. EASTERN COMMERCIAL ENTERPRISES (HIGH COURT OF CALCUTTA) 210 ITR 0103

Assessee showing a gross profit rate of 5.2%—Revenue being of the opinion that assessee inflated purchases, called in evidence one S from whom assessee made purchases and applied G.P. rate of 30%—S denied having made any sales to assessee in the face of earlier affidavits confirming such sales—Statement of S not furnished to assessee nor opportunity to cross-examine him given—Cross examination is sine qua non of the due process of taking evidence and no adverse inference can be drawn against a party unless that party is put on notice of the case made out against him—Matter remanded for cross-examination of S with opportunity to assessee to furnish evidence to rebut the evidence of S

(vi) KALRA GLUE FACTORY. vs. SALES TAX TRIBUNAL & ORS. (SUPREME COURT OF INDIA) 167 ITR 0498

Statement which was not tested by cross examination is not good evidence.

(III) No addition can be made on the basis of statement of Shri Nikhil Kumar Goyal

A copy of the statement of Shri Nikhil Kumar Goyal recorded on 25/10/2019 is available on Paper Book Page No.9-12. It is on 25/10/2019 that Shri Nikhil Kumar Goyal was examined on papers found and seized during the course of search in his business premises. The addition has been made on the basis of Exhibit 2, 3, 6, 20 & 26. However, the perusal of the statement of Shri Nikhil Kr.Goyal reveals that in the entire statement, Shri Nikhil Kumar Goyal has nowhere alleged that he made any unaccounted purchases from the assessee. He also expressed his inability in furnishing the addresses of the persons appearing in the loose papers on the ground that these papers were written by his father, who has suffered brain hemorrhage and was unable to speak. The facts being so, it is not clear that how the Id. AO has concluded that the papers seized from Shri Nikhil Kumar Goyal reveal unaccounted sales of Rs. 31 lacs and how he has decoded the figures by adding two zeros. The entire exercise of the Id. AO is based on conjectures and guess work. The addition made deserves to be deleted.

Ground No.3

Under the facts and circumstances of the case, the learned Assessing Officer has erred in applying GP rate of 10% on following unaccounted sales declared by the assessee against 5% declared by the assessee :-

- (i) Rs.20,35,000/- (Para 11.1, Page No.17 of Exhibit 14)
- (ii) Rs. 45,30,000/- (Para 11.2,Page No.44 of Exhibit-8)
- (iii) Rs.5,10,380/- (Para 11.3 Page No.43 of Exhibit-8)
- (iv) Rs.11,14,200/- (Para 11.4 Page No. 41 of Exhibit-8)

During the course of search in the case of the assessee, certain loose papers were seized from Plot No. 5, Ahimsa Marg, Mahaveer Nagar, Jaipur. The seized papers are scanned below :-

Page No. 17 of Exhibit 14

3/19 (17)  
 7/5/19 से पहले  
 Wahid bhai  
 Wahid bhai  
 185 kg @ 11000 = 2035000/-  
 Johai/bhai

Page No. 44 of Exhibit 8 (Party 3)

क्री. 27/5/19  
 निरराज जी गुप्ता (44)  
 300Kg @ 151.00 = 45.30  
 Payment terms  
 15 upto 15/6/19  
 15 upto 30/6/19  
 15.30 upto 15/7/19  
 निरराज गुप्ता  
 jas19 13<sup>th</sup> Jewellers Association Show | 06 -09 April, 2019 | Jaipur

Page No. 43 of Exhibit 8 (Party No.3)

11890 @ 1/8 = 2140 = 20  
 9560 @ 3/11 = 2963 = 60  
 5103 = 80  
 (53)  
 वहीद का 20=00 ADV का  
 16/4/19  
 गुवाडर  
 इ-वहीद  
 20/5/19  
 निरराज गुप्ता

**Page No. 41 of Exhibit 8 (Party 3)**

41  
26/6/19  
to  
26/8/19  
Moji Sab  
4952  
5000 @ 225  
= 11.25  
ए वहीदजी  
अहमद हुसैन  
ias20

It is on the basis of these papers that the Id. AO has observed that the assessee indulged in accounted sales. After working out the unaccounted sales, which has been done by the Id. AO arbitrarily decoding the figures by adding zeros,, the Id. AO has estimated the income by applying 10% NP rate. The action of the Id. AO is unlawful, illegal and unjust. The same is assailed as under :-

(a) No uniformity in decoding the figures.

It is seen that from the working of the Id.Ao that he has acted arbitrarily in decoding the figures noticed on the seized papers. At times, he has accepted the figures as it is, i.e. as found noted on the seized paper, but in other cases, ,three zeros have been added and in one case, two zeros has been added. The action of the Id.AO in adding zeros has not been explained or discussed in the assessment order. The Id. AO has not mentioned in the assessment order that what is his basis of decoding the figures noted on the seized papers and why there is no uniformity in it. Each paper is discussed as under :p

(i) Page No. 17 of Exhibit 14

On this page, the figures found noted have been accepted as it is, i.e. Rs. 20,35,000/-. There is no decoding.

(ii) Page No. 17 of Exhibit 14

On this page, the figure noted is 45.30, which has been decoded by the Id. AO as 45,30,000/-. The Id. AO has not explained as how he has added three zeros to the figure found noted on this paper. The action of the Id. AO is unlawful and unjust.

(iii) Page No. 43 of Exhibit 8 (Party No.3)

On this page, the figure noted is 5103.80, which the AO has decoded as 5,10,380/- by adding two zeros. The action of the Id. AO is not uniform and is without any basis. The action of the Id. AO cannot be put any test. Therefore, the working of the Id. AO is not acceptable.

(iv) Page No. 41 of Exhibit 8 (Party 3)

On this page, the figure noted is 4952 X 225, which comes to Rs.11,14,200/-. This has been accepted by the Id. AO. There is no decoding here.

The above discussion very clearly establishes that the Id. AO has not applied a uniform test for decoding the loose papers. He has acted arbitrarily and has not explained the basis of decoding. There is no discussion in the assessment order that on what basis decoding of figures was done. It is also not the case of the Id. AO that the decoding was done at the behest of the assessee. In view of this, the very act of decoding crumbles and the figures of sales worked out are unjust and unlawful. In view of this the Id. AO was not justified in applying NP rate of 10% on sales which has been worked out arbitrarily and unjustly. The additions, therefore, are unjust and unlawful and deserve to be deleted.

(b) NP rate applied is high

It is submitted that not only in working out the figures of sales, but also in applying the NP rate on such sales, the Id. AO has acted arbitrarily. It is the case of the Id. AO that the NP rate disclosed by the assessee in AY 2015-16 to 2019-20 is on average 7.26%. Against that, NP rate of 10% has been applied by the Id. AO on the ground that in unaccounted sales, there is no taxation.

In this regard, it is submitted that the action of the Id. AO is not based on correct appreciation of the facts and circumstances of the case. It is common knowledge that unaccounted sales are made with lower margin of profit as there is no taxation. The benefit of taxation is passed on to the buyers. Further, there is cut throat competition in grey market and hence, the profits are already lower in comparison to normal business. In view of these facts, it is submitted that the Id. AO was not justified in applying profit rate of 10%.

(c) The assessee has already disclosed the income on the unaccounted sales by filing the return of income.

It is further submitted that on the basis of papers scanned, the Id. AO has made additions to the income as under :-

- (1) Rs.2,03,500/-
  - (2) Rs.4,53,000/-
  - (3) Rs.51,038/-
  - (4) Rs.1,11,420/-
- Rs.8,18,958

During the course of assessment proceedings, it was submitted that the assessee, while filing the return of income for AY 2020-21, has taken into consideration the above papers of undisclosed sales. It is on account of such papers and other discrepancies that the assessee had made a disclosure of Rs.70,07,075/-. It is submitted that in the A.Y. 2020-21, the assessee has surrendered income of Rs. 2,21,41,550/-. This income has been surrendered with reference to unaccounted business of precious and semi-precious stones. Obviously, the disclosure of income of Rs.2,21,41,550/- in AY 2020-21 covers all the papers containing details of unaccounted sales. In the facts and circumstances of the case, there was no case for the Id. AO for making separate additions on the basis of above papers where unaccounted sales are alleged to have been noticed. It is also not the case of the Id.AO that these sales are over and above/exceed/not included in the income disclosed at Rs.2,21,41,550/-. In the facts and circumstances, the additions made by the Id. AO deserve to be deleted.

Ground No.4

Under the facts and circumstances of the case, the learned Assessing Officer has erred in treating the interest income of Rs.2034000/- on the basis of rough calculation and estimation on page No.11 of Exhibit-14 (Para 17-18 of assessment order).

The Id. AO has discussed the addition of Rs. 20,34,000/- in para 14 running from page 27 to 32 of the assessment order. These pages mainly discuss :-

(a)Page 11 of Exhibit 14 of Party No.1 which was found and seized from 5, Ahimsa Marg, Mahaveer Nagar, Jaipur, which is residential premises of the assessee.

(b)Page No. 8 of Exhibit 26 of Party No. 10 which was found and seized from the office premises of Shri Nikhil Kumar Goyal, broker of the assessee (1841, Chaubiyon ka Chowk, Banji Thokya Ki Dharmshala, Gheewalon Ka Rasta, Jaipur)

The papers are scanned below :-

Page No. 11 of Exhibit 4 of Party-1 from  
residence of Sunil Agarwal

Things To Do

**Kalpvraksh Stones**  
Precious & Semi-Precious Rough Stone

(11)

23556.23 =	24.9	<input type="checkbox"/>
20	25.9	<input type="checkbox"/>
25	210	<input type="checkbox"/>
25	1810	<input type="checkbox"/>
6849.40 chg	22.10	<input type="checkbox"/>
25	2710	<input type="checkbox"/>
10.02	5.11 chg	<input type="checkbox"/>
<u>30</u>	<u>1311</u>	<input type="checkbox"/>
25	1511	<input type="checkbox"/>
50	1511	<input type="checkbox"/>
20	2711	<input type="checkbox"/>
50	6.12	<input type="checkbox"/>
20	26.12	<input type="checkbox"/>
40	17.1	<input type="checkbox"/>
50	23.1	<input type="checkbox"/>
31.8		<input type="checkbox"/>
2	159633.38	<input type="checkbox"/>
27.9	3.244350.39	<input type="checkbox"/>
4	234784.31	<input type="checkbox"/>
5	222011.31	<input type="checkbox"/>
	6-149932.17	<input type="checkbox"/>
	7-229479.44	<input type="checkbox"/>
	18.12	<input type="checkbox"/>

**jas18**  
12<sup>th</sup> Jewellers Association Show

www.jasjaipur.com 31 AUG - 3 SEPT 2018

Things To Do

Kalpvraksh Stones  
Precious & Semi-Precious Stones

④	234784.31		27.9	
	6.76323	23.1 - 118		292.62
	20	29.1 - 124		909.33
	10	31.1 - 126		462.00
	65	11.2 - 137		3265.17
	25	21.2 - 147		1347.50
	35	23.2 - 149		1912.17
	30	26.2 - 152		1672.00
	40	9.3 - 163		2390.67
	<del>20.34</del>	<del>13.3 - 167</del>		
	<del>51.50</del>	<del>13.3 - 167</del>		
	<del>3.80</del>	<del>13.3 - 167</del>		
	3021.08	13.3 - 167		185.00
				12436.46
	<u>234784.31</u>			
<hr/>				
	<del>20340.00</del>			20340.00
	<del>20.34 - 13.3</del>			- 3021.08
	<del>2606853</del>			- 12436.46
				<u>4882.46</u>

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12<sup>th</sup> Jewellers Association Show

31 AUG - 3 SEPT 2018

On these pages, import transactions of Rs.2,34,78,431” was found recorded. It is the case of the Id. AO that on the basis of Shri Nikhil Kumar Goyal, the figure was to be added by “00” and thus, the figure worked out to Rs. 2,34,78,431/-. Further, the pages contained details of sales against the import of

Rs.2,34,78,431/-. The Id.AO accepted the plea of the assessee that the import bills of Rs.2,34,78,431/- was fully accounted for in the books of account of the assessee. The Id. AO also accepted the plea of the assessee that there were repeat entries in these papers and these also contained planning of sale of imported goods on various dates. The sum and substance of the submission is that these papers were found explained. It is submitted that as mentioned on Page 29 of the assessment order, the Id. AO had required the assessee to explain why the sales noted on these papers of Rs. 16,60,61,663/- should not be considered as his undisclosed income. However, on furnishing of explanation by the assessee, the Id. AO was satisfied and no addition was considered on account of such sales.

It is not understood on what basis the Id. AO has jumped into the conclusion that Page 8 of Exhibit 26 of Party 10 shows calculation of interest on delayed sales of Rs. 20,34,000/- and has accordingly made addition of the like amount. The entire exercise of the Id.AO in making addition on account of interest is of no avail. The action of the Id. AO is contested as under :-

(a) Papers found explained

As discussed in the foregoing para, the Id., AO has herself observed that the reply of the assessee with respect to entries on Page 8 vis-à-vis Page No. 11 is acceptable. The Id. AO has also observed that the import bill of Rs.2,34,78,431/- and planning of sales of the import on various dates is acceptable. In these circumstances, when the entire import bills of Rs.2,34,78,431/- is recorded in the books of account, then such purchases are bound to have corresponding accounted sales only and this has been accepted by the Id. AO and the papers have been found fully explained, the question of charging of interest does not arise. These papers do not have any mention of the word "interest". The broker Shri Nikhil Kumar Goyal has also not stated anything regarding charging of interest. The assessee was also not examined on this issue. In these circumstances, it is not clear as how the issue of interest cropped up. The entire addition on the alleged interest is based on guess work, conjecture and surmises. The addition is not based on evidence, but it based on suspicion. It is settled position of law that suspicion however strong cannot take the place of evidence. In view of this, the addition deserves to be deleted.

(b) Charging of interest does not arise

The Id. AO has observed that the Page No.8 of Exhibit 26 of party No.10 discloses figure of RS. 20,34,000/- which is nothing but interest on delayed sales. The very observation of the Id. AO is not acceptable. The sales,if delayed, bythe broker do not carry any interest. Interest is to be charged only when sale proceeds from the purchasing party are not received in time. It is

common knowledge that in the business of stones and precious stones, goods are sold on long credit without carrying any interest. In these circumstances, when the assessee was conducting sales through broker, Shri Nikhil Kumar Goyal, who has not stated anything regarding charging of interest, the Id. AO erred in appreciating the facts in proper perspective.

(c) Principles of natural justice violated

It is submitted that on the basis of Page No.8 of Exhibit 26 of Party 10 and Page No. 11 of Exhibit 14 of Party No.1, the Id.AO worked out that there were unaccounted sales of rS.16,60,61,663/-. On the basis of this working, show-cause was issued to the assessee as to why the unaccounted sales of Rs.16,60,61,663/- should not be treated as his income. This fact has been mentioned by the Id. AO on page 29 of the assessment order. It is the submission of the assessee that the Id.AO had asked for the explanation regarding sales of Rs.16,60,61,663/- and the same was replied by the assessee to the full satisfaction of the AO. After this issue, there remained nothing for the assessee to submit. No explanation was sought for from the assessee regarding the charging of interest. The Id. AO has also not issued any show-cause notice for making addition of Rs. 20,34,000/- on account of interest. Thus, the Id. AO has violated the principles of equity and justice in making the addition without affording opportunity to the assessee. Further, no opportunity to cross-examine Shri Nikhil Kumar Goyal was also allowed. Therefore, the addition deserves to be deleted.

Ground No.5

Under the facts and circumstances of the case, the learned Assessing Officer has erred in making the addition of Rs.29,498/- by estimating the GP @ 10% on unaccounted sales of Rs.2,94,983/- on the basis of seized document in exhibit 9 Page No.1 and exhibit 8.

The addition of Rs.29,498/- has been discussed in para 15 of the assessment order appearing on Page 33 to 36. The learned Ao has observed that as per Page 1 to 10 of Exhibit 9 there were unrecorded sales to various persons. The Id. AO has worked out the sales in the chart as appended below :-

Page No. of Exhibit 9	Name of the party	Particulars recorded	Amount	Actual amount (refer note below the table)	Date
Page 1	-	Total of entries recorded on	4351403 (after allowing		

		Page 39 of Exhibit 8	cash discount of 2% on 4440208)		
Page 2	Sumit Bhai		258.765	258765	25/10/2018
Page 3	V Kastiya		3.90 2.15	390000 215000	08/10/2018 4/12/2018
Page 4	Damodar Bhai		5.00 3.00 3.764	500000 300000 376400	10/09/2018 22/09/2018 27/09/2018
Page 5	D.P.Bhai		2.375	237500	31/05/2018
Page 6	Rajesh Musal Bhai		2905.0	290500	08/09/2018
Page 7	Ram sahaiji		3.00 ct 2.00 ct 5.00 ct 7.00 ct	300000 200000 500000 700000	29/06/2018 13/07/2018 08/08/2018 24/08/2018
Page 8	Akhil Bhai Vinit Bhai		2.14160 ct 0.80823 ct	214160 80823	10/05/2018 29/05/2018

On the basis of the above chart, the Id.AO issued show-cause notice to the assessee for explaining as to why sales of Rs.90,03,356/ should not be considered as undisclosed income. The reply furnished by the assessee that such sales have been taken into consideration in AY 2018-19 and 2020-21 has been accepted by the Id.AO. Despite this, the Id.AO has applied GP rate of 10% on sales of Rs.2,94,983/- allegedly pertaining to AY 2020-21. Thus, addition of Rs.29,498/- has been made to the income of the assessee.

In this regard, it is submitted that the details found noted on pages of Exhibit 9 as reproduced by the Id. AO in the aforesaid chart, do not contain any sale pertaining to AY 2020-21. The Id.AO has also not discussed in the assessment order as how the sales of Rs.2,94,983/- was found pertaining to AY 2020-21. In these facts and circumstances of the case, the addition is untenable and the same deserves to be deleted.

#### Ground No6

Under the facts and circumstances of the case, the learned Assessing Officer has erred in not allowing the set off of income/addition made against expenditure/investment/ assets found during the course of search.

Benefit of telescoping

Notwithstanding the submissions made above, it is submitted that the Id.AO has earned in making additions on the one hand by treating income on account of various unexplained expenditure and on the other hand on account of income by way rate application on unaccounted sales. The addition is two-fold, first by way of expenditure and second by way of income. The same is not in accordance with the settled principles of accountancy. The Id. AO was required to give the benefit of telescoping of income against expenditure./asset In this case, the Id. AO made addition on account of expenditure/asset as under :-

S.No	Amount	Addition made
1	Foreign currency	Rs.8,90,370
2	Excess stock of stones	Rs.4,49,744
3	Expenditure on artifacats	Rs.1,84,000
Total		Rs.15,24,114

Addition on account of income

S.No	Amount	Addition made
1	10% on unaccounted sales	Rs.2,03,500
2	-do-	Rs.4,53,000
3		Rs. 51,038
4	-do-	Rs.1,11,420
5	-do-	Rs. 7,32,375
6	-do-	Rs.1,47,500
7	-do-	Rs.41,85,833
8	-do-	Rs. 29,498
9	Interest income	Rs.20,34,000
Total		Rs.79,48,164/-

It is the submission of the assessee that no separate addition was required to be made on account of expenditure/asset of Rs.15,24,114/- as detailed above as the same stands covered by way of addition of income of RS. 79,48,164/- on

account of GP rate application on unaccounted sales and interest income as detailed above. Thus, expenditure/assets of Rs.15,24,114/- was required to be set-off against addition on account of income of Rs.79,48,164/-. Thus, no addition is required of Rs.15,24,114/-. In any case, the total addition would not exceed Rs.79,48,164/-. This will be further reduced by the benefit of Rs.70,07,075/- given by the Id.AO on account of additional income offered in ITR.

The following case laws are quoted in support :-

*(i) COMMISSIONER OF INCOME TAX vs. TYARYAMAL BAL CHAND*

*HIGH COURT OF RAJASTHAN*

*N.M. Kasliwal & Inder Sen Israni, JJ.*

*IT Ref. No. 39 of 1975*

*Apr 28, 1986*

*(1986) 54 CCH 0304 RajHC*

*(1987) 62 CTR 0216, (1987) 165 ITR 0453, (1987) 32 TAXMAN 0064*

Legislation Referred to

*Section 68*

Case pertains to

*Asst. Year 1966-67*

Decision in favour of:

*Assessee*

*Cash credits—Addition under s. 68—ITO can make addition under s. 68 as income from undisclosed sources, simultaneously with addition to trading results— However, assessee can claim the addition under s. 68 as covered by intangible additions to trading results—In the present case, for last several years and also in the relevant year intangible additions had been made—Assessee, therefore, could plead that the amount of cash credit could be taken as having*

*come out of such intangible additions—Tribunal, therefore, justified in treating the unexplained cash credit as covered by added gross profit on the basis of estimate*

Held

*The ITO was within his right to tax the amount of Rs. 16,950 as income from undisclosed source, even though he had added the amount of Rs. 18,117 in addition to the profits shown by the respondent-firm in its account books. However, the assessee was well within his rights to plead that this amount of Rs. 16,950 is covered by the intangible income assessed at Rs. 18,117 and added to the income of the firm and apart from this, since for the last preceding three years, substantial additions amounting to Rs. 32,797 have been made, the amount of Rs. 16,950 could be taken as having come out of such intangible additions. In the facts and circumstances of the case, the Tribunal was right in treating the unexplained cash credit entries to the extent of Rs. 16,950 as covered by added gross profit in the sum of Rs. 18,117 on the basis of the estimate.—[Anantharam Veersinghaiah & Co. vs. CIT](#) (1980) 16 CTR (SC) 187 : (1980) 123 ITR 457 (SC) : TC42R.1331 **relied on.***

COMMISSIONER OF INCOME TAX vs. SINGHAL INDUSTRIAL CORPORATION

HIGH COURT OF ALLAHABAD

R.K. Agrawal & Rajes Kumar, JJ.

IT Ref. No. 100 of 1993

Jul 8, 2005

(2005) 73 CCH 0659 AllHC

(2005) 199 CTR 0690, (2008) 303 ITR 0225, (2006) 150 TAXMAN 0466

Legislation Referred to

Section 68

Case pertains to

Asst. Year 1982-83

Decision in favour of:*Assessee*

*Income—Cash credit—Set off against addition for sales made outside books of account—Assessing authority made separate additions on account of undisclosed profit on sale of fuel injector equipment and in respect of unexplained cash credit—CIT(A) sustained the addition towards extra consumption of fuel injector but deleted the addition on account of unexplained deposits on the ground that the same was covered by the former—View of the CIT(A) that the sale outside books has been ploughed back in the form of deposits and therefore separate addition therefor could be deleted not challenged by the Revenue before the Tribunal—Tribunal justified in upholding the view that separate addition under s. 68 was not called for*

Held

*CIT(A) has sustained the addition of Rs. 89,500 towards extra consumption of fuel injector and has deleted unexplained deposits on the ground that the same was covered by the addition on account of extra consumption. Present is not the case where the addition towards unexplained cash credit has been deleted on the ground that it was properly explained but on the ground that it is covered by the addition made towards extra consumption. Perusal of the order of the Tribunal shows that the view of the CIT(A) that sale out of the books has been ploughed back in the form of deposits and the separate addition for the same could be deleted, has not been challenged by the Revenue before the Tribunal. The effect of the finding of the CIT(A) is that it has been accepted that the sale out of the books of account has been deposited in the form of cash credit, the addition in respect thereof at Rs. 89,500 has been sustained, therefore, the CIT(A) and the Tribunal have not deleted the addition made by the assessing authority as an unexplained cash credit under s. 68 as it was explained, but it has been deleted on the ground that the deposits were out of sale made out of the books of account and the addition to that extent has been sustained. There is no error in the view of the Tribunal inasmuch as the Revenue before the Tribunal has not challenged the view of the CIT(A).*

*(Para 5)*

Conclusion

*CIT(A) having deleted the addition towards unexplained deposits on the ground that the same was covered by the addition on account of sale outside books which has been ploughed back in the form of deposits, Tribunal was justified in upholding the view that separate addition under s. 68 was not called for.*

**ASSISTANT COMMISSIONER OF INCOME TAX vs. KASHMIR TRADING COMPANY\***

**IN THE ITAT JODHPUR**

*Rajpal Yadav, J.M. & K.D. Ranjan, A.M.*

*IT(SS)A No. 9/Jd/2009; Block period 1990-91 to 2000-01*

*Jul 22, 2011*

*(2011) 30 CCH 0390 JodhTrib*

*(2011) 60 DTR 0459, (2011) 141 TTJ 0374*

Legislation Referred to

*Section 68, 158BC, 158BFA(1)*

Case pertains to

*Block period 1990-91 to 2000-01*

Decision in favour of:

*Assessee*

*Also **Kashmir Trading Company vs. Asstt. CIT** (C.O. No. 50/Jd/2009; Block period 1990-91 to 2000-01)*

***Income—Cash credit—Telescoping against peak of ‘Dasti Bahi’—Assessee challenging addition of two sums of Rs. 1,13,000 and Rs.1,55,000 on the ground that there was no scope for adding the entries in block assessment consequent to search and seizure operations, which were found recorded in the regular books of account—Since assessee had not filed any appeal against rejection of the plea by CIT(A), Tribunal cannot record finding on this issue—However, whatever was introduced in the regular books of***

***account in the names of bogus persons was out of the amounts appearing in the 'Dasti Bahi'—CIT(A) was therefore, justified in allowing the telescoping of the addition against the peak of credits found recorded in 'Dasti Bahi', thereby deleting impugned addition made under s. 68***

Held

*The assessee had taken a plea before the CIT(A) that no addition in respect of entries found recorded in the regular books of account can be made in the assessment proceedings under s. 158BC. This plea of the assessee has been rejected by the CIT(A). It is a settled law that no addition on the basis of entries recorded in regular books of account can be made under s. 158BC. Since assessee had not filed any appeal against rejection of the plea, Tribunal cannot record finding on this issue. However, CIT(A) has allowed telescoping of Rs. 1,13,000 in the name of JN and Rs. 1,55,000 in the name of RL out of the peak of 'Dasti Bahi'. The CIT(A) has recorded a finding of fact that the assessee was not having any other source of income or any other asset. Therefore, whatever was introduced in the regular books of account in the name of bogus persons was out of the amounts appearing in the 'Dasti Bahi.' This finding of fact has not been controverted by the Revenue. The assessee was carrying on the business of 'Arhat' and undisclosed income was found recorded in the 'Dasti Bahi'. The AO had made the addition on the basis of entries found recorded in the regular books of account apart from addition based on peak of 'Dasti Bahi'. Since the AO had made addition on the basis of peak of entries recorded in regular books of account while determining the undisclosed income of the assessee, the entries recorded in the regular books of account have to be telescoped with entries recorded in the 'Dasti Bahi'. The CIT(A), therefore, is justified in allowing the telescoping of the addition made on the basis of peak credits of the entries recorded in the regular books of account against the peak of credits found recorded in 'Dasti Bahi'.*

**(Para 5)**

Conclusion

*CIT(A) was therefore, justified in allowing the telescoping of the addition against the peak of credits found recorded in 'Dasti Bahi', thereby deleting impugned addition made under s. 68.*

Ground No.7

Under the facts and circumstances of the case, the learned Assessing Officer has erred in not adjusting the money lying in PD a/c against advance tax liability/self-assessment tax and charged interest u/s 234 B & 234 C of the Income Tax Act, 1961 for Rs. 19,08,302/- and Rs.40,656/- deserves to be deleted.

The Id. CIT(A) is requested to issue directions to the Id. AO to adjust the money lying in PD account first and later on charge interest. The charging of interest will be u/s 234 B & 234 C shall be subject to relief granted by the Id.CIT(A).

Ground No.8

The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

13. In addition to the above written submission the Id. AR of the assessee has relied upon the following evidence / records:

Sr. No.	Particular	Page no.
1.	Copies of acknowledgement of original return of income filed for AY 2020-21	1-8
2.	Copy of statement of Nikhil Kumar Goyal recorded on 25/10/2019	9-12

**Additional Paper Book**

Sr. No.	Particulars	Page no.
1.	Copy of letter dated 11/5/2020 addressed to the Learned Assessing Officer for adjustment of cash seized during the course of search against self-assessment tax	01
2.	Copy of letter dated 10/1/2021 addressed to the Learned Assessing Officer for adjustment of cash seized during the course of search against self-assessment tax	02
3	Copy of letter dated 01/10/2021 addressed to the Learned Assessing Officer for adjustment of cash seized during the course of search against self-assessment tax	03
4	Copy of letter submitted on 12/1/2021 to the Learned Assessing Officer for adjustment of cash seized during the course of search against self-assessment tax along with computation of income.	4-7
5	Copy of letter dated 29/10/2021 of the Learned Assessing Officer for	8

	filing affidavits from concerned parties for adjustment of cash seized during the course of search and lying in PD account	
6	Copy of letter dated 2/11/2021 to the Learned Assessing Officer submitting no objection for adjustment of cash seized during the course of search and lying in PD account against self-assessment tax along with affidavits of 13 persons.	9-22

14. The Id. AR of the assessee in addition to what has been submitted in written submission supported by the paper book vehemently argued that the profit rate applied is considering the Gross profit rate and that too @ 10 % which is much higher and therefore, prayed to take a reasonable rate of profit wherever the Id. AO estimated the profit on the unaccounted sales and purchased activity observed. He also submitted that the records were not found from the premises of the assessee but were from the third party and thereby the addition could have been made as per provision of section 153C of the Act and not as per provision of section 153A of the Act. For that aspect of the matter he relied upon the decision of the Hon'ble Delhi High Court as referred in the submission. Therefore, the assessee pray to take a lenient view on the matter.

As regards the document found relating to the house construction Id. AO made adhoc addition without considering the submission of the assessee.

As regards the addition of based on the third party search Shri Nikhil Kumar Goyal he submitted that on this seized material the assessee was not confronted and no statement was recorded. These pages do not contain the name, address, phone number even the names are incomplete. So the addition made u/s 153A of the Act is not sustainable as records were found from third party possession.

He for the sake of convenience filed a year wise chart which reads as under:

<b>Sunil Kumar Agarwal</b>							
Details of addition before ITAT from assessment year 2015-16 to 2020-21							
Sr. No.	Particulars	A.Y. 2015-16	A.Y. 2016-17	A.Y. 2018-19	A.Y. 2019-20	A.Y. 2020-21	Total
1	House construction (carpentry work) – labour payment		0	3064533	0	0	3064533
2	House construction (carpentry work) – material purchase		0	5373108	0	0	5373108
3	Furniture and fixture polishing		0	1070172	0	0	1070172
4	Unaccounted expenditure on painting		0	0	3469474	0	3469474
5	Unaccounted expenditure on marble polishing		0	0	692164	0	692164
	<b>Total</b>		0	9507813	4161638	0	13669451
6	Cash sales on the basis of search of third party Shri Nikhil Kumar Goyal @ 10% of sale		1678625	310000	1415230	4185833	7589688
7	Cash sales on the basis of search of third party Shri Nikhil Kumar Goyal @ 10% of sale		0	531250	270501	147500	949251
8	Unaccounted cash purchases on the basis of search of Arvind Jain		0	617477	22972	0	640449
	<b>Total</b>		1678625	1458727	1708703	4333333	9179388
9	Unaccounted sales on the basis of seized documents from assessee's own premises		0	222010	66250	732375	1020635
10	Unaccounted sales on the basis of seized documents from assessee's own premises		0	0	0	29498	29498
	<b>Total</b>		0	222010	66250	761873	1050133
11	On account of excess stock		0	0	0	449744	449744
12	Addition applying GP 10% against 5% declared by the assessee		0	0	0	409479	409479
13	Unaccounted interest income		0	0	705000	2034000	2739000
14	Purchase of agriculture Land	420000	0	0	0	0	420000
	<b>Total</b>	420000	0	0	705000	2893223	4018223
	<b>Grand Total</b>	420000	1678625	11188550	6641591	7988429	27917195

As regards the addition made for the interest amount he submitted that the assessee has not made any advances so there is no question of having earned any interest by the assessee.

As regards the excess stock the Id. AO made addition @ 10 % but the same be required to be reduced.

As regards the addition made for house the Id. AO included the land price which was not purchased by the assessee. The submission made on house construction were not properly appreciated by the lower authority and the Id. AR of the assessee prayed for the relief based on the written submissions so filed.

15. Per contra Id. DR relied upon the detailed written submission and also on the case laws on the contention raised in the written submission. The written submission reads as under :

A. This rejoinder is respectfully submitted on behalf of the Revenue. The present appeal arises from the order of Ld. CIT (A), Jaipur-4/11539/2019-20/Order No :ITBA/APL/S/250/2024-25/1075261042(1) dated 29/03/2025, against which the assessee is in appeal. The brief facts of the case as noted in the assessment order are that a search and seizure action u/s 132 of the Act was carried out by the department on the members of Narnoli Group on 28.06.2019. Appellant filed his return of income on 10.01.2021 for the AY 2020-21 declaring a total income at Rs. 2,64,82,110/-. Ld. AO issued a notice u/s 143(2) of the Act to the appellant on 01.03.2021. Finally, Id. AO completed the assessment vide order dt. 29.09.2021 at a total income of Rs.2,89,47,315/-. Aggrieved by the aforesaid assessment, the appellant has filed the appeal before the Ld.CIT(A). The Ld.CIT(A) allowed appeal of the assessee and confirmed part and assessee is in appeal before your Honours. The assessee has filed paper book, written submission and grounds in form no 36. The revenue submits rebuttal on each as submits rebuttal on each as under with request to consider this rejoinder as part of record and arguments of revenue.

B. The assessee has raised following grounds of appeal

"1. Under the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the action of the Learned AO in applying the GP rate of 10% on the

following unaccounted sales declared by the assessee against 5% declared by the assessee:

(i) ₹20,35,000- Para 11.1, Exhibit-14, Page 17

(ii) ₹45,30,000 - Para 11.2, Exhibit-8, Page 44

(iii) ₹5,10,380 - Para 11.3, Exhibit-8, Page 43

(iv) ₹11,14,200 - Para 11.4, Exhibit-8, Page 41

Tax Effect: ₹1,27,757

2. The CIT(A) erred in confirming the action of the Learned AO in treating the interest income of ₹20,34,000 on the basis of rough calculation and estimation (Exhibit-14, Page 11, Para 14).

Tax Effect: ₹6,34,608

3. The CIT(A) erred in confirming the addition of ₹29,498 by estimating GP @10% on unaccounted sales of ₹2,94,983 (Exhibit-8, Page 9 and Exhibit-9, Page 1).

Tax Effect: ₹9,203

4. The CIT(A) erred in not giving a clear cut finding regarding set-off of income surrendered and addition sustained.

Tax Effect: Nil

5. The CIT(A) erred in rejecting the request for adjustment of PD A/c against advance tax/self-assessment tax, and in charging interest under Sections 234B and 234C for ₹19,08,302 and ₹40,656, despite a specific request in the return filed under Section 139 of the Act.

Tax Effect: Nil

6. The CIT(A) erred in not allowing telescoping benefit of surrendered income against additions sustained.

Tax Effect: Nil

7. The assessee craves your indulgence to add, amend, or alter any ground of appeal before or at the time of hearing.

Tax Effect: Nil

8. The CIT(A) erred in confirming the addition of ₹4,49,744 made by the AO on account of excess stock, which was duly explained.

Tax Effect: ₹1,40,320

9. The CIT(A) erred in confirming the action of the AO in treating the following amounts as unaccounted sales for the year under consideration and thereafter applying 10% NP rate:

(i) ₹3,23,750 - Para 11.6, Exhibit-8, Page 45

(ii) ₹14,75,000 - Para 12 (Papers found from Nikhil Kumar Goyal)

(iii) ₹4,18,58,330 - Para 13 (Papers found from Nikhil Kumar Goyal)

Tax Effect: ₹15,80,500"

### C. Rebuttal on Behalf of the Revenue (Ground Nos. 1 & 3 - GP Addition on Unaccounted Sales)

#### 1. Summary of Grounds Raised by the Assessee:

In Ground No. 1, the assessee has challenged the action of the CIT(A) in confirming the application of a 10% Gross Profit rate on unaccounted sales totalling ₹82,89,580 (based on seized documents and declarations), contending that only 5% GP should have been applied as per the assessee's own declarations.

ii. In Ground No. 3, the assessee has similarly objected to the GP addition of ₹29,498 on unaccounted sales of ₹2,94,983, discovered from seized material (Exhibits 8 and 9), again disputing the 10% profit rate as excessive.

2. The assessee's primary grievance in both grounds is that the profit rate applied by the AO and sustained by the CIT(A) is arbitrary, excessive, and not reflective of the actual business margins. The assessee contends that the Assessing Officer (AO) arbitrarily decoded the seized papers and applied an excessive profit rate, despite the assessee's own disclosure. The assessee has challenged the action of the CIT(A) in confirming the AO's estimation of Gross Profit (GP) @10% on the following admitted unaccounted sales:

Rs. 20,35,000

Rs. 45,30,000

Rs. 5,10,380

Rs. 11,14,200

Rs. 2,94,983/

The assessee argued that GP should have been estimated @5% as per its own declaration.

#### 3. Assessee's Submission

The assessee's arguments, as gleaned from the appeal and written submissions, are summarized as follows:

i. Alleged Arbitrary Decoding: The assessee claims the AO "arbitrarily" deciphered figures in the loose papers by adding zeros without any uniform basis, calling the exercise "conjecture and guesswork." It is argued that different seized pages were decoded inconsistently, and that some noting's were by an elderly family member with memory issues, allegedly undermining their reliability.

ii. Prior Disclosure of Income: The assessee asserts that the unaccounted sales reflected in those documents were already considered in the income disclosed post-search. Specifically, the assessee states that a total disclosure of ₹2,21,41,550 was made for AY 2020-21 towards unaccounted business, which ostensibly covered these transactions. The assessee points out that an additional income of ₹70,07,075 was offered in the return to account for discrepancies including these sales. Thus, it is argued that the AO's separate addition leads to

double counting, since the AO did not show that the seized transactions were over and above the income surrendered.

**Excessive GP Rate:** The assessee submits that applying a 10% profit rate is unjustified because it exceeds the normal gross profit margins. Citing average GP 7.26% of related concerns, the assessee claims unaccounted (cash) sales usually yield lower margins (since no tax is paid, that benefit is allegedly passed to buyers to stay competitive in the "grey market"). In other words, the assessee argues a 5% profit was appropriate (and was voluntarily offered by them), and that the AO's 10% is an arbitrary, high estimate.

In sum, the assessee prays for deletion of the addition, insisting the seized noting's were mis-read, the profit was already included in disclosed income, and that 10% is an overestimation.

#### 4. AO's Findings

The Assessing Officer, in the Section 153 A proceedings, analyzed specific seized documents found during the search on the assessee. Key findings by the AO were:

##### i. Unaccounted Sales from Seized Papers:

The AO identified four instances on cross check basis of unrecorded sales from the seized material:

- a. an offer to sell 185 kg of rough stones for ₹20,35,000 (noted on Exhibit-14, p. 17);
- b. a credit sale of 300 kg at ₹15,100/kg totalling ₹45,30,000 (Exhibit-8, p.44);
- c. certain transactions aggregating to ₹5,10,380 (Exhibit-8, p.43); and
- d. a sale of 4,952 units at ₹225 each amounting to ₹11,14,200 (Exhibit-8, p.41).
  - a) These noting's - some in code/shorthand - were deciphered by the AO in context. For example, the figure "45.30" was understood as 45.30 lakh (given the quantity rate calculation on that page).
  - b) The AO's decoding was bolstered by corroborative details (such as a third-party call referencing a 31 lakh cash deal, consistent with the pattern of adding "00" to figures in the noting's).
  - c) Importantly, the assessee himself ultimately admitted these were off-book deals evidenced by his own disclosure of unaccounted sales in the return and statements.
  - d) Assessee before It is pertinent to bring to the Hon'ble Bench's attention that the assessee had, during the course of assessment proceedings, filed a written submission 18/09/2021 acknowledging the existence of unaccounted sales, and did not object to the show-cause issued by the Ld. Assessing Officer with respect to the decoded seized documents, estimated turnover, or proposed GP/NP rate application before the than Ld. AO, and before countering the assessee

submission same need to be reproduced as crystal clear image on unaccounted sales and GP of his own admission-

"To:

The Assistant Commissioner of Income Tax, Central Circle - 2, Jaipur

Subject: Submission in the case of Shri Sunil Kumar Agarwal, 395, Narmoli Mansion, Outside Sangneri Gate, Jaipur

Respected Madam,

With reference to the above and as required by you for application of NP rate on unaccounted sales by the assessee, we respectfully submit as under:

The assessee is engaged in the trading of rough stones. The three business concerns of the assessee group are engaged in the same kind of trade. The NP/GP rates declared by the group concerns are as under:

<i>K. SUNIL NARNOLI</i>						
<i>F.Y.</i>	<i>2015-16</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>	<i>2019-20</i>	<i>Average</i>
<i>GP Rate (%)</i>	<i>9.91</i>	<i>9.59</i>	<i>8.2</i>	<i>6.17</i>	<i>5.62</i>	<i>7.89</i>
<i>NP Rate (%)</i>	<i>3.98</i>	<i>2.83</i>	<i>3.05</i>	<i>2.98</i>	<i>1.37</i>	<i>2.84</i>
<i>NARNOLI EMERALDS</i>						
<i>F.Y.</i>	<i>2015-16</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>	<i>2019-20</i>	<i>Average</i>
<i>GP Rate (%)</i>	<i>6.45</i>	<i>10.94</i>	<i>7.72</i>	<i>6.23</i>	<i>5.74</i>	<i>7.41</i>
<i>NP Rate (%)</i>	<i>3.01</i>	<i>4.79</i>	<i>3.82</i>	<i>2.98</i>	<i>1.24</i>	<i>3.16</i>
<i>DTA JEWLES</i>						
<i>F.Y.</i>	<i>2015-16</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>	<i>2019-20</i>	<i>Average</i>
<i>GP Rate (%)</i>				<i>5.38</i>	<i>7.56</i>	<i>6.47</i>
<i>NP rate</i>				<i>4.48</i>	<i>3</i>	<i>3.74</i>

The average higher GP rate is 7.89% and the lower GP rate is 6.47%, whereas the average higher NP rate is 3.74% and the average lower NP rate is 2.84%. The mean of the NP rate is 3.29%.

Therefore, you are requested to adopt an NP rate of 3.29% on unaccounted sales effected by the assessee group and oblige."

enclosed as paper book page number -1)

ii. In the above said letter, the assessee neither challenged the validity or content of the seized evidence nor denied the unaccounted transactions unearthed during the search. The assessee also did not oppose the rejection of books of accounts, nor did they furnish any alternate working or accounting records to contradict the seized material. In fact, the assessee voluntarily offered a suo moto calculation of NP, thereby implicitly conceding to the method of estimation and affirming the existence of undisclosed sales.

V. From this conduct, it is clearly established that the assessee had nothing to contradict or rebut the evidence gathered during the search. Further, it is a matter of record that no additional evidence was ever submitted either before the CIT(A) or before the Hon'ble Tribunal under Rule 46A to dispute the seized material or the decoded figures adopted by the AO. Accordingly, having failed to produce any substantive rebuttal or supporting records at any stage, the assessee cannot now be permitted to challenge the GP rate estimation, which was applied in a reasonable, just, and judicially sustainable manner. This reinforces the credibility of the AO's assessment and negates the plea for a lower NP rate of 3.29% now being advanced without evidentiary basis.

VI. Admission and Partial Disclosure:

a) Initially, the assessee could not explain certain seized pages during the search. However, in post-search queries, he accepted that the entries represented unaccounted sales.

b) In fact, for the 20.35 lakh offer (Exhibit-14 p.17), the assessee's reply conceded it was an unrecorded sale attempt (even though not materialized) and stated that profit on it was already included in the disclosed income.

c) Similar acceptance applied to the other documents - the assessee did not dispute the occurrence or quantum of these transactions, only their interpretation and profit rate. This amounted to an admission of the unaccounted turnover.

VII. Rejection of Books & Estimation:

a) Since these sales were absent from the regular books, the AO invoked the principles of best-judgment assessment.

b) No reliable books existed for the unaccounted business, warranting estimation of profit under Section 145(3) and 144.

- c) The AO noted that the assessee's personal income tax return showed no regular trading accounts (only partnership income), so past GP rates of allied firms (7%) were of limited relevance.
- d) Moreover, those firms' GP was on fully taxed sales, whereas these clandestine deals evaded taxes (GST/sales tax).
- e) The AO reasoned that such tax-evasion confers an extra profit cushion, justifying a higher margin.
- f) Consequently, the AO applied a 10% gross profit rate on the uncovered sales.
- g) This yielded additions of ₹2,03,500, ₹4,53,000, ₹51,038, and 1,11,420 respectively (total ₹8,18,958), which were added to the returned income.
- h) Penalty Initiation: The AO also initiated penalty under 271AAB for undisclosed income on these sales, underscoring that the transactions were accepted as "undisclosed" and taxable.

Thus, the AO's determination was that the assessee had undisclosed turnover of ₹0.819 crore, and taxing only the profit component (@10%) was a fair estimate of the concealed income given the circumstances.

#### VIII. Ld. CIT(A)'s Findings

The Ld Commissioner of Income Tax (Appeals) considered the assessee's contentions and the AO's order, and upheld the 10% GP addition with detailed reasoning:

##### Validity of Seized Evidence:

- a) The Ld. CIT(A) found that the loose papers (Exh. 14/8) clearly recorded business dealings pertaining to the assessee, triggering the presumption under Section 292C. The assessee did not produce any credible evidence to rebut the presumption that these documents (found in his premises) truly represent his unaccounted sales.
- b) General claims about the author's health or memory were unsubstantiated; notably, the assessee never produced the father (alleged note-maker) for examination nor offered any alternate decoding of the figures.
- c) In law, mere allegations cannot displace the statutory presumption that seized documents belong to and are correct as against the assessee. Ld.CIT(A) concluded the AO was entitled to rely on these papers at face value.

##### ii. Decoding Approach:

The assessee has not disputed the sales amount before the AO. As discussed above, but challenging later on, is not justifiable without any new evidence.

- a) On examining each document, Ld.CIT(A) observed that the AO's interpretations were logical and consistent with the evidence. For instance, Exhibit-8 p.41 explicitly showed "4952 × 225 = 11.25", matching 11.14 lakh for 4952 units; no decoding controversy there.

b) Where abbreviations appeared (like "45.30"), the AO reasonably inferred lakh values in line with the context. Ld.CIT(A) noted that the assessee himself, in responses, effectively conceded the turnover figures (often by stating he had included profit from them in his disclosure).

c) Having failed to offer any different explanation, the assessee cannot label the AO's reading as arbitrary. There was "no guesswork, but a reasonable inference" supported by circumstantial evidence. Thus, Ld.CIT(A) rejected the claim of lack of uniformity, finding no arbitrariness in the AO's method.

iii. Profit Rate Justification:

a. Ld.CIT(A) agreed that a 10% profit rate was warranted. Legally, once books are unreliable or absent, the AO can estimate income to determine the true profit.

b. Here, the assessee's argument that unaccounted deals carry lower margins was deemed purely self-serving and not backed by any evidence.

c. In fact, observed that tax-evaded transactions could just as likely yield higher profit since the seller saves on tax outflow or takes a premium for risk.

d. The Ld.CIT(A) cited case law (e.g. Kachwala Gems, Dhakeshwari Cotton Mills) emphasizing that some level of estimation is inevitable in such cases and will not be interfered with if rational. The assessee however failed before Hon'ble ITAT in distinguishing these case laws.

e. The AO's choice of 10% (only 2-3% above the assessee's normal GP) was found reasonable and conservative, given that many judicial precedents uphold even higher GP additions on concealed sales where exact data are unavailable.

f. Furthermore, it is respectfully submitted that the generation of unaccounted income through unrecorded sales would necessarily involve corresponding expenditure. Such expenditure must have either:

been incurred outside the books of account, or

been already claimed in the regular books, thereby artificially deflating the disclosed Gross Profit (GP).

In either case, the true profit margin on such undisclosed turnover cannot be equated with the declared NP rate of accounted transactions. Thus, a higher GP estimation on unaccounted sales is not only factually warranted but also legally sustainable.

iv. Assessee's Disclosure Claim:

a) Ld.CIT(A) addressed the claim that the income was already disclosed in the ₹2.21 crore surrendered. It was noted that while the assessee did declare substantial additional income in the return, no itemized reconciliation was furnished to show that these particular sales (and at what profit) were encompassed.

b) The blanket assertion that "it must have been covered" cannot override the AO's duty to accurately assess each component of undisclosed income. CIT(A)

highlighted that the assessee himself, in correspondence, admitted to including only an assumed profit (5%) for those sales in the disclosed sum.

found (and admitted)

b) Thus, the AO's addition essentially represents the differential profit (another 5%) to reflect a realistic margin.

d) There is no double taxation because the AO did not add more than the profits; he only brought the profit to 10% from the 5% the assessee probably accounted. Unless the assessee could demonstrate that a full 10% (₹8.18 lakh) was already accounted for in the ₹2.21 crore (which he did not), the addition is justified.

e) Ld. CIT(A) cited the legal maxim that the burden is on the assessee to prove an income is already offered here that burden was not discharged, as the disclosure was lump-sum with no detail. Therefore, CIT(A) concluded that no double counting was evident instead, the AO was correcting an understatement.

V. Legal Sanctity of 153A Assessment:

a) The Ld. CIT(A) also underscored that this addition was made in a search assessment (Section 153A), which specifically empowers the AO to assess "total income" including undisclosed income found.

b) The recent Supreme Court judgment in *Abhisar Buildwell Pvt. Ltd (2023)* was noted, wherein it was held that 153 A assessments must be based on incriminating material found in the search. In the present case, the impugned addition stems directly from incriminating documents seized in the search, squarely fitting the mandate.

c) The AO did not travel beyond the search material; hence the addition is within the lawful scope of 153A. The Ld. CIT(A) found this strengthens the Revenue's case: the very fact that concrete documents evidencing unaccounted sales were found (and admitted) gives legal legitimacy to the resultant addition.

Accordingly, The Ld. CIT(A) dismissed the assessee's appeal on this ground, affirming that the AO's action was legally sound, factually supported, and in line with jurisprudence.

VI. Relevant Legal Provisions

Before rebutting the assessee's contentions in detail, it is most humbly prayed to the Hon'ble Bench to recall the key provisions of the Income-tax Act, 1961 that govern search assessments and income estimation in this context:

a. Section 153A:

When a search is conducted under Section 132, the AO reassesses the total income of six years (and the year of search) notwithstanding regular assessment status. All incriminating material found is to be considered. Per the Supreme Court, the AO's jurisdiction under 153A is limited to material unearthed during the search- ensuring that additions are evidence-based. In this case, Section 153A is the enabling provision under which the unaccounted sales were assessed.

b. Section 292C:

This section (inserted in 2007) provides that documents found in the possession or control of a person during a search shall be presumed to belong to that person, and the contents are presumed to be true in any proceeding under the Act, unless rebutted. Thus, the loose papers seized from the assessee's premises carry a statutory presumption of truthfulness against the assessee. This provision fortifies the evidentiary value of Exhibit 14/8 here.

c. Section 145(3):

If the AO is not satisfied with the correctness or completeness of the accounts, or where the method accounting is such that the true income cannot be deduced, he may reject the accounts. In cases like the present, where a whole category of transactions was kept outside the books, the books are per se incomplete and unreliable. Section 145(3) justified the AO's rejection of the book results (which showed only regular turnover) and resort to estimation for the unaccounted turnover.

d. Section 144:

This provision allows the AO to make a "best judgment" assessment where the assessee fails to comply or where reliable data is not forthcoming. While our case is a 153A assessment, the principle of Section 144 was inherently applied the AO had to estimate income from the evidences since exact profits weren't recorded. Best judgment does not mean wild guess; it means a reasonable estimate based on available material. The AO's 10% GP is an exercise of this power, tempered by reason.

VI.A. Together, these provisions empowered the AO to assess the undisclosed sales and compute a fair profit, and they rebut any notion that the addition was beyond authority or based on no evidence.

a. Section 292C - Presumption of Seized Documents

i. Section 292C of the Act enshrines an important rule for search cases: any document found in possession of a person during search is presumed to belong to that person and to represent his transactions. unless proved otherwise. This is essentially a statutory affirmation of a common law evidence principle (akin to Section 110 of the Evidence Act) that possession implies ownership. The presumption is rebuttable - but the onus is squarely on the assessee to disprove the document's authenticity or correctness.

ii. In the present case, 292C applies fully. Multiple loose sheets were seized from the assessee's premises, detailing quantities, rates, names (e.g. "Saeed Bhai", "Ni\*\*\* Gupta"), dates and amounts. Under 292C, the Revenue is entitled to presume that these papers belong to the assessee, and that the financial transactions noted (unaccounted sales) are real and attributable to him. The assessee attempted no real rebuttal beyond suggesting the writings were by his

father and "might not mean what AO thinks." Crucially, no evidence was led to contradict the content - for instance, the assessee did not produce the father to testify that the figures were fictitious or different in meaning. He also implicitly acknowledged the truth of the entries by admitting unaccounted dealings and even including some income from them in his return. Thus, the 292C presumption stands un rebutted. Even father was ill how he was doing business is also a question.

iii. Jurisprudence supports that when an assessee merely denies seized papers without proof, the presumption holds and additions are justified. In CIT v. Anil Kumar Bhatia (Del HC) and other cases, courts have upheld that seized documents are valid evidence of income unless the assessee credibly explains them away. Here, far from explaining them away, the assessee's partial acceptance reinforced their credibility. Therefore, under Section 292C, the AO and CIT(A) were correct to treat the seized records as true evidence of unaccounted sales. Here vital to mentioned that assessee filed an affidavit on 18/09/2021 where he admitted that "Incriminating Documents are found". He further affirm to pay taxes on same. (the copy of affidavit is enclosed as Paper book Page number 2 to 3). This affidavit was supported with AR covering letter and same is enclosed as paper book page no 4. It is also vital to mention here that this affidavit was filed after issuance of show cause notice by the Ld. AO (same is enclosed as paper book page number 4 to

b. Section 153A - Scope of Assessment & Incriminating Material

i. Section 153A triggers a fresh assessment of income in a search case, for the specified years, irrespective of earlier assessments. The scope of this assessment is broad ("total income"), but recent judicial interpretation - now affirmed by the Supreme Court - has read an important qualification: for completed years, additions must be based on incriminating material found in the search.

ii. In the case at hand, the addition of gross profit on unaccounted sales is directly rooted in incriminating material - the seized documents. These papers were discovered only because of the search. Thus, the entire basis of the addition is the search evidence, exactly as envisaged by law. The AO did not use 153A to reopen some issue arbitrarily; he used it to tax income revealed by seized papers. This aligns with *Abhisar Buildwell (SC)* which implicitly sanctions additions having a nexus to seized material. Moreover, AY 2020-21 was the year of search (or a pending assessment year), so the assessments were live and open even otherwise.

(iii) It is also pertinent that Section 153A carries a non-obstante clause overriding normal limits, meaning the AO could assess this income even if the time for a regular assessment had passed, because the search brought it to light. The

assessee's suggestion that he had disclosed an overall sum and thus no further addition should be made is misplaced - under 153A the AO must assess the true total income based on evidence, not merely accept a unilateral disclosure if it appears understated. The AO was duty-bound to incorporate the seized evidence into the assessment. In summary, the impugned addition was well within the ambit of Section 153A, being grounded in search material and aimed at determining the correct concealed income.

iv. Relevance of Supreme Court Judgment - Abhisar Buildwell Pvt. Ltd.

a) The Abhisar Buildwell ruling (Supreme Court, April 2023) is a landmark on Section 153A. It settled conflicting High Court views by holding that completed assessments can be disturbed in 153A only on the basis of incriminating material found. The Revenue's appeals were dismissed, upholding that if no incriminating evidence for a particular year is found, the past assessment for that year cannot be arbitrarily reassessed. This judgment emphasizes that a search assessment isn't a free license to add income unrelated to search findings.

b) Applying this here, Abhisar Buildwell actually strengthens the Revenue's case: the addition under Ground 1 is entirely predicated on documents seized in the search. It is not an unrelated or conjectural addition; it is exactly the type of incriminating-evidence-based addition that the Supreme Court confirms as permissible under Section 153A. In fact, had the AO not made an addition on these seized unaccounted sales, he would be failing the mandate of 153A, which is to tax income revealed by the search. Abhisar Buildwell ensures that assessee's income cannot be enhanced without evidence - in this case, we have evidence, so the addition is on solid footing.

c) It is worth noting that Abhisar Buildwell involved certain assessee where no incriminating material for some years was found, and so additions for those years were struck down. Our case is the opposite scenario: incriminating material was found (loose sheets detailing sales) for AY 2020-21. Thus, as a matter of law, the AO not only had jurisdiction to make this addition, but it was incumbent on him to do so. The principle from Abhisar that "assessment is intrinsically linked to search material" is fully satisfied here - the quantum and subject of the addition (GP on unrecorded sales) comes straight from the seized papers.

d) In conclusion, the Abhisar Buildwell judgment supports the Revenue's action and dispels any notion that the addition was beyond the scope of a search assessment.

V. Applicability of the Indian Evidence Act - Burden of Proof and Corroboration

It is trite law that strict rules of the Evidence Act, 1872 do not directly apply to income-tax proceedings, which are quasi-judicial. However, general evidentiary principles do apply, especially on burden of proof and presumptions. Two key principles are relevant:

a) **Burden of Proof:** As per the Evidence Act (Sections 101-106), the burden lies on the person who asserts a fact. In tax matters, once the Revenue shows prima facie evidence of undisclosed income (e.g. seized documents, unexplained assets), the onus shifts to the assessee to rebut it. Additionally, Section 106 of the Evidence Act stipulates that if a fact is especially within the knowledge of a person, the burden to explain it is on him. In this case, the nature of noting's on seized papers - abbreviations, names, figures - are facts especially within the assessee's knowledge (or his associates'). Therefore, the burden was on him to provide a plausible explanation. He failed to do so satisfactorily. He could neither deny that these were sales nor give an alternate accounting; he merely said he estimated some income from them. And by filing affidavit suo moto(= discussed supra Pbn 3-4), he admitted the incriminating nature. Further requesting GP at lower rate is admission of unaccounted sales. Thus, by Evidence Act standards, the assessee did not discharge his burden, and the documents stand as evidence of income.

b) **Presumption of Ownership/Truth (Sec. 110 EA):** Section 110 of the Evidence Act states that possession of something implies ownership. unless proved otherwise. The Supreme Court in Chuharmal vs. CIT (1988) applied this principle to tax law: the possession of unaccounted assets led to presuming them as concealed income. Here, possession of incriminating papers allows the presumption that the transactions therein are the assessee's own undisclosed dealings. The Chuharmal case emphasized that while tax authorities are not bound by technical evidence rules, they can draw on such principles in that case, the court held that "title follows possession" and upheld treating seized watches' value as income when the assessee offered no explanation. Analogously, the assessee's possession of detailed records of cash sales strongly corroborates the Revenue's case. His half-hearted challenge (blaming an ailing father's scribbles) without evidence is insufficient to disturb this presumption. In fact, by admitting those sales, he essentially corroborated the documents.

c) **Corroborative Value of Seized Material:** The loose papers in question were not blank or dumb; they contained specific data that matched real-world metrics (weights, rates, dates). The assessee's own statements post-search corroborated them (he acknowledged offers or transactions corresponding to them). Under the Evidence Act, a document can be corroborated by circumstantial or direct evidence.

Here we had both: circumstantial (the consistency of noting's with industry practice, payment terms, etc.) and direct (assessee's partial admission, a third-party call about a similar figure). The tribunal can rely on such corroborated badges of truth to conclude the documents reflect real income.

d) In summary, applying evidence law principles, the burden of proof had shifted to the assessee once the Revenue produced the seized papers. He did not rebut the presumption or fulfil his burden. Therefore, in the absence of contrary proof, the natural inference is that the seized noting's are true and represent the assessee's concealed sales and resultant income.

vi. Case Law on Onus in Search/Undisclosed Income Cases

Indian courts have consistently held that when incriminating documents or information is found, the onus shifts to the assessee to explain why those should not be treated as his income. A few pertinent rulings:

a) CIT v. Anil Kumar Bhatia (2012, Delhi HC): In a search context, the court observed that the assessee must offer an explanation for seized material and cannot simply remain silent or deny ownership. If he does, the AO is justified in making additions. In our case, the assessee's explanation was incomplete effectively conceding the core fact (unaccounted sales happened) but disputing the quantum of profit. The onus thus remained on him to substantiate why only 5% profit (or any lower figure) should be taken. He provided no books or records of those dealings to back his claim. Thus, he did not dislodge the AO's findings. no documentation).

b) Dhakeshwari Cotton Mills Ltd. v. CIT (1954, SC). This is a seminal case on best-judgment onus. The Supreme Court held that the ITO should not act on pure guess with no material; however, when the assessee's records are unreliable, the ITO has authority to make a reasonable estimate and the assessee carries the burden to prove it wrong. Dhakeshwari emphasized that there "must be something more than bare suspicion"- in our scenario, we have far more than suspicion: we have documents and partial admission. Thus, the AO's estimate had a firm basis. The assessee failed to prove the estimate excessive; he merely argued it. Under Dhakeshwari, if the assessee wanted to contest the rate, the burden was on him to demonstrate with evidence (perhaps by showing actual purchase cost, market conditions, etc., for those unaccounted deals) that 10% was too high. He did not. Hence the AO's assessment stands.

c) CIT v. P. Mohankala (2007, SC) and Sumati Dayal (SC) - though dealing with unexplained credits and ostensible income, these judgments reiterate that the Department can draw reasonable inferences from the facts and the taxpayer must rebut with cogent evidence, not just theoretical explanations. Here, the assessee's theory ("tax-free sales have lower margin") was not backed by any cogent evidence (no comparative instances, no documentation).

Thus, the inference drawn by Revenue (that profit was 10%) remains unrebutted. To summarize, case law places the onus on the assessee to explain incriminating material or suffer the consequences. The assessee in this case did not carry that burden successfully. Therefore, the addition is supported by the principle that the

burden having shifted and not discharged, the presumption of concealment prevails.

vii. GP Rate Estimation and Assessee's Failure to Substantiate

- a) Assessee's Bare Claim of 5% GP Rate Unsupported by Any Evidence
- b) No Working, Formula, or Books Produced to Substantiate GP Rate
- c) Assessee Had Every Opportunity Post-Search to Justify GP - Failed to Do So
- d) Claimed GP Cannot Be Accepted Without Linkage to Seized Documents
- e) Revenue's Estimation More Credible in Absence of Assessee's Evidence
- f) GP Rate Determination Must Be Based on Probabilities, Not Assertions
- g) Assessee Cannot Rely on Self-Serving Statement Without Corroboration

vii. Assessee Cannot Claim Estimated GP Without Supporting Basis or Working

It is respectfully submitted that the assessee's plea that only a Gross Profit (GP) rate of 5% should be applied to the alleged unaccounted sales/purchases is wholly unsubstantiated and deserves to be rejected outright. The burden lies on the assessee, being the master of his business affairs, to furnish the basis of such claimed GP rate.

- a) In this case, the assessee has:
  - b) Failed to furnish any working, computation, or method used to arrive at the claimed GP of 5%;
  - c) Failed to link the seized documents to any verifiable purchase/sale record or cash flow cycle to justify this margin;
  - d) Failed to produce corroborating documentary evidence such as comparative past margins, audited books, or market rates that reflect a 5% margin in the same line of business.
  - e) This clearly violates the principle laid down by the Hon'ble Courts that a mere claim of lower GP without evidence is self-serving and cannot override the Revenue's estimation, especially when based on incriminating material found during search.
  - f) As held in:
    - g) CIT v. N. Swamy (2000) 241 ITR 363 (Mad.) - Mere bald assertion by the assessee without any evidence or linkage to seized documents cannot be accepted.
    - h) CIT v. Dhingra Metal Works (2011) 196 Taxman 488 (Del.) - In absence of books and bills, GP estimation by AO based on best judgment is valid.
    - i) Sumati Dayal v. CIT (1995) 214 ITR 801 (SC) - Fiction cannot be accepted as fact in tax jurisprudence; surrounding circumstances and human probabilities must guide judgment.
    - j) Thus, if the assessee truly had a GP rate of 5%, the onus was on him to substantiate it, not merely to state it. No one stopped the assessee from providing a working model or formula. The fact that no such explanation was provided even

after having full access to seized materials post-search reinforces the conclusion that the claim of 5% GP is an afterthought, devoid of credibility.

k) Therefore, the GP rate adopted by the AO (e.g. 10%) based on available materials, experience in similar cases, and considering evasion of GST/sales tax is reasonable and justified. Case Law on GP Application]

1) In the present case, the unaccounted sales were not standalone. During the course of the search, unaccounted purchases and excess stock were also detected, suggesting that the sales stemmed from such undisclosed stock. This establishes that the entire rotation or trading cycle was not captured in the books. However, the AO did not tax the full unaccounted turnover, nor did he apply any peak theory or rotation multiplier, which is often applied in cases of clandestine trading. Instead, only 10% GP on unaccounted sales was taxed. This approach is moderate and conservative.

m) Courts have consistently held that when unaccounted stock is found, and sales are inferred therefrom, taxing the gross profit margin (rather than full sales or rotating peaks) is fair and adequate. For instance:

CIT v. President Industries [(2002) 258 ITR 654 (Guj.)] - Held that only profit element on unaccounted sales can be taxed, not entire sales.

CIT v. N. K. Industries [(2016) 72 taxmann.com 289 (Guj.)] - Allowed GP rate addition where entire cycle of purchase/sale was off the books.

CIT v. Sanjay Oilcake Industries [(2009) 316 ITR 274 (Guj.)] -Unaccounted purchases allowed inference of sales; taxing only GP held reasonable.

Therefore, when excess stock is itself admitted, and unaccounted purchases are acknowledged, the GP rate of 10% becomes even more reasonable, especially since no further adverse inference of rotating business or multiple cycles of undisclosed trade was drawn.

#### viii. Case Law on Application of GP Rate in Absence of Reliable Books

When books of account are rejected or certain sales are found outside the books, the law permits the AO to estimate profit by applying a gross profit (GP) rate that is reasonable given the facts. Several authorities underscore this: Chand Ja

a) CIT v. A. K. Roy & Bros. (1972, SC) and CIT v. British Paints India Ltd. (1991, SC): The Supreme Court in these cases held that the AO is empowered - indeed duty-bound to determine the true income when the accounts do not reflect it. In British Paints (not cited due to content constraints) , the Court allowed the AO to revalue stock to correct the disclosed profits. By analogy, here the AO adjusted the profit rate to reflect true income from undisclosed sales. It's a correction of the assessee's under-reporting.

b) Kachwala Gems v. Jt. CIT (2007, SC): This case closely parallels our situation. The assessee in Kachwala Gems had incomplete records; the AO rejected the books and applied an estimated GP (much higher than disclosed). The Supreme

Court upheld the addition, famously stating that "some guesswork is inevitable" in best-judgment assessment and the AO's estimate cannot be discarded merely because it is an estimate. It stressed that absence of precise records due to the assessee's default gives leeway to the Revenue to make a reasonable guess, and such guess should not be interfered with if it is honest and fair. In our case, a 10% GP on unaccounted sales is an honest and fair estimate - it is actually moderate given that the business deals in precious stones (which often have significant markups). The assessee's disclosed 7% was on regular transactions; a slight uplift to 10% for clandestine ones is within a reasonable range. Under Kachwala Gems, the ITAT should uphold this approach, as the CIT(A) did.

c) Tara Chand Jain (All HC) and CIT v. S.P. Singh (Allahabad HC) - in these and similar cases, courts have sustained the use of average or higher GP rates where the assessee's accounts were not trustworthy. The message is: when exact data is absent due to the assessee's own failure, the tax authority's best judgment will be accepted if not absurd. The assessee here cannot accuse the AO of arbitrariness after himself hiding the transactions off-books; one who comes with unclean hands (secret sales) cannot demand precise arithmetic from the Revenue. The 10% rate is well within industry norms and far from arbitrary.

d) Dhakeshwari Cotton Mills (SC) (cited earlier): It also illustrates that applying a 40% GP in that case without basis was wrong because no material supported it. In contrast, our 10% is supported by both material (circumstances of tax evasion) and by the assessee's own normal margin data. Unlike Dhakeshwari's scenario of "pure guess and no material" here there is material (the sales themselves, needing profit to be attached) and reasoning (tax saving and risk factor warranting higher profit). Thus, our case passes the Dhakeshwari test as well.

In conclusion, adopting a GP rate to compute income from unaccounted sales is a time-tested and court-approved method when books are deficient. The chosen rate of 10% is justified by facts and comparable benchmarks, and finds support in case law as a legitimate exercise of best judgment.

#### ix. Point-wise Rebuttal of Assessee's Claims

With the factual and legal landscape clarified, we now rebut the assessee's specific claims one by one:

(i) "Decoding was arbitrary and not uniform."

This claim is unfounded. The AO's interpretation of the seized notes was consistent with the evidence and context. All key figures on the papers were explained in a coherent manner. For example,

"45.30" was read as ₹45,30,000 because the note itself showed a calculation (300kg @15100) supporting that. Another page's figures (4952 units @225) explicitly equated to 11.14 lakh, which the AO accepted as-is without any manipulation. The only "adding of zeros" occurred where the noting's were in

shorthand (e.g., "31" for 31,00,000 as informed by an outside party) – a reasonable decoding given common trade parlance and corroboration by the tip-off. The assessee has not offered any alternative decoding. He doesn't, for instance, claim that "45.30" meant ₹45,300 or some other unit - because that would be implausible against the written evidence. Merely alleging arbitrariness cannot suffice; under Section 292C and general onus principles, he had to prove the AO's reading wrong, which he didn't. In fact, by admitting the underlying transactions and only disputing the extent of profit, the assessee tacitly acknowledged the accuracy of the AO's decoding of sales figures. Hence, the charge of arbitrariness fails - the decoding was supported by the documents and unchallenged by any contrary proof. The assessee before AO never objected the decoding and also AO given benefit of his explained sales that also calculated.

(ii) "Gross profit rate of 10% is too high/excessive." -We respectfully submit that 10% is a reasonable and well-substantiated estimate for these undisclosed sales. The assessee's average GP of ~7% in his regular (tax-paid) business was a starting point, not an upper limit. Numerous factors justified a higher margin here:

(a) These transactions were tax-free (no GST or income tax paid), which could allow either greater profit to the seller or a discount to the buyer. If the assessee claims he gave all tax savings away as discount, that's an assertion with no evidence. It is equally, if not more, plausible that he retained some benefit.

(b) Lack of competition data: The assessee's notion of "cut-throat competition in grey market" is unproven. He presented no market study or comparable instances of clandestine deals with lower mark-ups. In fact, legitimate businesses often have thinner margins due to competition and compliance costs, whereas black market players might enjoy similar or better spreads by operating in niches or cartel-like environments.

c) Moreover, even if one were to assume some discount to buyers, the AO's adoption of 10% (just 3% above recorded GP) isn't drastic. It simply errs on the side of plugging possible revenue leakage from tax evasion. The assessee's plea for 5% has no basis other than his own wish. Notably, 10% falls well below the gross profit rates upheld in comparable cases of unaccounted trading. For instance, in CIT v. Khader Khan (Ker HC) the court upheld a 17% NP rate on suppressed turnover of arecanuts, considering tax evasion. Here 10% in a precious stones trade is certainly not excessive. The assessee had every opportunity to demonstrate that his actual profit on those deals was lower (by furnishing purchase invoices, expense details, etc., if any). He did not do so. Therefore, absent contrary evidence, the AO's rate - approved by CIT(A) - stands as fair and commensurate with the facts. It ensured only real income was taxed and that too at a moderate level.

(iii) "Income already disclosed, so addition amounts to double taxation."

a) This argument is misleading. Yes, the assessee declared an additional ₹2.21 crore in his return post-search. However, he has not shown that the specific sum of ₹8.18 lakh (or the sales giving rise to it) was included in that disclosure in full. In fact, by his own admission, he included only some profit (5%) from those sales. The AO simply added the differential 5% to reflect a more accurate profit. This is not double taxation; it is augmenting an underestimated income. An assessee unilaterally underreports an income item (hoping the Department won't notice the extent), the Department is not bound to accept it. Consider that the assessee's disclosure of ₹2.21 crore covered various discrepancies (stock, cash, investments perhaps) over multiple issues. The AO isolated one component -unaccounted sales - and quantified the income from it at ₹8.18 lakh. If indeed the assessee had already accounted ₹8.18 lakh for this, his returned income would have been higher by that amount compared to if he hadn't. But the fact that the AO found a need to add it indicates that the returned income did not include the full 10% profit. The onus was on the assessee to prove double counting by identifying where in the computation that ₹8.18 lakh sat. He failed to do so.

b) Tribunals have repeatedly held that a general surrender does not grant immunity from specific additions unless the surrendered amount clearly encompasses them. The CIT(A) rightly observed that the assessee cannot approbate and reprobate - i.e., claim to have offered income but at the same time protest the correction of the quantum of that income. There is no double taxation: only the portion of income that escaped the assessee's disclosure has been brought to tax. In any case, the principle of double taxation doesn't strictly apply to two assessments of the same person for the same period what matters is total assessed income matches real income. Here, after the addition, it does. The assessee is effectively asking for a pat on the back for partially coming clean and to let him under-report the rest; such a stance is not supported by law. Once a search takes place, the goal is to assess the true undisclosed income which is what the AO/CIT(A) have done.

#### X. Obligation of the Assessee to Explain Unaccounted Sales and Uphold Fiscal Discipline and Obligation to Explain Seized Material and Uphold Tax Discipline

a) It is respectfully submitted that unaccounted sales unearthed during search proceedings are not isolated financial irregularities-they form part of a larger loop of tax evasion affecting both the seller and the buyer. This results in a substantial loss of revenue not only in the form of income tax but also GST and associated cesses, including education cess, which are crucial for nation-building and public welfare. Such conduct undermines the integrity of the taxation system and cannot be countenanced.

b) The Income-tax Act accords certain rights to the assessee, but those rights come paired with duties-most importantly, the duty to explain the nature of

documents and transactions found during search. In the present case, despite being given ample opportunity post-search, the assessee neither provided any working, corroborative evidence, nor attempted to link the figures to his books of accounts. The bald denial or generalized response that the documents are not comprehensible or were not authored by him cannot absolve the assessee of the statutory onus, particularly when the documents were found from his own possession during a valid search under Section 132.

c) Assessment proceedings are not adversarial; they are intended to assist the assessee in determining his true income. The role of the tax authorities, including the Assessing Officer, is to ensure this goal is met with fairness and lawfulness. Therefore, when the assessee fails to explain material evidence found during search and does not cooperate in reconstruction of his undisclosed income, the Revenue is left with no option but to proceed based on best judgment and reasonable estimation.

d) In this context, the rejection of books and application of GP rate on unaccounted sales is neither arbitrary nor excessive-it is a legally tenable method of quantifying undisclosed income in the absence of verifiable records. The Department's actions, in fact, are consistent with the principles laid down in judicial precedents and uphold the public interest.

c) The total amount of undisclosed sales, as decoded from the seized documents and admitted by the assessee during the assessment proceedings, stands at ₹84,84,563. The assessee contends that only 5% Gross Profit (GP) should be applied to this turnover. However, a 5% GP on ₹84.84 lakhs results in a profit of merely 4,24,228, leaving the remaining ₹80.6+ lakhs unaccounted for.

d) If the assessee contends that the goods were entirely procured through unaccounted purchases, two major inconsistencies arise:

i. Absence of Evidence for Unaccounted Purchases:

There is no documentary evidence, books, or financial trail to establish the source of funds used to make such substantial unrecorded purchases. In the absence of any corroborating material, it is implausible to accept that over ₹80 lakhs worth of purchases were financed entirely outside the books.

ii. Possibility of Double Deduction:

Conversely, if such purchases were financed from booked expenditure while sales were suppressed, then the cost of goods sold has already been claimed in the regular P&L account, and applying only 5% GP to unaccounted turnover would amount to double deduction of expenses, leading to an artificially suppressed profit margin.

In light of the above, the assessee's plea for a 5% GP rate lacks financial credibility and evidentiary support. The AO's application of a 10% GP rate, resulting in a profit estimation of ₹8,48,456, is not only conservative and

reasonable but also aligned with the nature and scale of unrecorded transactions, especially in the absence of any verifiable cost records.

In view of the foregoing, the Revenue respectfully prays that the Hon'ble ITAT sustain the addition of ₹8,18,958 on account of gross profit @10% on the assessee's unaccounted sales for AY 2020-21. The CIT(A) has given a well-reasoned order considering both facts and law, which the assessee has not effectively controverted. We request that the assessee's Ground No. 1 and 3 be dismissed, the Ld. CIT(A)'s findings be upheld in entirety. and the addition be confirmed. This will reinforce the principle that admitted unaccounted transactions must bear tax on a fair estimate of income, and will be in line with the law and precedents cited above.

The Revenue's rejoinder is thus concluded, and we rely on the arguments and authorities submitted herein. We pray for justice by way of confirming the addition and rejecting the assessee's contentions.

II. "The CIT(A) erred in confirming the action of the Learned AO in treating the interest income of ₹20,34,000 on the basis of rough calculation and estimation (Exhibit-14, Page 11, Para 14).

Tax Effect: ₹6,34,608"

#### 1. Background of the Dispute

This rejoinder is respectfully submitted in response to Ground No. 4 raised by the assessee, challenging the addition of 20,34,000/- made by the Assessing Officer (AO) on account of interest income on delayed realization of sales, based on seized documents during a search and seizure operation under Section 132 of the Income-tax Act. The assessee contends that the addition was based on estimation and that cross-examination of a key person (Shri Nikhil Kumar Goyal) was denied. The Revenue respectfully rebuts these submissions as follows:

i. The Id. AO has discussed the addition of Rs. 20,34,000/- in para 14 running from page

27 to 32 of the assessment order. These pages mainly discuss :-

a. Page No. 11 of Exhibit 4 of Party-1 from residence of Sunil Agarwal( paper book page no-)

b. Page No. 8 of Exhibit 26 of Party No. 10 which was found and seized from the office premises of Shri Nikhil Kumar Goyal, broker of the assessee (paper book page no-)

c. The assessee has challenged the addition of ₹20,34,000 made by the AO as interest on delayed realization of sales, on the basis of Page 8 of Exhibit-26 and Page 11 of Exhibit-14, seized during search.

d. The key submissions of the assessee are:

Documents Found Explained and Accepted:

The AO accepted that the import entries of ₹2,34,78,431 were duly recorded in books and the corresponding sales planning entries were also explained.

No addition was made on account of the alleged ₹16.60 crore of unaccounted sales after assessee's explanation.

**No Mention of Interest in Seized Documents:**

The impugned pages do not contain any express mention of the word "interest".

Shri Nikhil Kumar Goyal, the broker, has not made any statement regarding charging or calculation of interest.

**Addition Based on Suspicion, Not Evidence:**

It is contended that the AO presumed the existence of interest income without any evidentiary basis.

The assessee argued that in the stone trade, long credit is common and usually non-interest bearing.

**Violation of Principles of Natural Justice:**

No specific show-cause notice was issued regarding the proposed addition of ₹20,34,000 as interest.

The assessee was only asked to explain unaccounted sales, which he did to the AO's satisfaction.

No opportunity for cross-examination of Shri Nikhil Goyal was provided.

**Conclusion:**

The assessee submits that the addition is based on assumption, conjecture, and without affording proper opportunity, and therefore, deserves to be deleted.

**II. CIT(A)'s Findings - Supports AO's Logical Calculation**

The Ld. CIT(A), after examining Page 8 of Exhibit-26, has upheld the AO's conclusion that:

- a) The numeric noting's are not random or ambiguous,
- b) The figures clearly reflect standard commercial interest computation:
  - a. Principal Amount (e.g., ₹6.76 lakh),
  - b. Date of Receipt (e.g., 23.1),
  - c. Number of Delay Days (e.g., 118),
  - d. Resulting Interest (e.g., ₹29,262),
- c) The total interest derived is ₹20,34,000/- after reducing earlier evident interest of ₹12,436.46.

Thus, the finding is not based on conjecture or estimation, but mathematical derivation from seized business papers.

**III. Rebuttal of Assessee's Submissions**

**1. Claim: No "Interest" Mentioned in Documents**

**Rebuttal:**

The absence of the word "interest" is immaterial when the computation unmistakably reflects an interest calculation. The AO and CIT(A) have demonstrated:

Delay period (e.g., 124 days),  
Dates and receipts matched,  
Resulting figures proportional to delay.  
Reductions done from gross to net.

These are standard markers of commercial interest accounting. The substance overrides absence of terminology.

#### 2. Claim: Broker (Nikhil Kumar Goyal) Did Not Confirm Interest

Rebuttal:

The assessee never disputed that the document was not sourced from his broker's office (Exhibit-26).

The broker was his own business representative-not a third party or adversary.

The onus was on the assessee to produce or summon him, which was never done.

Judicial Principle: A party cannot seek protection under natural justice after having slept on the opportunity - Kishanchand Chellaram v. CIT (125 ITR 713).

#### 3. Claim: Addition Without Show Cause = Violation of Natural Justice

Rebuttal:

The document was confronted during assessment.

The AO rightly noted that the sales figures were accepted, but interest was unaccounted for.

The assessment order records analysis of this exact page and working. No fresh material was introduced.

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Hence, the assessee was aware of the basis of addition and had ample opportunity to rebut it.

Further:

The statement of Shri Nikhil Goyal was already provided (not disputed),

The assessee never objected or requested cross-examination,

No affidavit, rejoinder, or explanation of the interest workings was filed.

#### 4. Claim: Entire Imports and Sales Were Explained - No Further Income

Rebuttal:

Even if principal sales are recorded, the interest received on delayed realization is separate income and must be declared. Recording of sales does not absolve the assessee from disclosing the financial income generated from trade delays.

Income earned from business operations includes both principal sales and incidental interest from credit transactions. Suppressing the latter violates Section 69A/68 principles.

#### IV. Legal Support & Presumptions Under Section 292C

Documents seized from the assessee and his linked broker (Exhibit-14 & Exhibit-26) attract presumption of truth and ownership under Section 292C.

The assessee accepted the principal sales noted in these papers.

As per law (Ajay Gupta v. CIT, Delhi HC), partial acceptance binds the assessee to the rest of the record unless specifically rebutted-which was not done.

#### II. Seized Documents Relied Upon - Admitted and Business-Linked

1. The addition is based on documents seized from:

Exhibit-14 (Page 11) - seized from the residence of the assessee, and

Exhibit-26 (Page 8) - seized from the office of Shri Nikhil Kumar Goyal, who acted as the broker of the assessee.

Both documents contain records of sales amounting to ₹2,34,78,431/-, which the assessee has accepted and recorded in his books post-search. Thus, the assessee has acknowledged that the seized documents pertain to his business.

iii. Interest Calculation is Precise, Not Estimated

The AO has identified specific entries related to delayed payments and interest, including:

Date of receipt of sale proceeds,

Number of days of delay (e.g., 124 days),

Outstanding amount, and

Calculated interest figures (e.g., 29,262 and ₹90,933).

The AO has also explained how interest of ₹12,436.46 was already evident and the remaining interest of ₹20,34,000/- was proportionately derived from the same records.

iv. The working is mathematical and business-standard, not a rough estimate. No evidence was offered by the assessee to rebut these figures.

v.. Chain of Evidence Complete - Matching Entries from Two Linked Premises

The evidentiary trail is unbroken:

The sales figures in Exhibit-14 (assessee's residence) match those in Exhibit-26 (broker's office).

The assessee has accepted and booked the sales in his records.

The interest workings are part of the same business document.

Thus, the assessee cannot selectively accept part of a document (sales) and reject the rest (interest). The seized documents form one cohesive business ledger, and the evidentiary loop is fully closed.

vi. Cross-Examination of Shri Nikhil Kumar Goyal -

The assessee's plea of being denied cross-examination is factually incorrect and legally without merit.

Shri Nikhil Kumar Goyal was not a third-party adversary, but the assessee's own broker.

His identity, address, and role were well within the knowledge and control of the assessee.

The statement of Shri Goyal was provided to the assessee by the AO. Despite this, the assessee:

Filed no objection,  
and

Never sought to produce him as a defence witness, which he could easily have done.

And one hand he is relying upon his explanation of sales othe hand denying his interest details.

Even as and additional evidence assessee never requested Hon'ble Ld.CIT(A) not before the Hon'ble BENCH.

vii. This is recorded clearly in the CIT(A)'s order:

The statement of Shri Nikhil Kumar Goyal was provided to the assessee, but no reply or objection was filed; even no request for cross-examination was made before the assessing authority."

In law:

A party cannot remain silent when the opportunity exists and later invoke principles of natural justice (Kishanchand Chellaram v. CIT. 125 ITR 713 (SC)).

When the witness is the assessee's own agent, failure to examine or produce him is fatal to any claim of prejudice.

In this case, Shri Goyal was the assessee's own business representative. If the assessee wanted to rebut the inference of interest, he should have produced or summoned him, which he deliberately chose not to do. Hence, the plea is not legally tenable.

viii. Legal Presumption Under Section 292C - Block Assessment Context

The addition was made during a search assessment/block period, and is based on documents seized under Section 132.

As per Section 292C:

The documents seized from the assessee or from premises linked to him (his broker) are presumed to belong to him and to be true.

This statutory presumption stands unless specifically rebutted, which the assessee has failed to do.

Judicial Support:

Ajay Gupta v. CIT (Delhi HC): Partial acceptance of seized record binds the assessee to the rest.

S.M. Aggarwal v. CIT (Delhi HC): Documents seized under search and later accepted form valid basis of addition unless disproven.

The assessee has accepted the sales and failed to rebut the interest. The addition is, therefore, fully valid under law.

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ix.. AO's Order Remains Factually and Legally Sound

Ple In ca or

Based on matching, admitted seized documents,

With precise calculations, and

Within the framework of block assessment provisions and Section 292C presumptions.

The Revenue strongly defends the validity of the AO's action and prays that the addition may be sustained, especially in light of the assessee's failure to rebut evidence or produce his own business witness.

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x.. Conclusion

The assessee's submissions collapse under scrutiny:

The figures are not guesses, but mathematically precise and commercially consistent.

No denial of opportunity can be alleged when the assessee chose silence despite being fully aware and equipped to respond.

The seized documents are cohesive, and acceptance of sales, but denial of interest, is impermissible.

CIT(A)'s reasoning is sound, and fully supports the AO's addition.

Prayer

It is most respectfully prayed that:

The Ground No. 4 raised by the assessee be dismissed, and

The addition of ₹20,34,000/- made by the AO as undisclosed interest income on delayed sales be upheld in full, being legally.

arithmetically, and evidentially justified.

GROUND NO. 5: Interest Charged u/s 234B & 234C - Adjustment of Seized Cash

The assessee has challenged the levy of interest under sections 234B and 234C amounting to ₹19,08,302/- and ₹40,656/- respectively, contending that the seized cash lying in the PD A/c ought to have been adjusted towards advance/self-assessment tax liability.

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CIT V. Anjum M.H. Ghaswala (252 ITR 1).

II. Revenue's Rejoinder Submission

1. No Valid Application under Section 132B(1) Proviso

The assessee has not filed any valid application within the statutory period of 30 days from the end of the month in which the asset was seized, as mandated under the proviso to Section 132B(1) (i). The so-called "request" made in the return filed under section 139 or by belated communication dated 10/01/2021 does not meet the requirement of law. The Hon'ble ITAT has in several cases

upheld that failure to make an application within the stipulated time renders the claim of advance tax adjustment unsustainable, especially when he claimed mount belongs to various family members.

### 2. Explanation 2 to Section 132B is Applicable

Explanation 2 to Section 132B, inserted by the Finance Act, 2013 w.e.f. 01.06.2013, clarifies that "existing liability" shall not include advance tax. In the present case, the search was conducted post this date. The AO, therefore, rightly declined to treat seized cash as advance tax. Judicial precedents cited by the assessee, such as CIT v. Arun Kapoor (334 ITR 351), pertain to pre-amendment law and are inapplicable to the present fact pattern.

### 3. Interest under Sections 234B and 234C is Mandatory and Automatic

It is a settled legal position that interest under Sections 234B and 234C is compensatory in nature and mandatory, as held by the Hon'ble Supreme Court in: CIT v. Anjum M.H. Ghaswala (252 ITR 1), CIT v. Bhai Himat Singh (276 ITR 527), and Prannoy Roy (309 ITR 231).

In absence of valid advance tax payment, interest is automatic and not open to waiver or discretion by the AO or appellate authorities except in prescribed circumstances, which are not satisfied in this case.

Even date of search and calculation of advance tax vis-à-vis with income is also vital. I. Legal Impact of Search on Determination of Undisclosed Income

Under Section 132(4) and Section 153A/153C, the income tax department has the authority to assess "undisclosed income" discovered during the course of a search. Once a document is found and accepted or decoded during search, it has serious legal consequences.

Undisclosed income, as per Explanation (b) to Section 271AAB, includes:

Any income represented by entries in books, documents, or assets found during the search that were not recorded in the books or not disclosed to the department before the date of search.

#### II. Timing: Why the Date of Search is Legally Significant

Date of Search = Trigger Date for treating the findings as "undisclosed."

If the assessee has not disclosed such income in their return filed before the date of search, or

Has not paid advance tax proportionately on such income before the date of search,

Then the income is treated as undisclosed, and advance tax compliance is not considered fulfilled.

This was upheld in multiple judicial decisions, e.g.:

CIT v. Mahendra C. Shah (299 ITR 305) (Gujarat HC):

Surrender during search without prior disclosure attracts legal consequences including penalty unless immunity under Sections 271AAB or 273(2)(c) is validly claimed.

### III. Advance Tax Implications - When Claimed Against Undisclosed Income

To claim benefit of advance tax against searched income, the following must be proven:

1. Income was already estimated and declared before the date of search, and
2. Advance tax was paid before the due dates under Section 211, proportionate to the income eventually offered.

If these are not satisfied, the claim of advance tax is not allowable against income treated as "undisclosed" under:

Section 68/69/69A/69B/69C, or

Search-based additions under Section 153A or Section 271AAB.

Also refer:

Section 132(4A) and Section 292C - presumption of ownership and truth of seized documents until rebutted.

### IV. Judicial View - Cannot Adjust PD Account or Advance Tax Against Undisclosed Income

If income is discovered post-search, and the assessee has not voluntarily offered or paid taxes on it before the search, then:

Advance tax paid earlier (on declared income) can't be adjusted against newly discovered income,

Claiming refund or telescoping of tax paid is not permissible unless the income was already in the computation base.

### Conclusion

Where the search date precedes any voluntary disclosure or advance tax payment, and the income is unearthed from seized materials, it will legally qualify as undisclosed income, and:

Advance tax benefits or refund claims cannot be used to offset tax liability on such income,

The burden lies on the assessee to prove that the income was already known, recorded, and taxed before the search.

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### 4. Assessee Cannot Claim Adjustment Without Express Statutory Compliance

The assessee's argument that mere noting in the ITR qualifies as a request is misconceived. Section 132B specifically provides the manner and timeline for such application. The Hon'ble Supreme Court in [CIT v. Shelly Products (261 ITR 367)] and various ITAT rulings has recognized that unless statutory preconditions

are met, discretionary benefits like early adjustment of seized assets cannot be presumed.

#### 5. Self-Assessment Tax is Not Automatically Adjustable from Seized Cash

While the assessee has tried to circumvent Explanation 2 by classifying the payment as self-assessment tax, the Revenue submits that even such classification is untenable in absence of express permission and application under Section 132B. The seized assets can be adjusted only post-assessment. The fact that AO has eventually adjusted the seized amount post-assessment does not imply that the cash could have been adjusted earlier. The Department cannot be faulted for following the legislative framework strictly.

#### 6. Equity or Conduct Cannot Override Statutory Provisions

Revenue respectfully submits that equitable pleas, however sympathetic, cannot override clear legislative provisions. The assessee's good conduct or voluntary disclosure cannot entitle him to a benefit which the law, post amendment, expressly bars. The Hon'ble ITAT in [Spaze Towers Pvt. Ltd. v. ACIT, ITA No. 3184/Del/2014] has upheld this view in post-2013 scenarios.

#### 7. Jurisdictional Validity of CIT(A)'s Order

The CIT(A) has correctly held that

No formal application for adjustment was made before the AO.

The bar under Explanation 2 is applicable.

Interest is consequential and hence, rightly levied.

Thus, the CIT(A)'s finding is legally sound and factually justified. The assessee's contention was rightly rejected as premature and not tenable in law.

#### III. Prayer

In view of the above submissions, the Revenue respectfully prays that:

The assessee's Ground No. 7 regarding deletion of interest under Sections 234B and 234C may be rejected in full.

The CIT(A)'s order in this respect may kindly be upheld, as it is in accordance with the statutory provisions and the binding legal framework applicable post-Finance Act, 2013.

Ground No. 4 and 6

"Under the facts and circumstances of the case, the Learned CIT(A) has erred in not giving clear cut finding regarding set-off of income surrendered and addition sustained by the Learned CIT(A)."

Ground No. 6

"Under the facts and circumstances of the case, the Learned CIT(A) has erred in not allowing benefit of telescoping against the income surrendered/addition sustained by the Learned CIT(A)."

I. Preliminary Objection: Inconsistent Stand by the Assessee

The assessee has challenged the additions on account of GP estimation and interest income in appeal, thereby disputing their validity. Simultaneously, he seeks the benefit of telescoping by alleging that these very income additions should be considered as the source of unexplained assets or expenditure.

This stand is legally untenable. An assessee cannot claim set-off or telescoping of income that he has not accepted. The benefit of telescoping arises only where the assessee admits the income and demonstrates clear nexus of its application toward unexplained expenditure/investments.

#### II. Legal Principle: Telescoping Is Conditional, Not Automatic

The Hon'ble Supreme Court in CIT v. Devi Prasad Vishwanath Prasad [(1969) 72 ITR 194 (SC)] authoritatively held:

"There is nothing in law which prevents the ITO in an appropriate case from taxing both the cash credit and the business income estimated after rejecting the books... It is for the assessee to prove that if the cash credit represents income, it is from a source already taxed."

Thus, where the assessee fails to prove nexus between the unexplained asset/expenditure and the income taxed, both additions can stand independently.

In the present case:

The assessee has not accepted the GP addition or interest income;

There is no evidence to show that such income was applied toward the expenditure (foreign currency, artefacts, excess stock);

Therefore, the claim of telescoping fails both in fact and in law.

#### III. Jurisdictional High Court Ruling: Rajasthan High Court in Kamal Motors

In Kamal Motors v. CIT [(2003) 131 Taxman 155 (Raj) / (2002) 258 ITR 263 (Raj)], the Hon'ble Rajasthan High Court held:

"The burden lies on the assessee to establish that the cash credits or investments were made out of the income already disclosed or taxed. In absence of such admission or linkage, the benefit of telescoping cannot be granted."

In that case too, the assessee failed to correlate the unexplained assets with the estimated income, and the Court upheld separate additions. The ratio directly applies here as the assessee's claim is also unsupported by admission or evidence.

#### IV. Jaipur ITAT Ruling: J.C. Home Tex vs. ACIT (ITA No. 1107/JP/2023, order dated 10.07.2024)

The Hon'ble ITAT Jaipur Bench rejected telescoping of alleged bogus advances against surrendered income of ₹68 lakhs, stating:

"Benefit of telescoping cannot be granted as an afterthought unless the assessee substantiates it with cogent nexus and factual clarity."

Facts in that case mirror the present one:

No cash trail or fund flow linking income to expenditure;

No acceptance of the income by the assessee;  
Telescoping denied.

Thus, the principle has already been upheld by this very Hon'ble Bench.

V. Ahmedabad ITAT Ruling: Atiresh Sales Pvt. Ltd. vs. ITO (ITA No. 1531/AHD/2023, order dated 03.12.2024)

This ruling held:

"Telescoping of unexplained cash credits against business income is no permissible when the assessee disputes the income and fails to prove nexus between income and investment."

The Tribunal upheld separate additions under Section 68, noting that telescoping is not a matter of right and requires clear identification of the source.

This supports the Revenue's position that in absence of admission or fund trail, no set-off can be granted.

VI. Gujarat HC Ruling: Principal CIT v. Aliasgar A. Varteji [(2018) 96 taxmann.com 231 (Guj)]

This judgment clarified that:

"The benefit of telescoping is discretionary, not automatic. The assessee must prove that the undisclosed income was applied toward the investment in question."

Where the income is not accepted, or the nexus is not established, no telescoping is permissible.

VII. Factual Analysis of the Present Case

Addition Type

	Amount (₹)	Nexus Proven?	
		Admission?	Revenue's Position
GP on Unaccounted Sales	59,14,164	No	No Under dispute; not telescopable

Addition Type	Amount (₹)	Nexus Proven?	Admission?	Revenue's Position
Interest income	20,34,000	No	No	Under dispute; not telescopable
Foreign currency found	8,90,370	No	No	Separate unexplained addition
Excess stock of stones	4,49,744	No	No	Separate unexplained addition
Artefact expenditure	1,84,000	No	No	Separate unexplained addition

The assessee has not proved or even claimed any one-to-one linkage between the income and the disputed outflows. In fact, he is in appeal on those very additions.

Therefore, the benefit of telescoping must be denied in law and on facts.

#### VIII. Conclusion & Prayer

In view of the above judicial pronouncements and the factual matrix:

1. Telescoping is not a matter of right. It is a relief based on demonstrated linkage and admission.
2. The assessee has failed to either accept the income or establish its deployment, which is the essential condition for telescoping.
3. The CIT(A)'s findings are well-reasoned, based on law and deserve to be upheld.

It is respectfully submitted that Grounds No. 4 and 6 of the assessee's appeal may kindly be dismissed, and the CIT(A)'s rejection of telescoping be upheld in full, in the interest of justice and equity.

Ground Number 8.

This rejoinder is respectfully submitted on behalf of the Revenue in response to Ground No. 7 raised by the assessee before this Hon'ble Tribunal challenging the addition of Rs. 4,49,744/- on account of excess stock found during the search.

#### 1. Undisclosed Stock Is Undisclosed Income Quantum Is Irrelevant

The assessee's primary argument is that the excess stock is "meagre" when compared to the total declared stock. This is factually admitted and legally immaterial.

The core issue is not the amount, but the fact that the stock found was not recorded in the books of account as on the date of search.

As held in *McDowell & Co. Ltd. v. CTO* [(1985) 154 ITR 148 (SC)], any colourable attempt to evade tax must be seen through and struck down. Income must be taxed on the basis of its true character and not camouflage.

Thus, once excess stock is found:

Its non-disclosure triggers application of Section 69.

Valuation is not disputed.

Presumption under Section 292C holds unless rebutted with cogent evidence which is missing in this case.

2. No Evidence That the Excess Stock Was 'Rough', 'Waste', or Non-Marketable

The assessee has not produced any document or affidavit to demonstrate that:

The stock in question was of inferior quality;

It was rough/waste stones;

It was non-saleable or incorrectly valued.

On the contrary, the valuation report of the registered valuer has not been challenged. This indicates clear acceptance of quality and value, nullifying any such vague explanation at the appellate stage.

Mere oral statements or post-facto reconciliation cannot override the documentary findings of a search proceeding backed by Section 132(4A) and Section 292C.

3. No Proof That the Excess Stock Was Acquired Out of Accounted Sources

The assessee has also failed to demonstrate with books, invoices, or confirmations that:

The stock was purchased from accounted income, or

It was included in regular purchase records.

This is critical because under Section 69, the burden of proof is on the assessee to:

Explain nature and source of such assets,

And to prove that the explanation is satisfactory.

As held in CIT v. Dhingra Metal Works [(2011) 196 Taxman 488 (Del)], once an asset is found and the assessee fails to offer a satisfactory explanation, the entire value is liable to be taxed, regardless of quantum or accounting claims.

4. Addition and Penalty Both Justified

The residual difference of Rs. 4,49,744/-:

Survived even after partial reconciliation accepted by the AO and CIT(A);

Represents actual physical stock found and valued;

Was not disclosed in the regular books.

Penalty proceedings under Section 271AAB(1A)(b) were rightly initiated, since the conditions search, non-recording in books, and admission in proceedings are all met.

Judicial Precedents Supporting Revenue's Position on Third-Party Seized Documents

Use of Third-Party Documents When Corroborated and Linked to Assessee

It is well established that mere entries or loose papers found in a third party's possession cannot by themselves be used to tax another assessee unless

supported by credible corroborative evidence linking those entries to that assessee. Courts have held that such seized material is otherwise a "dumb document" of no evidentiary value in isolation. For instance, in CIT v. P.V. Kalyanasundaram (Madras HC, affirmed by SC), and CIT v. Sant Lal (Delhi HC 2020), additions based on a diary seized from a third party were deleted because the diary was neither found in the assessee's premises nor in his handwriting, and the Revenue failed to produce other cogent evidence linking the entries to the assessee. By contrast, in the present scenario the corroborative link is strong: the assessee has admitted using the third party as his broker, and the broker's own statement confirms the transactions pertaining to the assessee. Where the assessee's connection to the seized documents is affirmatively demonstrated e.g. through the assessee's admission or other evidence courts have held that the documents are no longer "dumb" but become probative evidence. In short, documents seized from a third party may form a valid basis for addition if the Revenue can show a clear, corroborated nexus to the assessee, as is the case here (the assessee himself acknowledges the broker's role, lending credence to the seized records). This principle accords with the Supreme Court's observation in CIT v. M. Ganapathi Mudaliar that entries in a stranger's books are not by themselves evidence against the assessee unless the connection is established by independent evidence.

#### Adverse Inference from Failure to Cross-Examine or Produce the Broker and Inference from Assessee's Inaction Against the Broker's Allegations

Further bolstering the Revenue's position is the telling fact that the assessee never took any legal action against the broker who allegedly implicated him in unaccounted sales. If the broker's documents and statements were a complete fabrication or wrongdoing against the assessee, one would expect the assessee to at least protest or initiate action (for instance, a complaint of defamation, forgery, or breach of trust). Yet, the assessee lodged no FIR, no civil suit, nor even a legal notice against the broker. This conspicuous inaction speaks volumes. Courts do treat a party's conduct as a relevant circumstance under the Evidence Act (Section 8-conduct of any party is relevant if it influences or is influenced by the facts in issue). Silence can, in context, amount to tacit admission. Here, the broker's records squarely accuse the assessee of suppressing sales; the assessee's total lack of repudiation outside the tax proceedings suggests that he does not genuinely contest the broker's claims. In simple terms, one who is falsely accused would ordinarily fight back. The absence of any such reaction by the assessee is consistent with the broker's account being truthful. This inference dovetails with the adverse- presumption doctrine discussed above: not only did the assessee withhold evidence, he also refrained from any behaviour expected of an innocent person falsely implicated. Tribunals

have noted in similar contexts that an assessee's passivity in the face of serious allegations (especially when the means to counter those allegations were available) supports the Revenue's contention that the allegations are credible. Thus, the assessee's own conduct notably, his acquiescence by silence - further corroborates that the unaccounted sales recorded by the broker did pertain to the assessee.

#### Attribution of Code Names/Aliases in Seized Documents to the Assessee

The seized documents use certain code names (for example, "Narnoli") against various unaccounted transactions. The Revenue's case is that "Narnoli" is an alias for the assessee himself - a fact that the assessee has neither denied nor disputed at any stage. In fact the entire search is as "NARNOLI GROUP".

Assessee himself has business in the name of NARNOLI,

Assessee use this as his surname NARNOLI,

In all submission assessee has used NARNOLI Group,

Assessee address is NARNOLI Mansion,

Assessee name is Sunil NARNOLI and in paper it was written as "S. NARNOLI"

NARNOLI is neither community nor a religion so not common,

Further same name and same business and his own broker is saying that this belongs to Sunil NARNOLI, has not been rebutted by the assessee.

In tax jurisprudence, if a document clearly refers to the assessee (even indirectly or by code) and the assessee does not object or offer an innocent explanation, the document can be taken as evidence against him. In the

Sant Lal case (supra), the addition failed partly because the only identifier for the assessee was "HM" (a generic shorthand for "Health Minister")

which was too vague absent further proof. But critically, the assessee in that case contested the identification. In contrast, here "Narnoli" uniquely identifies the assessee (being widely known as his moniker or related to his name/business) and the assessee never disclaimed this. By not disputing the alias despite being fully aware of it, the assessee has effectively conceded the linkage. Legal precedent indicates that where a document found in a third party's records contains a clear reference to an assessee (such as a nickname, initials, project name, etc.), and the assessee fails to rebut the connection, the document's contents can be read as relating to the assessee. In CIT v. Anil Bhalla (Del HC) for example, a coded reference in a seized diary was held attributable to the assessee because circumstantial evidence and the assessee's own admission linked the code to him (the assessee had used that code name in communications) - the court noted that once the identity behind the code is reasonably established and not refuted, the entries bear evidentiary value against that person.

Similarly, ITAT rulings (e.g. Pradeep Runwal vs. TRO Pune Bench) stress that if a common name or alias on seized papers is shown to refer to the assessee (through admission or surrounding facts), then the onus shifts to the assessee to dissociate himself from those entries - failing which, the entries may be read as his unexplained income. In our case, the alias "Narnoli" was specifically tied to the assessee's dealings (the broker's statement presumably explains that "Narnoli" meant the assessee). The assessee's lack of denial is an implicit acceptance of this fact. Therefore, the Tribunal can legitimately treat the "Narnoli" entries in the broker's documents as pertaining to the assessee. Absent any alternate explanation from the assessee, there is no ambiguity in the attribution - unlike a scenario with a common first name or unclear initials, here the code uniquely points to the assessee and stands unchallenged. This satisfies the requirement noted in Sant Lal and other cases that there must be reasonably clear identity of the person for third-party notations to be used. By leaving the alias uncontroverted, the assessee has effectively allowed the presumption that "Narnoli = himself to go unrebutted.

Presumptions under Sections 132(4A) and 292C, and Assessee's Burden to Rebut

Indian income-tax law explicitly creates certain statutory presumptions for documents found in the course of a search. Section 132(4A) of the Income Tax Act (read with the parallel Section 292C applicable to post-search proceedings) provides that documents seized during a search are presumed to belong to the person from whose possession they were found, and further that the contents of such documents are presumed to be true as against that person, unless rebutted by evidence to the contrary. These presumptions are rebuttable, but the onus of rebuttal lies on the person against whom the document is used. In the present case, although the incriminating documents were seized from the broker (a third party), the Revenue has invoked Section 292C by convincingly demonstrating that the documents "pertain to" or "relate to" the assessee (as required for initiating proceedings under Section 153C). In effect, once the nexus is established and the documents are tendered in the assessee's proceedings, the presumption of truthfulness attaches to their contents - placing a heavy burden on the assessee to disprove them. Notably, even before the statutory presumption is formally applied, the basic facts already invite a common-law presumption against the assessee: substantial evidence indicates the seized papers reflect his unrecorded sales. Under Section 106 of the Evidence Act, the assessee was duty-bound to elucidate facts especially within his knowledge - for example, if those recorded sales were not his, whose were they? how else did the broker come to record "Narnoli" transactions? - yet he has offered no such explanation. This failure to rebut reinforces the statutory presumption. In summary, the

combined effect of Sections 132(4A)/292C and Evidence Act Section 106 is that the seized documents are presumed to be valid evidence of the assessee's unaccounted sales, and the onus was on the assessee to refute that presumption with credible evidence. He has not done so. The Tribunal may draw guidance from *Chuharmal v. CIT (SC)* which observed that the presumptions under the Evidence Act apply to tax proceedings and that possession of unexplained assets (there, luxury watches) gave rise to a presumption of ownership and income which the assessee failed to rebut the value was thus rightly added as undisclosed income. Likewise, here the presumption that the seized records are authentic and attributable to the assessee stands unrebutted. The Delhi High Court in *CIT v. Sunil Aggarwal (2015)* made it clear that once documents seized (even from a third party) are connected to the assessee, the factual contents are presumed true and the assessee must produce evidence to the contrary, failing which the addition is justified. In our case, the assessee has neither produced the broker for cross-examination, nor produced any counter-evidence (such as books or records disproving the alleged unaccounted sales). Thus, by virtue of Section 292C and the general law of evidence, the contents of the broker's seized documents - showing sales by "Narnoli outside the books are deemed to be true and attributable to the assessee. The failure of the assessee to rebut this presumption legally amounts to an admission of the facts contained in those documents.

**Broker Was Assessee's Agent - Onus to Rebut Lies on Assessee, Not Revenue**

It is respectfully submitted that Shri Nikhil Goyal was not a Revenue witness. He was the admitted broker and agent of the assessee, as acknowledged in earlier submissions and not disputed anywhere on record.

Therefore, it was not the Revenue's burden to produce or cross-examine him.

On the contrary, it was the assessee's primary obligation to bring his own broker forward, if he wished to contradict the incriminating statement or clarify the entries in the seized records.

The settled legal principle is: When a key person is under the control or influence of the assessee (as a broker, employee, or agent), the onus to produce him lies squarely on the assessee.

*CIT v. Durga Prasad More (82 ITR 540 SC)*: "Tax authorities are entitled to look into the surrounding circumstances. The burden lies on the assessee to explain the true nature of any transaction that appears suspicious."

*Aggarwal Financiers v. CIT (P&H HC)*: "Failure to produce persons within assessee's control creates a presumption that their evidence would have gone against him."

**Section 106, Indian Evidence Act:** The obligation to produce evidence of a fact which lies within a person's special knowledge lies on that person.

Here, the assessee had:

Full knowledge of Shri Goyal's identity:

Direct access to him;

Ample opportunity at all stages (assessment, CIT(A), ITAT) to call him as his own witness;

and yet made no attempt whatsoever.

The Revenue cannot be faulted for not producing the broker, especially when the broker is the assessee's own agent. The principles of fairness, logic, and law do not shift this burden onto the Department.

alleging that natural justice Therefore, any plea now by the assessee was denied due to absence of cross-examination factually hollow. is legally baseless and

PRAYER

In light of the above:

The addition of Rs. 4,49,744/- is legally sustainable.

The assessee's plea of "negligible difference" is legally untenable.

The absence of evidence to prove it was rough, inferior, or purchased from disclosed sources further supports the addition.

Therefore, the Revenue humbly prays that Ground No. 7 of the assessee's appeal be dismissed, and the order of the learned CIT(A) be upheld.

Concluding Submission on Affidavit, AR's Endorsement, and Failure to Explain Seized Entries

Without prejudice to the foregoing submissions, it is respectfully submitted that while the assessee has furnished a sworn affidavit dated 18.09.2021 owning up the seized documents and undisclosed income, he has completely failed to discharge the corresponding burden of explaining the contents of such documents, their financial implications, or the rationale behind the quantum of income offered.

Notably:

The assessee has not explained the basis of proposing Gross Profit (GP) @5%, despite the Assessing Officer applying a reasonable 10% GP rate based on past history, business profile, and seized material.

The assessee has not offered any working or rebuttal to the interest component clearly recorded on the seized documents.

The assessee has also not denied nor sought cross-examination of Shri Nikhil Goyal, despite acknowledging him as his broker, and despite unaccounted sales having been routed through him as per seized evidence.

Furthermore, the said affidavit was not an isolated or unauthorised act. It was specifically reaffirmed by a separate letter dated 15.09.2021 filed by the assessee's Authorised Representative (AR), which clearly requested that all additions relating to the group may be made in the hands of Shri Sunil Kumar

Agarwal alone. This letter demonstrates that the affidavit was not only voluntary but was made with the full knowledge, advice, and support of legal counsel.

The search took place on 29.06.2019 and assessment proceedings commenced on 01.03.2021. The affidavit and the AR's letter were submitted during the assessment proceedings, and the final orders were passed on 29.09.2021. Hence, there was ample time and opportunity for the assessee to clarify the entries, explain the nature of transactions, and provide justification-yet no such effort was made.

Accordingly, it is submitted that the affidavit must be read as a complete and conscious assumption of ownership and responsibility, both in terms of the seized documents and the undisclosed income, and having failed to explain the actual entries therein, the Assessing Officer cannot be faulted for estimating income-including GP, interest, and unaccounted sales-based on best judgment and material available on record.

The statutory presumption under Section 292C of the Income-tax Act and judicial presumption under Section 58 of the Indian Evidence Act both operate against the assessee, and he has offered no rebuttal evidence to discharge the burden now squarely upon him.

In light of the above, the Hon'ble Bench is humbly prayed to reject the present contentions raised by the assessee as afterthoughts, and to uphold the additions made by the Assessing Officer, which are rooted in seized documents, binding admissions, and complete legal endorsement by the assessee and his Authorised Representative.

Ground of Appeal no 9.

"Under the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the action of the Learned AO in treating the following amount as unaccounted sales for the year under consideration and thereafter applying 10% NP rate:

(i) Rs. 3,23,750/- (para 11.6, page no. 45 of exhibit-8)

(ii) Rs. 14,75,000/- (para 12 on the basis of papers found from Nikhil Kumar Goyal)

(iii) Rs. 4,18,58,330/- (para 13 on the basis of papers found from Nikhil Kumar Goyal)

Total Addition: Rs. 1,58,05,000

Total Tax Effect: Rs. 24,92,388"

The revenue respectfully submits as under-

I. ADDITION OF RS. 73,23,750/- (EXHIBIT-8, PAGE 45)

Assessee's Argument:

The seized document is undated and unsigned.

The author of the document is unknown.

The notings on the page are merely prospective offers and do not evidence actual sales.

Only partial sales were subsequently made, and those are already accounted for. No inquiry has been conducted by the AO to link this paper to the assessee's business.

Revenue's Rebuttal:

1. Statutory Presumption of Ownership and Authenticity: As per Section 292C of the Act, any document found during a valid search is presumed to belong to the assessee from whose premises it is found, and the contents of such document are presumed to be true unless rebutted. The assessee has not discharged this presumption.

2. Clear Nexus Between Seized Document and Actual Sales: The assessee himself admitted that the quantities and rates mentioned in the seized paper later materialized into sales. This admission establishes an undeniable nexus between the seized paper and the assessee's trading activity.

3. Contradiction in Stand: The assessee cannot approbate and reprobate. On one hand, he admits that sales happened based on the same rate/quantity; on the other, he denies the evidentiary value of the seized page. This duality renders the defence untenable.

4. Failure to Reconcile the Full Transaction: While assessee admits part of the sale (46 gm and 550 gm), he fails to account for the rest of the amounts recorded on the document. This strengthens the case for unaccounted sales.

5. No Rebuttal or Alternate Explanation Provided: The assessee has not submitted any ledger, stock statement, or affidavit explaining the nature and purpose of the document. In absence of such evidence, the AO's inference of unaccounted sales and application of GP is justified.

6. CIT(A) Justification: The CIT(A) upheld the addition, holding that the assessee failed to show any increase in expenses or reduced margin in such sales, and therefore estimation @10% was not excessive, especially considering tax evasion elements in such sales.

II. ADDITIONS OF RS. 14,75,000 AND RS. 4,18,58,330 (DOCUMENTS FROM SH. NIKHIL KUMAR GOYAL)

ADDITION OF RS. 73,23,750/- (EXHIBIT-8, PAGE 45)

Assessee's Argument:

The seized document is undated and unsigned.

The author of the document is unknown.

The notings on the page are merely prospective offers and do not evidence actual sales.

Only partial sales were subsequently made, and those are already accounted for.

No inquiry has been conducted by the AO to link this paper to the assessee's business.

Revenue's Rebuttal:

1. Statutory Presumption of Ownership and Authenticity: As per Section 292C of the Act, any document found during a valid search is presumed to belong to the assessee from whose premises it is found, and the contents of such document are presumed to be true unless rebutted. The assessee has not discharged this presumption.

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5. No Rebuttal or Alternate Explanation Provided: The assessee has not submitted any ledger, stock statement, or affidavit explaining the nature and purpose of the document. In absence of such evidence, the AO's inference of unaccounted sales and application of GP is justified.

6. CIT(A) Justification: The CIT(A) upheld the addition, holding that the assessee failed to show any increase in expenses or reduced margin in such sales, and therefore estimation @10% was not excessive, especially considering tax evasion elements in such sales.

II. ADDITIONS OF RS. 14,75,000 AND RS. 4,18,58,330 (DOCUMENTS FROM SH. NIKHIL KUMAR GOYAL)

Assessee's Argument:

The documents were found at third-party premises and are unsigned and undated.

The documents are 'dumb' papers and lack evidentiary value.

The AO arbitrarily added zeros to the numerical figures.

The name of the assessee does not appear on these papers.

No opportunity for cross-examination of Shri Nikhil Kumar Goyal was provided.

Revenue's Rebuttal:

1. Documents Found During Authorized Search: The papers were seized from Shri Nikhil Kumar Goyal, a known broker who has not been disowned by the assessee. As per Section 132(4A) and 292C, documents found from premises of

a person are presumed to be related to him unless rebutted. No affidavit or other rebuttal was filed by the assessee.

2. Admissible Evidentiary Value with Corroboration: It is settled law that unsigned documents, if corroborated by external evidence (such as statement of the broker, matching with business records, decoding logic), can be relied upon for making additions. [Ref: CIT v. P.V. Kalyanasundaram 282 ITR 259 (Mad)]

3. Statement of Broker Corroborates Revenue's Case: Shri Nikhil Goyal admitted that he facilitated cash transactions on brokerage basis and voluntarily surrendered his commission income. This corroboration lends authenticity to the documents.

4. Assessee Did Not Seek Cross-Examination During Assessment: The assessee never made a formal request under Rule 46A or Section 131 to cross-examine Shri Goyal during assessment proceedings. Courts have held that a belated claim of denial of cross-examination is an afterthought [Kanungo & Co. v. Collector of Customs, 1983 ELT 1486 (SC)].

5. No Denial of Relationship or Rebuttal Evidence: The assessee has not denied business dealings with Shri Goyal. No document has been submitted showing that the transactions or notings were unrelated.

6. AO's Decoding is Rational and Explained: The AO has applied a consistent decoding methodology based on trade practice and rounding logic common in coded notings. The assessee has not offered any alternative interpretation.

7. CIT(A) Rationale: The CIT(A) categorically observed that when documents are found from an intermediary and are corroborated by statement and tally mismatch, the burden shifts on the assessee to explain the transaction. In absence of any effort to do so, the addition is legally sustainable.

8. Jurisprudence on Third-Party Evidence: The Hon'ble Madhya Pradesh High Court in Vijay Jain v. CIT [2019] 265 Taxman 81 held that additions can be sustained solely on the basis of third-party statements if not rebutted and if they relate to the assessee's transactions.

9. Detailed Discussion on Affidavit and Goyal's Statement Already Addressed: A detailed rebuttal has been made above on the affidavit filed by the assessee, the evidentiary role of Shri Nikhil Kumar Goyal's statement, and the decoding of sales figures. These findings and rebuttals may be applied mutatis mutandis to similar arguments raised under different additions as they follow the same factual pattern, involve identical legal principles under Section 292C, and relate to the same evidentiary burden on the assessee.

### III. GP RATE @10% ON UNACCOUNTED SALES

Assessee's Argument:

GP rate of 5% is adequate and in line with bulk cash sales.

The transactions are at low margin due to competitive cash trade.

No estimation above the disclosed GP is warranted.

Revenue's Rebuttal:

1. Arbitrary Declaration of 5% GP: The assessee has failed to furnish any cost-sheet, transaction-wise margin analysis, or accounting support to justify the 5% GP rate claimed.

2. AO Relied on Group GP Benchmarking: AO referred to average GP of three related concerns of the assessee: 7.89% (K. Sunil Narnoli), 7.41% (Narnoli Emeralds), and 6.47% (DTA Jewels). Thus, average GP of 7.26% was reasonably uplifted to 10% considering tax evasion.

3. Cash Sales Typically Yield Higher GP: It is judicially accepted that cash/unaccounted sales involving tax evasion and unbilled purchases result in higher margins due to savings on GST, compliance costs, and purchases from grey market.

4. CIT(A)'s Detailed Reasoning: The CIT(A) noted that the assessee failed to show any incremental expenses, additional indirect costs, or higher discounts justifying a lower NP. Further, the assessee did not produce any party or books to counter the estimation.

5. Supporting Precedents:

Kachwala Gems v. JCIT [288 ITR 10 (SC)]: Estimation of income is permissible when books are not reliable.

CIT v. British Paints India Ltd. [188 ITR 44 (SC)]: AO duty-bound to adopt reasonable basis for estimating correct income.

Dhakeswari Cotton Mills Ltd. v. CIT [26 ITR 775 (SC)]: Fair estimation permissible even in absence of complete records.

6. Mutatis Mutandis Application of Rebuttal on Onus and Presumptions:

The arguments and rebuttals already made above in relation to the evidentiary presumptions under Section 292C and failure of the assessee to discharge onus apply equally to this issue, and may be adopted mutatis mutandis.

PRAYER

In view of the above facts, evidences, and legal submissions placed on record, the Revenue respectfully submits that:

1. Additions Based on Seized Material are Justified:

The additions made by the Ld. Assessing Officer are based on seized documents, decoded transactional records, corroborative statements of third parties (including broker Shri Nikhil Kumar Goyal), and the failure of the assessee to discharge the burden cast upon him under the statutory presumptions of Sections 132(4A) and 292C of the Income-tax Act, 1961.

The documents found are contemporaneous, specific, and transactional in nature-not rough or dumb as alleged.

2. Gross Profit Estimation is Reasonable and Legally Tenable:

The GP rate of 10% applied by the Ld. AO on unaccounted turnover is conservative and backed by judicial precedent (CIT v. Kachwala Gems, CIT v. British Paints India Ltd., CIT v. Dhakeswari Cotton Mills). In absence of books of account or proper records, best judgment assessment under Section 144 was lawfully invoked and upheld in part by the CIT(A).

3. No Violation of Natural Justice:

The assessee never sought cross-examination of Shri Nikhil Goyal at any stage-before the AO, CIT(A), or even in appeal. The assessee had complete knowledge of the documents and their implications, as evidenced by written submissions and affidavits on record. Hence, there is no breach of natural justice.

4. CIT(A)'s Findings are Balanced and Reasoned:

The Ld. CIT(A) has confirmed the most material parts of the additions and applied judicial discipline in balancing facts and law. There is no perversity, illegality, or miscarriage of justice in the order under challenge to warrant interference.

5. Mutatis Mutandis Application of Legal Findings:

As detailed discussions on affidavit, statement of Shri Nikhil Goyal, and GP estimation have already been made in preceding parts of this rejoinder, the same may kindly be read mutatis mutandis in relation to all other connected additions contested in appeal.

**General Principle - Failure to Explain Source of Surrendered Income Justifies Business-Linked Taxation**

It is a well-established legal principle that once the assessee surrenders income during a search, the onus lies of such income with credible evidence. the assessee to explain the nature and source

In the present case:

The assessee has admitted to undisclosed income, but has nowhere explained whether it originated from business activity, personal assets, or any external source.

No evidence has been furnished to trace the source, nor any alternative explanation offered before the AO, CIT(A), or this Hon'ble Tribunal.

Significantly, no other incriminating material was found during search apart from seized documents linked to business sales and interest on delayed payments.

In law, where the source of admitted or surrendered income remains unexplained, the only justifiable presumption is that it arises from existing known business activity-including unaccounted turnover or financial receipts such as interest.

**Judicial Support:**

CIT v. Devi Prasad Vishwanath Prasad (1972) 72 ITR 194 (SC):

Where no explanation is offered for cash credits, it is open to the AO to treat them as income from undisclosed sources.

CIT v. P. Mohanakala (2007) 291 ITR 278 (SC):

Mere disclosure is insufficient; the assessee must substantiate the source with evidence. Failing which, the department is justified in making an addition.

Accordingly, the Revenue respectfully submits that the surrendered income must be linked to the incriminating documents found and taxed as income from business activity, particularly interest income, as no other plausible source has been put forth and It is most respectfully prayed that in all cases where surrendered income is not linked to any independent source, and where seized materials clearly reflect concealed business activities or receipts, the Revenue is fully justified in drawing inferences based on commercial logic and treating such income as business-linked, including interest or financial earnings embedded in unaccounted transactions.

In the circumstances stated above, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to:

- Dismiss the appeal filed by the assessee in its entirety;
- Uphold the findings and partial confirmation of additions by the Ld. CIT(A); and
- Confirm the legality and validity of the additions made by the Ld. AO under the search assessment framed under Section 153A of the Income-tax Act.

Ld. DR also relied upon the following case laws:

S. No.	Issue/Head Note	Case Name & Citation	Pg No.
1	Presumption from seized documents in search	CIT v. Anil Kumar Bhatia [(2012) 24 <a href="http://taxmann.com">taxmann.com</a> 98 (Del.)]	1-4
2	Estimation of income in best judgment when books are unreliable	Dhakeshwari Cotton Mills Ltd. v. CIT [(1954) 26 ITR 775 (SC)]	5-6
3	Seized material has evidentiary value unless rebutted	Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)]	7-9
4	Telescoping denied when income not accepted or nexus not proved	CIT v. Devi Prasad Vishwanath Prasad [(1969) 72 ITR 194 (SC)]	10-11
5	Seized documents presumed true under 292C	Chuharmal v. CIT [(1988) 172 ITR 250 (SC)]	12-13
6	Addition on unaccounted sales — only GP can be taxed	CIT v. President Industries [(2002) 258 ITR 654 (Guj.)]	14-15
7	GP addition upheld on unaccounted purchases/sales	CIT v. N.K. Industries [(2016) 72 <a href="http://taxmann.com">taxmann.com</a> 289 (Guj.)]	16-17

8	Estimation permissible on unaccounted stock	CIT v. Sanjay Oilcake Industries [(2009) 316 ITR 274 (Guj.)]	18-19
9	AO's right to estimate income to reflect real profit	CIT v. British Paints India Ltd. [(1991) 188 ITR 44 (SC)]	20-22
10	Best judgment and reasonable estimation upheld	Kachwala Gems v. JCIT [(2007) 288 ITR 10 (SC)]	23-25
11	Burden of proof — Facts within special knowledge	Section 106, Indian Evidence Act	26
12	Cross-examination must be demanded timely	Kishan Chand Chellaram v. CIT [(1980) 125 ITR 713 (SC)]	27-28
13	No telescoping without clear nexus	Kamal Motors v. CIT [(2002) 258 ITR 263 (Raj.)]	29
14	Post-2013 — No advance tax adjustment from seized cash	Explanation 2 to Section 132B	30-31
15	Interest u/s 234B & 234C is mandatory	CIT v. Anjum M.H. Ghaswala [(2001) 252 ITR 1 (SC)]	32-36
16	Voluntary disclosure doesn't imply immunity from specific additions	Principal CIT v. Aliasgar A. Varteji [(2018) 96 <a href="http://taxmann.com">taxmann.com</a> 231 (Guj.)]	37
17	Entire unrecorded sales cycle off-books — GP taxable	CIT v. Dhingra Metal Works [(2011) 196 Taxman 488 (Del.)]	38-39
18	Landmark judgment on Section 153A scope	Pr. CIT v. Abhisar Buildwell Pvt. Ltd. [(2023) SC Judgment]	40-42

16. Ld. DR in addition to what has been submitted vehemently argued that for A.Y. 2015-16 the assessee filed affidavit in the Benami transaction and has not provided the documents. As is evident that original deed were found from the premises of Shri Anshul Agarwal had it be the property of the Nanda Ram Meena then the why the original paper were found from Shri Anushul Agrawal. Therefore, the reference was also made to Benami Property Unit. In the assessment proceeding the ld. AO issued a show cause notice for addition Rs. 4,20,000/- wherein it was contended the above payment was made by the assessee out of the withdrawal available

with him for the house hold. For the assessment year 2016-17 the issue involved is of the cash flow statement.

As regards the issue raised in the assessment year 2018-19 Id. DR vehemently argued that when the assessee earns @ 7.86 % how the arguments of the Id. AR be accepted for estimation of income @ 5 % and thereby she supported the estimation of income at 10 % as made by the Id. AO. As regards the addition made for house the addition made were based on the valuation made and on that aspect of the matter she relied upon the order of the Id. CIT(A). The issue raised in the A.Y. 2019-20 and 20-21 has same issue and on that aspect of the matter she relied upon the order of the Id. CIT(A).

17. In the rejoinder the Id. AR of the assessee submitted that the assessee has withdrawal of Rs. 12 lac. The property was not purchased by Anshul Agarwal. Even on merits the assessee has sufficient amount available so no addition can be made. As regards the profit 5 % has been accepted and there cannot be huge margin even the transaction found to have been alleged to have been based on the material seized from third party and therefore the profit to be estimated at 5 %.

18. We have heard the rival contentions and perused the material placed on record by both the parties and gone through the orders of the lower authorities. Since we have discussed the brief facts herein above and to avoid repetition we are not dealing with the facts of each addition here and the relevant finding of the Id. CIT(A) so as to avoid the repetition. Thus, we directly take up the issue raised in each ground raised by the assessee in this appeal i.e. ITA No. 521/JP/2025.

18.1 Vide ground no. 1 the assessee challenges the GP rate of 10% applied on unaccounted sales declared by the assessee against 5% declared by the assessee Rs. 20,35,000/- (para 11.1, page no. 17 of exhibit-14) (ii) Rs. 45,30,000/- (para 11.2, page no. 44 of exhibit -8) (iii) Rs. 5,10,380/- (para 11.3, page no. 43 of exhibit -8) (iv) Rs. 11,14,200/- (para 11.4. page no. 41 of exhibit -8).

Record reveals that while filling the return of income the assessee has already offered the profit @ 5 % on the alleged sales which has been made out of the books and therefore, Id. AO against that 5 % income offered by the assessee estimated the income @ 10 %. The assessee challenges that adhoc addition and stated that while doing so the Id. AO has not considered any comparable. The profit earned in the recorded transaction and

unrecorded transactions cannot be paired. We have in detail persuaded the arguments advanced by both the parties and dispute raised by the assessee that the documents upon which the income offered were found from the third party wherein the full name, address and cell number etc not disclosed properly. The revenue contended that during the post search enquiries the assessee was asked about the purchaser and seller parties with whom the unaccounted transactions were made. With regard to the details of persons mentioned on the documents, the assessee submitted that they are unable to provide the names & addresses of the persons to whom unaccounted sales were made or from whom unaccounted purchases were made. The reason for that all the unaccounted transactions were made by the individual brokers generally from the Mohamadden community who carries the good personally with them and the transactions were made in cash. Since the transaction is closed in one shot without any further action, the name and address of the actual buyer or seller is not known to the assessee. Record also reveals that the transactions are of high value semi-precious gems stone unfinished or semi-finished valuables. The margin on the high value items which are traded out of books has obviously have less realizable value. Therefore, on being asked about the comparable Id. AR of the assessee submitted the audited profit and loss

account of M/s. Narnoli Emeralds for the year ending on 31.03.2020 i.e. for the Assessment year under consideration wherein the turnover was for Rs. 15,29,43,944 was recorded and thereby the gross profit was reported at Rs. 87,56,927/- which comes 5.66 %. Similarly, another firm K. Sunil Narnoli wherein the sales is recorded at Rs. 36,95,61,309 and gross profit was recorded at Rs. 2,07,77,249/- which comes to 5.62 %. This aspect has already discussed at page 17 of the assessment order. The turnover reported in those firm and that of issue of sales reported in this loose paper are in isolation and not of much value. Therefore, considering the overall factum on the issue we are of the considered view that estimating the profit @ 6 % will end the justice and thereby the Id. AO tax accordingly to that percentage of the profit instead of 10 % added by him. While doing adding the estimation of profit @ 6 % the Id. AO will reduce the profit already offered by the assessee. Based on this observation ground no. 1 raised by the assessee is allowed.

18.2 Vide ground no. 2 the assessee challenges the finding of the Id. CIT(A) in confirming the action of the Learned AO treating the interest income Rs. 20,34,000/- based on rough calculation and thereby making the addition of Rs. 20,34,000/-.

Record reveals that while search proceedings page No.11 of exhibit-14 of party-1 was found and seized from the residential premises of Shri Sunil Kumar Agrawal. While post search enquiry, Shri Nikhil Kumar Goyal admitted that these slips/pages are related to cash sales which is not accounted / recorded in the regular books of accounts. He admitted that he has played the role of broker in the sale/purchase transactions recorded on these pages/slips. He also voluntarily surrendered the brokerage income earned through these cash sales transactions. Mainly sale transactions between Shri Sunil Kumar Narnoli (his concerns) & other parties are recorded on these papers/slips. The tally data was verified and these sales made by Shri Sunil Kumar Narnoli to other parties were not reflected in the books maintained by Shri Sunil Narnoli. During the search, premises of Shri Nikhil Kumar Goyal were also covered and during statements he admitted that he earns income by way of brokerage through sales/purchase of semi-precious gems stone. During the search proceedings page No.8 of exhibit-26 of party-10 was found and seized from the office premises of Nikhil Kumar Goyal (1841, Chaubiyon Ka Chowk, Banji Thokyo Ki Dharmasha Ghee Walon Ka Rasta, Jaipur). It is pertinent to mention here that during the search proceedings Shri Nikhil Kumar Goyal explained that the total of the amounts written on the page written as "234784.31" which is

suppressed by '00' or 'double zero'. He stated that the actual amount is Rs. 2,34,78,431/-. He further stated that amounts on the document are written in coded form such as 20 is written for 20 lakhs. On co-relating both the above pages, it was inferred by the Id. AO that the transaction amount of Rs. 2,34,78,431/- recorded in coded form as 234784.31 on the page seized from business premise of Shri Nikhil Kumar Goyal mentioned verbatim/exactly at Sl. No. 4 at the bottom of page No. 11 seized from the residential premises of Shri Sunil Kumar Agrawal. It implies that the pattern of recording the transactions in coded forms is exactly same in both the above incriminating pages. Further, the handwriting on both the documents appears to be of the same person. Considering the above facts, the amounts of sales recorded on page-11, the total was calculated at Rs. 16,60,61,663/-. On that issue assessee was required to show cause why the sales made of Rs. 16,60,61,663/- should not be considered as his undisclosed income for relevant assessment year (i.e. A.Y 2020-21). Further following the similar patterns of transactions, sales through Shri Arvind Jain also was found. In response, assessee filed a reply submitting that you have mentioned that the transaction in coded form is exactly same in both the documents. You have further mention that the sales recorded in those documents are not recorded. These allegations were not correct

because the number of entries are repeated entries firstly and the entries recorded in the bottom of the paper page no. 11 exhibit-14 are regarding imports made by the assessee which are duly recorded in the books of accounts of the assessee group.

Now for clarification we can assume that the same document was prepared only as planning for payment of import liabilities. Assessee explained that by way of table at Rs. 30, 31 & 32 the assessment order. So the Id. AO noted this document which is exhibit -14 page 11 is nothing but planning for collection from debtors for outward payment of import liabilities. The amount mentioned at sr.no. 16 to 21 are import bills and are verifiable from the import advice which are duly recorded in the books of accounts. Copy of all the import advice which were exactly of the same figure and date mentioned in seized papers were submitted. The Id. AO noted that the reply of the assessee has been perused and the same was acceptable to the extent that the entries on page No.8 of exhibit-26 of party-10 are repeated entries of page No. 11 of exhibit-14 of party-1 regarding import bill of value Rs. 2,34,78,431 and planning of its sale over various dates by Shri Nikhil Kumar Goyal. It was also accepted that the lower part of page no. 11 exhibit-14 of party 1 has record of various import bills of Shri Sunil Kumar Agarwal. Further assessee has claimed that these

import advice are duly recorded in books of accounts. However, on perusal of page no. 8 of exhibit 26 of party 10 shows working of interest on delayed sales. Regarding the import advice of value Rs. 2,34,78,431, the split of interest totals up to Rs. 12,34,646. Further on the lower part of the same document, this figure has been deducted from overall interest on delayed sales for Rs. 20,34,000 Thus it was held that assessee has interest income on delayed sales for Rs. 20,34,000 which was out of book income. Accordingly, the same was brought to tax by the Id. AO when the matter was carried before the Id. CIT(A) confirmed that addition because the transaction recorded were clearly verifiable but since for the interest part no submission was made by the assessee the addition was confirmed.

Before us the Id. AR of the assessee submitted that based on the page no. 8 of Exhibit party no 10 and page no. 11 of Exhibit 14 of party no. 1 the Id. AO worked out that there were unaccounted sales of ₹16,60,61,663/-. Based on these working, show cause notice was issued to the assessee asking as to why the unaccounted sales of ₹16,60,61,663/- should not be treated as his income. This fact has been mentioned by the Id. AO on page 29 of the assessment order. It is the submission of the assessee that the Id. AO had asked for the explanation regarding sales of rupees ₹16,60,61,663 and the same was replied by the

assessee to the full satisfaction of the assessing officer. After this there remained nothing for the assessee to submit any explanation. Record shows that no explanation was asked from the assessee regarding the charging of interest. Even the show cause notice issued earlier and after submission no opportunity was granted to the assessee for making his case for the proposed addition. Thus, we are of the considered view that the Id. AO has violated the principles of natural justice while making this addition merely based on the surmise and conjecture and that too without calling for the explanation of the assessee and therefore, the same is directed to be deleted. Based on these observations ground no. 2 raised by the assessee is allowed.

18.3 Vide ground no. 3 the assessee challenges addition of Rs. 29,498/- by estimating the GP @ 10% on unaccounted sales of Rs. 2,94,983/- based on seized document in exhibit -9 page no. 1 and exhibit -8. The bench noted that neither the assessment order discussed how this figure has arrived nor the Id. CIT(A) has given his finding as the income estimated is related the year under consideration.

The bench based on the submission reproduced at page 49 of the order of the Id. CIT(A) noted that two transaction dated 10.05.2018 for 2,14,160 and 80,823 dated 29.05.2018 the total of that two entry comes to Rs. 2,94,983/- and thus based on that transaction we found force in the arguments of the Id. AR of the assessee that the transaction of Rs. 2,94,983/- is not related to the year under consideration and thereby we direct the Id. AO delete the addition of Rs. 29,498/-. Based on this observation ground no. 3 raised by the assessee is allowed.

18.4 Vide ground no. 4 and 6 the assessee challenged that the Id. CIT(A) has erred in not giving clear finding as to allow the setoff of income surrendered and addition made against the expenditure incurred or investment made and thereby the benefit of the telescoping was sought by the assessee. On this issue Id. AR of the assessee as submitted in his written submission that the Id. AO made the addition of asset or investment as well as income and thereby the benefit of the assets against the income estimated is required to be given. Since the submission made by the assessee is already incorporated herein above wherein the assessee asking the addition of Rs. 15,24,114 to be adjusted against the additional income or addition of profit estimated. On this aspect of the matter Id. AR of

the assessee has relied upon the decision of our own Rajasthan High Court in the case of Commissioner of Income Tax Vs. Tyaryamal Bal Chand [ 32 Taxman 64 ]. The relevant finding of our High Court reads as under ;

7. The learned counsel for the revenue, Shri Surolia, has on the other hand, drawn our attention to the case of *Kale Khan Mohammed Hanif v. CIT* [1963] [50 ITR 1](#) , in which their Lordships of the Supreme Court have held that the onus of proving the source of sum of money found to have been received by the assessee is on him and has further held that the amount of cash credit could be assessed to tax as income from undisclosed sources in addition to the business income computed by estimate. The tax authorities were not precluded from treating the amount of credit entries as income from undisclosed sources simply because the entries appeared in the books of business whose income they had previously computed on percentage basis. In the matter of *CIT v. Devi Prasad Viswanath Prasad* [1969] [72 ITR 194](#) , it has been held by their Lordships of the Supreme Court that where there is unexplained credit, it is open to the ITO to hold that it is the income of the assessee and it is for the assessee to prove that even if the cash credit is taken as income, it is income from the source which has already been taxed.

It is clear from the law discussed above, that the ITO was within his right to tax the amount of Rs. 16,950 as income from undisclosed sources. Even though he had added the amount of Rs. 18,117 in addition to the profit shown by the respondent-firm in their account books. However, in the present case, the respondent was well within his rights to plead that this amount of Rs. 16,950 is covered from the intangible income assessed at Rs. 18,117 and added in the income of the firm and apart from this, since for the last preceding 3 years, substantial additions amounting to Rs. 32,797 have been added, the amount of Rs. 16,950 could be taken as having come out of such intangible additions. In the case of *Anantharam Veerasinghaiah & Co. (supra)*, **their Lordships of the Supreme Court have held that the additions made to the book profits in earlier years are the real income and can be treated as available for use in subsequent years or even in the same year.** In the case of *S. Nelliappan (supra)*, their Lordships of the Supreme Court have held that the Tribunal can permit the appellant to raise grounds not set forth even in the memorandum of appeal at the time of arguments and in this case, these grounds were taken even before the A AC also.

Respectfully following the binding precedent and since the judgement cited has not been differentiated we direct the Id. AO to give benefit of telescoping to the assessee.

18.5 Ground no. 5 raised by the assessee deals with the rejection of the contention of the assessee as regards the adjustment of the money lying in PD A/c against advance tax liability/self-assessment tax and charging of interest u/s 234B & 234C of the Income Tax Act 1961 for Rs. 19,08,302/- and Rs. 40,656/-which was contrary to the provisions of law where the specific request was made by the assessee in the return filed u/s 139 of the Act. The provision of section

<sup>8</sup>[**Application of seized or requisitioned assets.**<sup>19</sup>

<sup>20</sup> **132B.** (1) The assets seized under [section 132](#) or requisitioned under [section 132A](#) may be dealt with <sup>21</sup> in the following manner, namely:-

(i)	the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) <sup>22</sup> [the Interest-tax Act, 1974 (45 of 1974) and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015)], and the amount of the liability determined <sup>23</sup> on <sup>24</sup> [completion of the assessment or reassessment or recomputation] <sup>25</sup> [and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined <sup>23</sup> on completion of the assessment under Chapter XIV-B for the block period, as the case may be] (including any penalty levied <sup>23</sup> or interest payable in connection with such assessment) and in respect of which such person is in default or is <sup>26</sup> [deemed to be in default, or the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of <a href="#">section 245C</a> , may be recovered out of such assets] :
	<sup>27</sup> [ <b>Provided</b> that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained] to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion,

	if any, of the asset may be released, with the prior approval of the <sup>28</sup> [Principal Chief Commissioner or] Chief Commissioner or <sup>28</sup> [Principal Commissioner or] Commissioner, to the person from whose custody the assets were seized:
	<b>Provided further</b> that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under <a href="#">section 132</a> or for requisition under <a href="#">section 132A</a> , as the case may be, was executed;
(ii)	if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

<sup>34</sup>[*Explanation 2.*-For the removal of doubts, it is hereby declared that the “existing liability” does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.]

While deciding the appeal of the assessee Id. CIT(A) has relied upon the above explanation inserted vide Finance Act 2013. Thereby we also would like to refer to the memorandum explaining budgetary provision which reads as under ;

Application of seized assets under section 132B The existing provisions contained in section 132B of the Income-tax Act, inter alia, provide that seized assets may be adjusted against any existing liability under the Income-tax Act, Wealth-tax Act, the Expenditure-tax Act, the Gift-tax Act and the Interest-tax Act and the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable and in respect of which such person is in default or deemed to be in default. Various courts have taken a view that the term “existing liability” includes advance tax liability of the assessee, which is not in consonance with the intention of the legislature. The legislative intent behind this provision is to ensure the recovery of outstanding tax/interest/penalty and also to provide for recovery of taxes/interest/penalty,

which may arise subsequent to the assessment pursuant to search. Accordingly, it is proposed to amend the aforesaid section so as to clarify that the existing liability does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Act. This amendment will take effect from 1st June, 2013.

On conjoint reading of the above provision, we are of the view that the Id. Assessing officer has to grant the credit of the taxes the day he applies for the adjustment of the money against the liability arised in the case of the assessee. Here in this case the assessee has applied for the adjustment of the taxes on 01.10.2021 and thereby the credit be given from the day the assessee applied and not before, because the legislative intent is clear that the assessee has to clear the source and has to apply that cash seized against the tax liability. Therefore, considering the above provision of the law and the application made by the assessee dated 01.10.2021 the Id. AO is directed to give the credit based on this application as made by the assessee. In terms of this observation the ground of appeal raised by the assessee disposed off.

Reading the aforesaid provision of the Act and the intention of the legislature Considering the provision of the Act as referred above and fact that the assessee has applied for adjustment of the said tax vide his return of income the assessing officer is duty bound to apply for the adjustment of the said money in accordance with law.

18.6 Ground no. 6 raised by the assessee has already been considered vide dealing with the ground no. 4 of the assessee.

18.7 Ground no. 7 raised by the assessee is general in nature and does not require our finding.

18.8 Vide ground no. 8 the assessee challenges the addition of Rs. 4,49,744/- made by the assessing officer for excess stock. Since we have allowed the set off of the assets vide dealing with the ground no. 4 of the assessee, the investment made by the assessee for this excess stock be adjusted against the income already taxed in the year under consideration and thereby the ground no. 8 raised by assessee is disposed off with this observation.

18.9 Vide ground no. 9 the assessee challenges the finding of the lower authority while confirming the action of the Learned AO in treating the following amount as unaccounted sales for the year under consideration and thereafter applying 10% NP rate-

- (i) Rs. 73,23,750/- (para 11.6 page no. 45 of exhibit-8)
- (ii) Rs. 14,75,000/- (para 12 on the basis of papers found from Nikhil Kumar Goyal)
- (iii) Rs. 4,18,58,330/- (para 13 on the basis of papers found from Nikhil Kumar Goyal).

From the page no. 27 of the paper book filed by the revenue the bench noted the statement of Shri Nilkhil Kumar Goyal was recorded as per provision of section 131 of the Act on 25.10.2019. On careful consideration of that statement the bench noted that the contention of the revenue that the seized material found is to be considered after removing "00" and the same were written in coded form is not written. So the statement made in the assessment proceeding by the Id. AO alleged to have been base do on this statement against the evidence placed on record. Not only that the pages as referred while making the addition were confronted to Shri Nikhil Kumar Goyal then how these paper alleged to have been related to the unaccounted sale of the assessee. The bench noted from the submission made available from the paper book filed by the revenue at page 150, the reply of the assessee vide letter dated 15.09.2021 was made available. The reply is on the issue on hand which reads as under ;

In this regard it is submitted that we are unable to explain the entries recorded in above documents. As these documents are seized from third person. We have not entered into any such transaction with Shri Nikhilkumar Goyal or other person which are entered in the above documents. You are requested to provide us the details that how you have reached on this conclusion that the above figures are noted in seized documents are in coded form and two zeros are suppressed from the figures. Whether any statement was recorded and in which statement of Shri Nikhil Kumar Goyal has admitted this fact. Therefore, first you provide the copy of statement of Nikhil Kumar Goyal or any other person who accepted this fact. Thereafter, you are requested to provide us opportunity to cross examination of that person because the facts are totally wrong and assessee has not made any cash sales to Shri Nikhil Kumar Goyal.

Since, these documents were provided by the revenue in their paper book so file reveals the following non disputed facts which are as under:

1. The assessee vide reply dated 15.09.2021 asked for the statement of Shri Nikhil Kumar Goyal, relevant material and the cross examination of Shri Nikhil Kumar Goyal.
2. The assessment order has been passed on 29.09.2021.

As is evident from the record made available by revenue officer them self in their paper book the contention that two zero omitted is not found recorded in that statement submitted. Even the seized material as referred were not confronted to Shri Nikhil Kumar Goyal, forget about confronting the assessee. Not only that when the assessee shouting vide letter dated 15.09.2021 to provide material and cross examination the Id. AO while passing the order on 29.09.2021 only writes that ***“The reply of the assessee was considered and the documents pertaining to the above stand of the department were provided along with the statement of Shri Nikhil Kumar Goyal. Thereafter assessee did not furnish any reply on the issue. “***

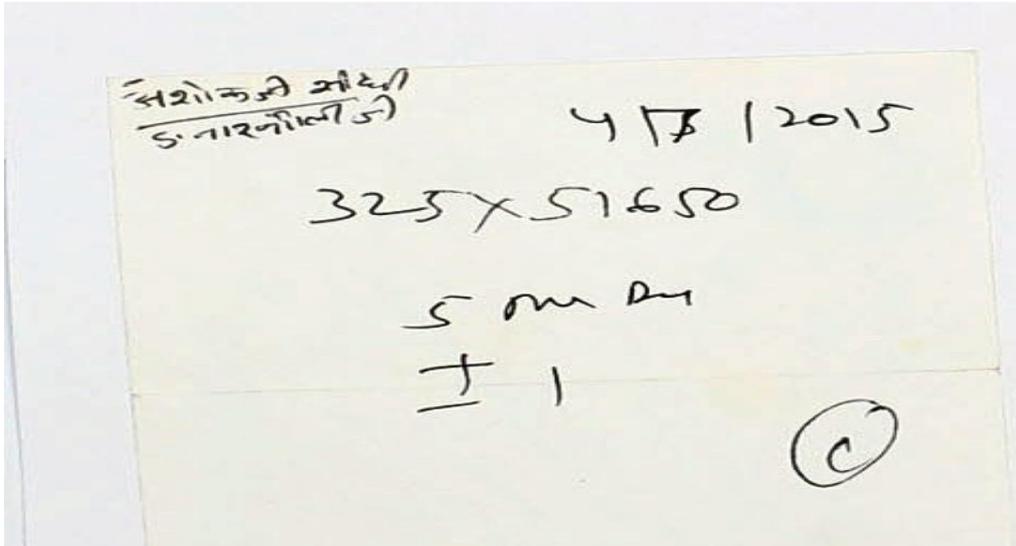
On being asked to revenue about the seized material statement of Shri Nikhil Kumar Goyal the revenue relied upon the paper book filed on 06.08.2025 duly signed by the Id. DR show that there is no evidence of

having provided the material based upon which the additions were made. The statement of the Shri Nikhil Kumar Goyal was filed which does not deal with the paper as referred by the revenue while making the addition and the contention that the two zeros were omitted were not found in that statement submitted. Even the cross examination as called for by the assessee was not provided even though the specific request was made. The statement recorded and relied upon is recorded under section 131 of the Act and not u/s. 132(4) of the Act. Thus, that statement has no binding effect. Not only that, the statement does not deal with the papers upon which the addition is made. Not only that the statement provided to the assessee and relied upon by the revenue does not deal with the two zero omission facts from the statement of Shri Nikhi Kumar Agarwal placed on record. When the assessee asked for the statement and cross examination of Shri Nikhil Kumar Agarwal only the statement was provided wherein the material based upon which the addition propose is not dealt with. All these aspects of the matter confronted by the assessee during the detailed hearing conducted on 15.04.2025 and thereafter the matter was finally heard on 06.08.2025 no efforts were made to bring a statement where Shri Nikhil Kumar was confronted to the third-party search material relied upon and confronted to the assessee. Even the material to support of the contention

of the omission of two zero were also not placed on record because the statement relied upon does not deal with that aspect. Thus, what we are having before us is the statement recorded u/s. 131 of Shri Nikhil Kumar Agarwal dated 25.10.2019 wherein total 11 questions were raised to Shri Nikhil Kumar Agarwal but there is no discussion of that paper based on upon the addition of 10 % of the alleged sales from F. Y. 2015-16, 2017-18, 2018-19 and 2019-20 were propose that summary of charts are appearing at page 25, 26 and 27 of the assessment order.

When the matter carried before the Id. CIT(A) he affirmed the contention of the Id. AO that. The detailed finding of the Id. CIT(A) on this is appearing in order for the assessment year 2016-17 wherein the Id. CIT(A) only reproduced one page based on upon which it was alleged to have sale of "325 \* 51650 = 1,67,86,250 and the 10 % of the same was added as profit on this sales. As is evident that the page upon which reliance was made was not confronted to the parties searched. No inquiry whatsoever were made even pre-post search proceeding it was in the assessment proceeding the assessee was show caused notice issued on 03.09.2021 against which the assessee filed the reply on 15.09.2021 and ultimately the assessment order was passed on 29.09.2021. Thus, this shows that the assessee was not given the proper opportunity to deal with those papers.

The paper as we see on these disputed amount was reproduced by the Id.CIT(A) in his order for A. Y. 2016-17 at page 42. The scan image is reproduced herein below :



As is evident from the above image as available on record this paper is without any head or tail not only it does not specify that the transaction as alleged to have with the assessee. Since this page is not found from the premises of the third party the revenue has to brought on record as to how and why that paper pertains to the financial affairs of the assesses. As discussed in detailed herein above even Shri Nikhil Kumar Agarwal was not confronted with those papers relied upon by the revenue and therefore we see no reason to sustain the addition made on this count in the hands of

the assessee. Based on this observation ground no. 9 raised by the assessee is allowed.

Resultantly the appeal filed by the assessee in ITA no. 521/JP/2025 for assessment year 2020-21 is partly allowed.

19. Now we take up the appeal filed by the assessee in ITA no. 520/JP/2025 for assessment year 2019-20 where in the assessee has raised the following grounds of appeal;

1. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 7,05,000/- made by the Learned AO on account of unaccounted interest on the basis of rough calculation and which has never been received by the assessee.
2. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 34,69,474/- made by the Learned AO on account of unaccounted expenditure in painting work which is duly accounted for in the books of accounts and thereby applying the section 115BBE of the IT Act 1961 and in giving unclear finding that the surrender was not in correct year.
3. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 6,92,164/- made by the Learned AO on account of unaccounted expenditure in marble fixing labour which is duly accounted for in the books of accounts and thereby applying the section 115BBE of the IT Act 1961.
4. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 66,250/- made by the Learned AO by applying GP rate of 10% on unaccounted sales of Rs. 6,62,500/-.
5. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 2,70,501/- made by the Learned AO by applying GP rate of 10% on unaccounted sales of Rs. 27,05,010/- on the basis of document seized from third party without providing opportunity of cross examination.

6. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 14,15,230/- made by the Learned AO by applying GP rate of 10% on unaccounted sales of Rs. 1,41,52,295/- on the basis of document seized from third party without providing opportunity of cross examination.

7. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 22,972/- made by the Learned AO on the basis of document seized from third party without providing opportunity of cross examination for unaccounted cash purchases.

8. Under the facts and circumstances of the case the Learned CIT(A) has erred in not allowing benefit of telescoping against the income surrendered/addition sustained by the Learned CIT(A).

9. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

20. The bench noted that the ground no. 1 raised by the assessee in this appeal is on the same set of facts as that we have considered in ground no. 2 of the assessee in ITA no. 521/JP/2025 for assessment year 2020-21 and since we have considered the submission of the parties and arguments raised before us we do not wish to reiterate the facts, arguments and finding herein again in ground no. 1 raised by the assessee and the decision taken by us while dealing with the ground no. 2 of the assessee in ITA no. 521/JP/2025 for assessment year 2020-21 shall apply mutatis mutandis to this ground no. 1 of the assessee raised in this appeal and thereby ground no. 1 raised by the assessee in this appeal is allowed.

20.1 Now coming to the ground no. 4 raised by the assessee in this appeal relates to the addition of Rs. 66,250/- made by the Learned AO and sustained by the Id. CIT(A) by applying GP rate of 10% on unaccounted sales of Rs. 6,62,500/-. Since the facts of this ground are similar to the ground no. 1 raised by the assessee in ITA no. 521/JP/2025 for assessment year 2020-21 and since we have considered the submission of the parties and arguments raised before us we do not wish to reiterate the facts, arguments and finding herein again in ground no. 4 raised by the assessee in this appeal and the decision taken by us while dealing with the ground no. 1 of the assessee in ITA no. 521/JP/2025 for assessment year 2020-21 shall apply mutatis mutandis to this ground no. 4 of the assessee raised in this appeal and thereby ground no. 4 raised by the assessee in this appeal is partly allowed.

20.2 Vide ground no. 5 6 & 7 raised by the assessee in this appeal relates to material collected at third party premises and based on the statement of Shri Nikhil Kumar Goyal and thereby estimating the profit @ 10 % on the alleged sales record from the premises of Shri Nikhil Kumar Goyal. This aspect of the matter has already been dealt by us while dealing with the ground no. 9 raised by the assessee in ITA no. 521/JP/2025 for

assessment year 2020-21 and since we have considered the submission of the parties and arguments raised before us we do not wish to reiterate the facts, arguments and finding herein again in ground no. 5, 6 & 7 raised by the assessee in this appeal and the decision taken by us while dealing with the ground no. 9 of the assessee in ITA no. 521/JP/2025 for assessment year 2020-21 shall apply mutatis mutandis to this ground no. 5, 6 & 7 of the assessee raised in this appeal and thereby ground no. 5, 6 & 7 raised by the assessee in this appeal are allowed.

20.3 Vide ground no. 8 the assessee is praying for the telescoping of the addition made of income against the expenditure or investment made and also added against that income already taxed. This issue has already been dealt with by us while dealing with the ground no. 6 in ITA no. 521/JP/2025 for assessment year 2020-21 and since we have considered the submission of the parties and arguments raised before us we do not wish to reiterate the facts, arguments and finding herein again in ground no. 8 raised by the assessee in this appeal and the decision taken by us while dealing with the ground no. 6 of the assessee in ITA no. 521/JP/2025 for assessment year 2020-21 shall apply mutatis mutandis to this ground no. 8

of the assessee raised in this appeal and thereby ground no. 8 raised by the assessee in this appeal is allowed.

20.4 Ground no. 9 raised by the assessee being general in nature and does not require our finding.

20.5 Now the left of over ground in this appeal are ground no. 2 & 3 wherein the assessee vide ground no. 2 challenges the finding of the Id. CIT(A) in confirming the addition of Rs. 34,69,474/- made by the Learned AO on account of unaccounted expenditure in painting work which is duly accounted for in the books of accounts and thereby applying the section 115BBE of the IT Act 1961 and in giving unclear finding that the surrender was not in correct year. Vide ground no. 3 the assessee challenges the addition of Rs. 6,92,164/-made by the Learned AO on account of unaccounted expenditure in marble fixing labour which is duly accounted for in the books of accounts and thereby applying the section 115BBE of the IT Act 1961.

20.5.1 The brief facts related to this dispute are that while search proceeding at the residence premises of the assessee, certain incriminating

documents were seized and inventoried as Exhibit 7 page no. 7. This page contains total of three bills amounting to Rs. 34,69,474/- out of which it has been submitted by the assessee during post search proceedings that the total of three bills is Rs. 34,69,474/- and out of this only Rs. 13,79,817/- is accounted for and the balance amount of Rs. 20,89,657/- is settled out of books. However, the seized material (page no. 112 of Ex-16, page no. 4 of Ex-15, page no. 21 and 5 of Ex-15) show that the total payment of Rs. 34,69,474/- pertained to Shri Anurag ji and Shri Krishan ji out of which Rs. 25,95,000/- was paid prior to 10.03.2019 and the balance was payable (Page no. 7 of Ex-15). Further the tally data verified during the course of post-search proceedings revealed no ledger or any voucher in the name of Shri Anurag ji or Shri Krishan ji. In view of this, the assessee was requested to show cause why an addition of Rs. 34,69,474/- may not be made on account of unaccounted expenditure on painting work incurred in the FY 2018-19. In response to the query, the assessee replied that Shri Anurag Sharma is proprietor of M/s Shri Krishna Enterprises and we have paid Rs. 13,79,817/- to M/s Krishna Enterprises and other parties for this paint and polishing work. Rs. 11,79,779/- was paid to M/s Shri Krishna Enterprises and Rs. 2,00,038/- was made to M/s Pinkcity Paints. Copy of ledger accounts of both the payments are enclosed. Therefore the

remaining amount of Rs. 20,89,657/- we have already offered for taxation in assessment year 2019-20 and 2020-21. So no further addition can be made on this account. The submission of the assessee was considered but not found fully acceptable because the assessee in the written submission has submitted that the page represents total amount paid/payable for painting related expenditure including painter charges and material. It has also been submitted that out of Rs. 34,69,474/-only Rs. 13,79,817/- is accounted and the balance amount Rs. 20,89,657/- was settled out of books. Ld. AO noted that these pages contain the rates charged by the contractor. The area mentioned in page no. 112 of exhibit 16 with respect to each type of paint is multiplied by respective rates and the total charges has been worked out to Rs. 32,02, 867/-. This shows that page no. 112 is determination of area on which painting work has been done and page no. 4 is corresponding bill raised by the painter. Both the pages contain an entry titled as bill no. III. Considering all above, it can be summed up that the payment of Rs. 34,69,474/-was payable to Shri Anuraj Ji and Shri Kishan Ji out of which Rs. 25,95,000/- was paid prior to 10/03/2019 and the balance amount of Rs. 8,74,474/- was shown due as mentioned on page no. 7 of the exhibit 15. At the same time the tally data of the assessee was verified and it was noticed that there is no ledger in the name of either Shri

Anurag ji or Kishan ji. A letter u/s 133(6) of the Act was written to M/s. Krishna Enterprises at the address given in the bill provided by the assessee. But it has returned un-served. Therefore the claim of the assessee has remained unverified with. No sales tax/VAT/GST etc. is appearing in the bills of M/s. Krishna Enterprises. The payments are in neat round figures. Further mere payment through bank is not sacrosanct nor can it make a non-genuine transaction genuine. Thus it is held that entire settlement towards these contractors was made out of books. In view of this an amount of Rs.34,69,474/- was held to be undisclosed expenditure on painting work and the same is added to the income of the assessee considering the same as undisclosed investment u/s 69B of the Act for AY 2019-20.

As regards the second addition of Rs. 6,92,164/- the brief facts are that while search Annexure AS Exhibit 11 of Party 2 from Old residential house at address 3, Sethani ka Bagh, MD Road, Jaipur of Shri Sunil Kumar Agarwal. The verification of loose papers revealed that page no. 40 to 51 are details of 1<sup>st</sup> bill raised for polish work etc. and page no. 51 of inventorised papers is the first page of running bill number I. This bill continues till page no 40 of the inventorised paper. This entire bunch includes 23 pages of the 'Shree Register'. The page no. 23 of the 'Shree

Register i.e. back side of the page no. 40 of inventorised papers contain the total of all the pages which works out to Rs. 10,70,172/-. Similarly, page no. 84 to 58 are details of 2nd bill raised for polish work etc. and page no. 84 of inventorised papers is the first page of running bill number II. This bill continues till page no 57 of the inventorised paper. This entire bunch includes 53 pages of the 'shree register'. The page no. 53 of the 'shree register' i.e. page no. 58 of inventorised papers contain the total of all the pages which works out to Rs. 17,86,020/-. This page also contain the total of 2nd bill (Rs. 1786020) and 1st bill (1070172) which works out to Rs. 28,56,192/-. Similarly, page no. 90 to 86 are details of 3rd bill raised for polish work etc. and page no. 89 of inventorised papers is the first page of running bill number III. This bill continues till page no 86 of the inventorised paper. This entire bunch includes 7 pages of the classmate register. The page no. 7 of the classmate register i.e. page no. 86 (backside) of inventoried papers contain the total of all the pages which works out to Rs. 1,91,260/-. This page also contain the total of 3rd bill (Rs. 1,91,260) and 1st bill and IInd bill (28,56,192) which works out to Rs. 30,47,452/-. It is also noted here that out of Rs. 30,47,452/-, Rs. 23,00,000/- has been received by the contractor and Rs. 7,47,452/- has been shown as balance. The tally data was verified on test check basis wherein no such entries were found

recorded. During the search as well as post search enquiries, assessee did not give any explanation with regard to these papers. During the course of assessment proceedings, assessee was required to show cause why an addition of Rs. 3047457/- [Rs. 10,70,172/- for FY 2017-18, Rs. 19,77,280/- for FY 2018-19] may not be made on account of unaccounted expenditure for respective assessment years. In response to the query, the assessee vide his submission dated 15.09.2021 replied as under: "In this regard it is submitted that we have filed detailed explanation during post search enquiries and explained that this was a composite contract given to team of labors. Thus the marble polish and fixing work was done by a team of labours. The payment was made to various team members. The details of which are as under :-

1. VIMALKUMAWAT	275000
2. RAJENDRAJANGID	325000
3. KSHAMAJANGID	250000
4. VISHNU JANGID	50000
5. DEENDAYALKUMAWAT	650000
6. HARSAHAI	50000
7. BHARAT SINGH	25000
8. LOKESH	25000
9. DAILY WAGES	112336
Total	1762336

All the above payments were made by crossed account payee cheques and against marble fixing and polishing labour. Copy of ledger accounts of payments along with bills of sub-contractors are-enclosed-herewith.

Therefore, the amount offered by the assessee for Rs. 1285116/- is correct figure for taxation in assessment year 2019-20 which also have been offered for taxation in the return filed in response of notice u/s 153A of the Income Tax Act, 1961. The submission of the assessee is considered but not found acceptable because on verification of the tally data no such entries were found to be recorded which could establish that the assessee had in actual made payment to these parties. Further, Assessee's claim these payments were made for marble polish and fixing work was not found verifiable. Summons u/s 131 served to the three parties, namely, Rajendra Jangid, Kshama Jangid and Vishnu Jangid remained un-complied with. Summons u/s 131 issued to Harsahai was received back un-served. Shri Bharat Singh and Shri Deen Dayal Kumawat attended but as per their admission they did different work than polishing etc. claimed by the assessee. Shri Vimal Kumawat did not attend in person. His father attended but did not file any supporting documents to substantiate the claim. Shri Vimal Kumar Kumawat is a B. Com. graduate, bank employee with Bank of Baroda, posted in Gujarat. His father claimed that in the period under consideration he arranged labor for the assessee. But the amount he claims to have received is one lakh or so and not supported by any bank statement. Thus the contention of the assessee has remained unverified.

Accordingly, it is held that assessee incurred out of books expenditure of Rs. 30,47,452/- in total, out of which Rs. 19,77,280/- has been incurred during the year under consideration. However, as assessee has already declared Rs. 12,85,116 for taxation in the return filed in response to notice u/s 153A, therefore, an amount of Rs. 6,92,164 (Rs. 19,77,280/- minus Rs. 12,85,116) was added to the income of the assessee considering the same as undisclosed investment u/s 69B of the Act for relevant assessment year.

20.5.2 The addition so made were challenged before the Id. CIT(A) who has confirmed both the addition by observing as under :

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

On the issue the following year wise additions have been done in the assessment orders.

	A.Y 16-17	AY 18-19	AY 19-20	AY 20-21	Total
Unaccounted expenditure on painting	0	0	34,69,474	0	34,69,474

During search action, certain incriminating documents containing details of three bills amounting to Rs.34,69,474/- were found and appellant submitted that out of this, Rs. 13,79,817/- is accounted for and the balance amount of Rs.20,89,657/- were settled out of books.

However, on perusal of seized material, it revealed that total payment of Rs.34,69,474/- pertained to ShriAnuragJi and ShriKrishanJi out of which Rs.25,95,000/- was paid prior to 10.03.2019 and the balance was payable. During post search proceedings, tally data was verified and the same did not reveal any ledger or any voucher in the name of ShriAnuragJi or ShriKrishanJi.

During assessment proceedings, assessee submitted that seized material show that the total payment of Rs.34,69,474/- pertained to ShriAnuragJi and ShriKishanJi out of which Rs.25,95,000/- was paid prior to 10.03.2019 and the balance was payable. ShriAnurag Sharma is proprietor of M/s Shri Krishna Enterprises and he has paid Rs. 13,79,817/- to M/s Krishna Enterprises and other parties for this paint and polishing work. Rs.11,79,779/- was paid to M/s Shri Krishna Enterprises and Rs.2,00,038/- was made to M/s Pinkcity Paints. Remaining amount of Rs.20,89,657/- have been offered for taxation in A.Y. 2019-20 and 2020-21.

As noted by the Id. AO, however, on analysis of seized pages, it was found that payment of Rs.34,69,474/- was payable to ShriAnurajJiand ShriKishanJi out of which Rs.25,95,000/- was paid prior to 10.03.2019 and the balance amount of Rs.8,74,474/- was shown due as mentioned on page no.7 of exhibit 15. At the same time the tally data of the assessee was verified and it was noticed that there is no ledger in the name of either ShriAnuragJi or KishanJi. A letter u/s 133(6) of the Act was written to M/s Krishna Enterprises at the address given in the bill provided by the assessee. But it was returned un-served. Therefore the claim of the assessee has remained unverified with. Further, no sales tax/VAT/GST etc. was appearing in the bills of M/s Krishna Enterprises and the payments were in neat round figures. The Id. AO further held that mere payment through bank is not sacrosanct nor can it make a non-genuine transaction genuine. In view of this, Id. AO held that entire settlement towards these contractors was made out of books. Accordingly, the amount Rs.34,69,474/- was held as undisclosed expenditure on painting work and the same was added to the total income of the appellant u/s 69B of the Act for AY 2019-20.

During appellate proceedings, the appellant contended that page no.7 of Exhibit 15 contained details of total expenditure of Rs.34,69,474/- and payment of Rs.25,95,000/- and showing amount of Rs.8,74,474/- does not contain the name of Kishanji and Anuragji. The appellant further contended that Id. AO was wrong in stating in Para 8 on page 3 of assessment order that Page No.112 of Exhibit 16 and Page No.4 of Exhibit 15 and Page No.5 of Exhibit 15 show the name of Anuragji and Kishanji. Name of "Kishanji" and "Anuragji" is not available on these papers. The name of Kishanji and Anuragji is available only on Page No.21 of Exhibit 15, which is only in respect of Bill No.2 of Rs. 1,36,097/-.

However, the contention of the appellant is not acceptable for the reason that as mentioned in assessment order page no.21 contains an entry on left hand side as bill No. II and the name of contractor is mentioned as ShriKishanJi and AnuragJi. Further page no.5 contain the rates charged by the contractor. The area mentioned in page no.21 with respect to each type of paint is multiplied by

respective rates and the total charges has been worked out to Rs.1,36,097/-. This shows that page no.21 is determination of area on which painting work has been done and page corresponding bill raised by the painter (as noted by the Id. AO).

Even though in the assessment order there is reference to 5 pages from the search and seizure action whereas the appellant in the appeal submissions have only provided 4 pages and has not provided the 5th page.

Similarly, page 112 of Exhibit 16 contains an entry on the left hand side as bill No.-III. The name of contractor is mentioned as ShriKishanJi and AnuragJi. Page No.4 of Exhibit-15 contains rate charged by the contractor. The area mentioned in page no.112 of Exhibit-16 with respect to each type of paint is multiplied by respective rates and the total charges has been worked out to Rs.32,02,867/-.

In view of it is noticed that these pages are connected to each other and can't be taken individually. Page No. 112 contains the name of contractor Sh. Anuragji and Sh. Kishanlalji and the calculation on remaining pages are based on this page. Therefore, the findings of the Id. AO is correct.

Further, the appellant contention that rough paper normally contain a name for reference only which otherwise may belong to a firm and in this case, Kishanji was a reference to M/s Krishna Enterprises and name of ShriAnurag was with reference to Pink City paints. This contention of appellant is also not acceptable as it is specifically mentioned in assessment order that a letter u/s 133(6) of the I.T. Act, 1961 was written the said firm i.e. M/s Krishna Enterprises at the address given in the bill provided by the assessee. But the same was returned un-served. There was no sales tax/VAT/GST etc appearing in the bills of M/s Krishna Enterprises. Therefore, the claim of the appellant was not verified. In view of above, the appellant contention is not acceptable.

The sum and substance of the facts placed on record in the assessment order and the submissions of the appellant is that the appellant has accepted that total expenditure of Rs. 34,69,474 was done in this regard. In view of this the contentions of the appellant regarding the contents of the papers are dismissed on this ground also. The appellant has claimed that Rs.11,79,779/- was paid to M/s Shri Krishna Enterprises and Rs.2,00,038/- was made to M/s Pinkcity Paints and remaining amount of Rs.20,89,657/- have been offered for taxation A.Y. 2019-20 and 2020-21. In the assessment order there is no finding or observation to the effect that expenditure of Rs. 34,69,474 is different and separate from Rs.20,89,657/-surrendered by the appellant. As there is no dispute the addition is liable to be deleted to this extent. Thus the dispute remains with respect to the amount of Rs. 13,79,817 (Rs.11,79,779 and Rs.2,00,038). The appellant has not been able to show that this amount was actually paid for the purposes for which it has been claimed to have been paid. Similarly the appellant has not been able to

show that this amount was paid to the parties to which it has been claimed to have been paid. The learned AO carried out the enquiry during the assessment proceedings and the notices under section 133(6) of the Act were issued vide which the notices were received back unserved. Accordingly it cannot be said that the appellant has made payment of Rs. 13,79,817 out of his bank account to the alleged parties for the claim the purpose and thus the surrendered by the appellant does not cover the entire amount of the impugned expenditure and thus the addition is sustained hereby to the extent of Rs. 13,79,817. The unaccounted unexplained cash expenditure is alternatively taxable under section 69C of the Act. However the full surrender (Rs. 20,89,657) has not been done in the correct year. The income surrendered by the appellant in AY 2020-21 is also liable to be taxed in the AY 2019-20 only. The complete details and documents of the surrender have not filed by the appellant in appeal. Thus the relief is allowed to the appellant only to the extent the income has been surrendered in the AY 2019-20 specifically and clearly on this account.

Accordingly this ground of appeal is hereby partly allowed.

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

On the issue, the following year wise additions have been done in the assessment orders in this regard:-

	A.Y 16-17	AY 18-19	AY 19-20	AY 20-21	Total
Unaccounted expenditure on (i) furniture & fixture polishing and (ii) marble polishing and	0	1070172	692164	0	1762336

As per the facts noted in the assessment order are that a search and seizure action was carried out in the case of Narnoli Group on 28.06.2019 of which the appellant is one of the member. During search proceedings certain incriminating documents related to unexplained investment in construction of house i.e. painting, polishing, carpentry etc. were found and seized.

As noted by Ld. AO during the course of search action, certain loose papers (page 1 to 94) were seized and inventoried as Annexure -AS Exhibit-11. On

verification same were found to be related to bill of Polish work. The details of which are as under:-

1. Page 40 to 51:- These pages are related to 1st bill raised for polish work etc and page No.51 is the first page of running bill No.I. The page No.23 of 'Shree Register' i.e. backside of Page No.40 of inventoried paper contained total of all pages which worked out to Rs. 10,70,172/-.

2. Page 84 to 58:- These are details of 2nd bill raised for polish work etc. The pg No.58 contain total of all pages which worked out to Rs. 17,86,020/-. This page also contain the total of 2nd bill (Rs.1786020) and 1st bill (1070172) which worked out to Rs.28,56,192/-.

3. Page No. 90 to 86: These are detail of 3rd bill raised for polish work etc and page No.7 of the classmate register i.e. Page No.86(backside) of inventoried papers contain total of all the pages which worked out to Rs. 191260/-. This page also contain total of 3rd bill (Rs.1,91,260) and 1st bill and IInd bill (28,56,192) which worked out to Rs.30,47,452/-. It was noticed that out of Rs.30,47,452/-, Rs.23,00,000/- has been received by the contractor and Rs.7,47,452/- was shown as balance. Woo

As noted by Ld. AO during search proceedings, appellant did not give any explanation regarding these papers.

During assessment proceedings assessee claimed to be same as composite contract given to team of labors. Thus the marble polish and fixing work were claimed to be done by a team of labours. The assessee furnished payment details and claimed the same to be paid by cheque and against marble fixing and polishing labour. The assessee further submitted that Rs. 12,85,116/- is correct figure and same has been offered for taxation in A.Y. 2019-20. Whereas as per seized papers the Id. AO worked out the total payment at Rs.30,47,452.

However, as noted by the Id. AO, on verification of the tally data no such entries were found to be recorded which could establish that the assessee had in actual made payment to these parties. Further, to verify the contention of assessee, Id. AO made enquiry from these labours and summons issued to three parties, namely Rajendra Jangid, Kshama Jangid and Vishnu Jangid remained un-complied with. Summons issued to Harsahai was received back un-served. Sh. Bharat Singh and Shri Dayal Kumawat attended but as per their admission they did different work polishing etc. claimed by the assessee. Likewise, Sh. Vimal Kumawat did attended in person but his father attended who failed to substantiate the claim w supporting documents. Thus, the contention of the assessee could not be verified.

In view of above, it was concluded by the Id. AO that assessee has incurred out of book expenditure of Rs.30.47.452/-, Accordingly, income of Rs.30,47,4521- was taxed for different assessment year as under:-

Description	A.Y	Income offered	Addition made
Undisclosed investment u/s 69B	2018-19	-	10,70,172
-DO-	2019-20	12,85,116	6,92,164

During the course of appellate proceedings, the appellant submitted that out of tot expenditure of Rs.30,47,452/-, he has accounted for expenditure of Rs. 17,62,336 The appellant submitted the details of payment made to various parties Rs. 17,62,336/-.

The appellant has furnished ledger of following parties:-

1. Shri Vimal Kumar Kumawat,

As per ledger, the appellant has paid Rs.2,75,000/- to Shri Vimal Kuma Kumawat (Rs. 175000+Rs.100000)

1. Shri Rajendra Kumar Jangid,

As per ledger, the appellant has paid Rs.3,25,000/- to Shri Rajendra Kuma Jangid (Rs.175000+Rs.150000)

1. Kshma Jangid,

As per ledger, the appellant has paid Rs.2,50,000/- to Kshma Jangid

1. Shri Vishnu Kumar Jangid,

As per ledger, the appellant has paid Rs.50,000/-

1. Shri Deendayal Kumawat,

As per ledger, appellant has paid Rs.6,50,000/- to Shri Deendayal Kumawat (Rs.400000+Rs.250000)

1. Shri Harsahay Meena,

As per ledger, the appellant has paid Rs.50,000/- to Harsahay Meena

1. Sh. Bharatlal Jatav,

As per ledger, the appellant has paid Rs.25,000/- to Sh. Bharatlal Jatav

1. Sh. Lokesh Kumar,

As per ledger, the appellant has paid Rs.25,000/- to Sh. Lokesh Kumar

1. Ledger of payment made to labourers directly of Rs. 1,16,336/-

The appellant has contended that seized papers are rough and dumb papers. However, on perusal of these pages, it is found that page No.23, Page No. 58 and backside of page No.86 are all linked together page no.58 contains the total of page no.23 and page no.86 is third bill and total of 1st, 2nd and 3rd bill and detail of payment made against this. Further, the accompanying pages, it was found to be raised for polish work etc. There are several other pages found during search which was related to carpentry, polish and paint work. The appellant was constructing his house and there were expense incurred in related to this. Even the appellant has accepted that out of books payments have been done and surrendered has been done by the appellant in this regard and the benefit of the same has been given to the appellant by deducting the surrendered amount from the total unaccounted expenditure

made by the appellant. Thus, these pages can't be said to be dumb and rough estimate in these circumstances.

The appellant has further contended that expenditure related to AY 2017-18 and 2018-19 stood already accounted for in the books of assessee and before accepting the version of parties to whom summons sent, opportunity to cross examine these persons should have been allowed. Therefore, the action of the Id. AO is not in order.

However, on perusal of assessment order, it is noticed that appellant had not requested for cross examination.

Therefore, the contention of the appellant the opportunity for cross examination at this stage is not acceptable.

Further the legal aspects of cross examination have also been discussed in adjudication of issue pertaining to sales made by the appellant through Shri Goyal. The same discussion is referred to and not repeated here for the sake of brevity.

Further, as regards appellant contention that all the expense was accounted, the same was examined in detail by the Id. AO during assessment proceedings. During investigation carried out by the Id. AO, some of the parties did not attend, in some cases summons returned un-served. In those cases, where compliance was made, they could not substantiate their claim with supporting evidence. Even the appellant could have furnished valid confirmation of these parties and could have produced these parties but did not do the same. The primary onus is on the appellant.

Therefore, in view of the above facts, the contention of the appellant is not acceptable and it is held that Id. AO was justified in making the impugned addition.

Accordingly this ground of appeal is hereby dismissed.

20.5.3 Since on both the issues, assessee did not find any favour from the Id. CIT(A). The assessee challenged those two additions before this tribunal. Apropos to this ground the Id. AR of the assessee has filed a detailed written submission which reads as under :

Ground No.2

Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 34,69,474/- made by the Learned Assessing Officer on account of unaccounted expenditure in painting work which is duly accounted for in the books of accounts and thereby applying Section 115 BBE of the IT Act, 1961 and in giving unclear finding that the surrender was not in correct year.

On the basis of loose papers found during the course of search, the Learned Assessing Officer made addition of Rs. 34,69,474/- on account of labour charges of whitewashing etc. It was the case of the assessee that the total expenditure has been accounted for in the books of the assessee and payments have been made as under :-

Rs.11,79,779/- to Krishna Enterprises

Rs. 2,00,038/- to Pink City Paints

Rs.20,89,657/- surrendered in A.Y. 2020-21.

Rs.34,69,474/-

The Learned CIT(A) has granted relief to the extent of Rs 20,89,657/- surrendered by the assessee in A.Y. 2020-21 and balance amount of Rs. 13,79,817/- has been sustained. The payments made to Krishna Enterprises and Pink City Paints have not been accepted on the ground that these papers contained name of Shri Kishanji and Sh. Anuragji and not name of these parties. The plea of the assessee that Shri Kishanji and Shri Anuragji represented the aforesaid firms was not accepted. Dition has been sustained by the Learned CIT(A) without any basis. The same deserves to be deleted. The submission made before the Learned CIT(A) are quoted below :-

*"The Id. AO has made addition of Rs. 34,69,474/- on the basis of seized papers Page No. 7, 2 & 5 of Exhibit AS-15, which contained the details of labour charges paid for paint, white-washing etc. The page No. 7 is scanned below, which discloses that the total work done was for Rs. 34,69,474/-, against which payment of Rs.25,95,000/- was made and balance Rs. 874474/- was due even on 10/03/2019, which is the date of page No. 7.*

*The assessee submitted that against expenditure of Rs. 34,69,474/-, amount of Rs.13,79,817/- stood accounted for in the books of account as payment of Rs.11,79,779/- to M/s Krishna Enterprises and Rs.2,00,038/- was paid to M/s Pink City Paints, both totaling to Rs.13,79,817/-. Balance amount of Rs.20,89,657/- (Rs.3469474 – 1379817) was surrendered as income for A.Y. 2020-21. In support of the submission, copy of ledger account of M/s Krishna Enterprises and M/s Pink City Paints are available on Paper Book Page No 6 & 7. Copy of computation of income for AY 2020-21 disclosing surrender of Rs.20,89,657/- is available on Paper Book Page No. 8 to 14.*

*However, the Id. AO summararily rejected the submission of the assessee and made addition of Rs.,.34,69,474/-. The main ground of addition made by the Id.AO is that these seized papers were pertaining to Shri Kishanji and Anuragji*

*whereas in the books of account of the assessee, there were no such accounts. In other words, the Id.AO did not recognize the payment made to M/s Krishna Enterprises of Rs.11,79,779/- and to M/s Pink City Paints of Rs.2,00,038/- as payments made for paint work done by Kishanji and Anuragji. The ground taken by the Id. AO is very shaky. It is submitted that page No. 7 of Exhibit 15 scanned below which contains details of total expenditure of Rs.34,69,474/- and payment of Rs.25,95,000/- and showing outstanding amount of Rs.8,74,474/- does not contain the name of Kishanji and Anuragji. The Id. AO is also wrong in stating in Para 8 on Page 3 of the assessment order that Page No. 112 of Exhibit 16 and Page No.4 of Exhibit 15 and Page No. 5 of Exhibit 15 show the name of Anuragji and Kishanji. All these papers, i.e. Page No. 112 of Exhibit 16, Page No. 7 of Exhibit AS-15, Page No. 4 & 5 of Exhibit 15 are scanned below and these do not display the name of "Kishanji and Anuragji".*



<u>Bill Summary</u>	
Bill No. 1	32,02,867/-
Bill No. 2	1,36,097/-
Bill No. 3	1,30,510/-
	<hr/>
	34,69,474/-
Amount Deduction	25,95,000/-
	<hr/>
Due Amount	<u>8,74,474/-</u>

Bill No. - III

DATE: 10/3/19

PAGE NO.:

4

1. Distemper -  $7411.87 \times 8 = 59294/-$
2. Plastic Paint -  $9888.24 \times 15 = 148323/-$
3. Royal Paint -  $21551.71 \times 22 = 473037/-$
4. Satin Paint -  $12237.90 \times 30 = 367137/-$
5. Birla Putty with Ace -  $17884.48 \times 12 = 214613/-$
6. Melamine Polish -  $12491.75 \times 85 = 1061798/-$
7. Spirit Polish -  $4924.48 \times 40 = 196979/-$
8. Enamel Paint -  $3799.9 \times 10 = 37999/-$
9. Polycote -  $442.57 \times 400 = 176948/-$
10. Birla Putty on Shadu -  $2932.71 \times 12 = 35192/-$
11. Birla Putty with Trowel -  $4026.72 \times 37 = 148990/-$
12. Roller Texture -  $3521.90 \times 9.50 = 34028/-$
13. PU Polish -  $694.52 \times 170 = 118075/-$
14. Metallic Paint -  $772.74 \times 45 = 34773/-$
15. Duco PU -  $102.18 \times 185 = 18903/-$
16. Main Gate Paint -  $830.61 \times 40 = 33224/-$
17. Satin Paint with Remove -  $1451.22 = 43554/-$

3202867/-

⑤

DATE 10/3/19  
PAGE NO.

Re paints and polish work!

1.	Royal paint	-	3193.92 x 16 =	51102/-
2.	Plastic paint	-	762.12 x 12 =	9145/-
3.	Distemper	-	340.5 x 8 =	2724/-
4.	melamine with remove		327.75 x 95 =	31,136/-
5.	melamine polish	-	114.18 x 85 =	9705/-
6.	Satin paint	-	475.52 x 30 =	14265/-
7.	Enamel paint	-	184.99 x 10 =	1849/-
8.	Ace	-	375 x 8 =	3000/-
9.	melamine pu	-	20 x 170 =	3400/-
10.	Trocial paint	-	390.87 x 25 =	9771/-
				1,36,097/-

*In view of the aforesaid four pages scanned above, it is clear that the name of "Kishanji" and "Anuragji" is not available on these papers. These papers are vital and additions have been made on the basis of these papers only. The name of Kishanji and Anurgaji is available only on Page No. 21 of Exhibit 15, which is only in respect of Bill No. 2 of Rs.1,36,097/-. In these circumstances, the Id. Ao was not justified in rejecting the submission of the assessee on the ground that the payments were not made to Kishanji and Anuragji. The assessee considers it relevant to submit that the rough papers normally contain a name for reference only which otherwise may belong to a firm. In this case also, Kishanji was a reference to M/s Krishna Enterprises and name of Shri Anurag was with reference to Pink City Paints. The Id. AO did not cause any inquiries and rejected the submission of the assessee on flimsy grounds. It gives an impression that the Id. AO was rushing through the assessment order and made the addition in haste, which deserves to be deleted."*

In view of the aforesaid submission, the Learned CIT(A) was not justified in dismissing this ground of appeal. The Hon'ble ITAT is humbly requested to delete the addition.

### Ground No.3

Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs.6,92,164/- made by the Learned Assessing Officer on account of unaccounted expenditure in marble fixing labour which is duly accounted for in the books of accounts and thereby applying Section 115 BBE of the IT Act, 1961.

The addition is totally based on loose papers found during search. The loose papers are undated, unsigned and have no narration. Addition has been made on the basis of these loose papers in A.Y. 2018-19 also. The assessee's submission was that out of total expenditure of Rs. 30,47,452/-, the assessee had accounted for expenses to the extent of Rs. 17,62,336/- in A.Y. 2017-18 and 2018-19 and balance amount of Rs. 12,85,116/- was surrendered in A.Y. 2019-20. Thus, the total expenditure was fully explained. The Learned Assessing Officer firstly rejected the explanation on the ground that labour, Sh. Rajendra Jangid and Vishnu Jangid did not turn up for purposes of verification. The Learned Assessing Officer also suspected that the expenditure accounted in the books of account was not in respect of these papers. Further, the Learned Assessing Officer bifurcated the amount on his own as the papers did not contain any date. The Learned Assessing Officer held that out of total expenditure of Rs. 30,47,452/-, amount of Rs. 19,77,280/- pertained to A.Y. 2019-20. The Learned Assessing Officer has not

mentioned any ground for this working. However, after giving credit of amount surrendered of Rs. 12,85,116/- in A.Y. 2019-20, the balance amount of Rs 6,92,164/- has been added as income of the assessee. The action of the Learned Assessing Officer was vehemently argued and challenged before the Learned CIT(A), but the plea of the assessee was dismissed by the Learned CIT(A) as he did not appreciate the submissions of the assessee. It is submitted that the addition was based purely on guess work of the Learned Assessing Officer and the same has been wrongly sustained by the Learned CIT(A). The Hon'ble ITAT is humbly requested to delete the addition. The submissions made before the Learned CIT(A) are quoted below :-

*"During the course of search in the case of the assessee, certain loose papers were seized from old residential house at 3, Sethani Ka Bag, MD Road, Jaipur. The papers seized are as per exhibit 11. On the basis of these papers of Exhibit 11, the Id. AO noticed that assessee had carried out marble fixing and polishing work and incurred expenditure of Rs.30,47,452/-. On the basis of these papers, the Id. AO has made addition of Rs.10,70,172/- in AY 2018-19 and of Rs.6,92,164/- in AY 2019-20, which is the year under consideration. The entire facts relating to the issue have been discussed in detail in AY 2018-19. The same are quoted below :-*

*"The relevant pages No.23, 53 and & 86 of Exhibit 11 of Annexure AS (Party 2) are scanned below on the basis of which the Id. AO has made additions in the case of the assessee.*

श्री रामजी		58	
		DATE: 10/03/18	
		PAGE NO: 53	
चौका 1 की रकम	25,446	चौका: 35 की रकम	33,235
2	17,595	36	18,579
3	13,170	37	33,695
4	29,926	38	38,136
5	18,190	39	37,607
6	23,096	40	31,203
7	19,139	41	31,682
8	14,859	42	37,396
9	31,182	43	20,803
10	15,252	44	26,466
11	27,225	45	27,801
12	19,256	46	79,737
13	14,272	47	48,133
14	19,421	48	75,325
15	19,827	49	1,47,780
16	26,633	50	57,715
17	16,817	51	51,797
18	14,055	52	1,379
19	17,448		
20	16,430		
21	20,332		7,98,465
22	11,787	चौका: 1 से 52 तक	
23	66,809	का लेख	9,87,555
24	19,239	+	7,98,465
25	62,197		
26	30,429		
27	1,18,622	total:	17,86,020
28	24,355	Bill Ist	10,70,172
29	44,839	Total	28,56,192
30	72,855		
31	33,038		
32	29,451		
33	29,839		
34	26,524		
	9,87,555		

		<u>श्री रामजी</u>		Bill IIIrd
पैज नं.	1	ली	रकम	21,698
	2	ली	रकम	52,599
	3	"	"	17,503
	4	"	"	10,851
	5	"	"	47,110
	6	"	"	35,594
	7	"	"	5,905
IIIrd Bill total: ⇒				<u>1,91,260</u>
Bill = I + II =				2856192
Bill = III =				<u>191260</u>
Total =				30,47,452
Received Payment = -				<u>23,00,000</u>
				747,452 Bal.

*These papers have totals as under :*

*Rs. 28,56,192 as per Page 58 which includes total of Rs. 10,70,172/- of Page No. 23 + 192260 of page No. 86 = Rs.30,47,452/-.*

*During the course of assessment proceedings, the assessee submitted that out of total expenditure of Rs. 30,47,452/-, which is spread over in AY 2018-19 and 2019-20, the assessee had accounted for expenditure of Rs.17,62,336/-. The details of payments of Rs.17,62,336/- were furnished before the Id. AO and the same are as under :-*

S.No	Name of the party	Amount	Remarks
1	Sh. Vimal Kumar Kumawat	Rs.2,75,000	1,75,000 in AY 2017-18 & Rs.1,00,000 in AY 2018-19
2	Rajendra Kumar Jangid	Rs,3,25,000	1,75,000/- AY 2017-18 & Rs.1,50,000 in AY 2018-19
3	Kshma Jangid	Rs.2,50,000	A.Y. 2018-19
4	Vishnu Kumar Jangid	Rs.50,000	A.Y. 2018-19
5	Deendayal Kumawat	Rs,6,50,000	Rs.4,00,000 AY 2017-18 & Rs.2,50,000 in AY 2018-19
6	Harsahay Meena	Rs.50,000	AY 2018-19
7	Bharatlal Jatav	Rs.25,000	AY 2017-18
8	Lokesh Kumar	Rs. 25,000	AY 2017-18
9	To Misc. Labour	Rs.1,16,336	AY 2017-18
	Total	Rs.17,62,336	

*Copies of the ledger accounts of aforesaid parties are available on paper book on page No.8-16*

*In addition to the aforesaid amount of Rs.17,62,336/- accounted for in the books of account of the assessee in AY 2017-18 and 2018-19, the assessee also surrendered an amount of Rs. 12,85,116/- in AY 2019-20. Copy of the computation of income for AY 2019-20, evidencing the aforesaid surrender is available on Paper Book. Thus, on his part, the assessee explained the entire expenditure of Rs.30,47,452/-. However, the Id. AO did not accept the explanation of the assessee on the ground that summons issued u/s 131 to Rajendra Jangid and Vishnu Jangid remained uncomplied with. Hence, the Id.*

AO rejected the explanation of the assessee and has made addition of Rs.10,70,172/- in AY 2018-19.”

The action of the Id. AO is unlawful, illegal and unjust. The same is contested as under :-

(i) The seized papers are rough and dumb papers.

The relevant pages No.23, 58 and & 86 of Exhibit 11 of Annexure AS (Party 2) have been scanned above, on the basis of which the Id. AO has made additions in the case of the assessee. The perusal of the above scanned papers discloses that these apparently appear to be an estimate of expenditure of polishing of marble. These papers do not carry the signature of the assessee. These papers also do not have any date upon them. Further, the writer of these papers is not known. In these circumstances, no reliance can be placed on such papers and these are to be treated as rough papers. Therefore, the addition made deserves to be disallowed.

Following case-laws are quoted in support :-

(i) DCIT Vs. Rajendra Kumar Sancheti (ITAT Jaipur) 42 Taxworld 152 dated 27.03.2009

Addition cannot be made on the basis of seized paper which is not prepared by the assessee and which appears to be a deaf and dumb document.

(ii) Mahaan Foods Ltd. Vs. DCIT (ITAT Delhi) (2009) 27 DTR 185

In the absence of any other evidence found during the course of search or brought on record by the Assessing Officer to show that the expenditure found noted on seized documents was actually incurred by the assessee, the same cannot be added to the undisclosed income of the assessee.

No inference could be drawn against the assessee much less any inference of unexplained expenses on the basis of a dumb document found at the residence of its director as there is no proof to show that the amount mentioned in the said document was paid by the company.

(iii) Moolchand Kumawat & Sons Vs. DCIT (Ajmer) ITAT Jaipur Bench 42 Taxworld 241 in M.A. No. 93/JP/2008 arising out of ITSSA No. 24/JP/2005 order dated 20.02.2009

Addition cannot be made on the basis of a dumb document or on the basis of entries found recorded on a paper seized during search without conducting any enquiry from the concerned party.

(iv) Assistant Commissioner of Income Tax Vs. Satya Pal Wassan (2007) 295 ITR 9 AT 352 (Jabalpur)

*A documents found during the course of a search must be a speaking one and without any second interpretation, must reflect all the details about the transaction of the assessee in the relevant Assessment Year. Any gap in the various components for the charge of tax must be filled up by the Assessing Officer through investigation and correlation with the other material found either during the course of the search or on investigation. Without this no addition can be made on the basis of a loose sheet.*

(v) Gyan Kumar Agarwal vs. Assistant Commissioner of Income Tax (2011) 60 DTR 241 (Hydrabad Tribunal)

(vi) *It was held in the following cases that addition could not be made on the basis of uncorroborated noting on loose sheets and papers –*

- (1) S.P. Goyal VS. DCIT (2002) 77 TTJ 1 (Mum)
  - (2) Chandra Mohan Mehta Vs. ACIT (1999) 65 TTJ 327 (Pune)
  - (3) Bansal Strips Pvt. Ltd. Vs ACIT (2006) 100 TTJ 665 (Del)
  - (4) Kishan Chand Sobhraj Mal (1991) 42 TTJ 423 (JP)
  - (5) CIT Vs. Naresh Khattar (HUF) (2003) 261 ITR 664 (Del)
  - (6) Lal Chand Agarwal vs ACIT 21 TW 213 (ITAT Jaipur)
  - (7) CIT Vs. S.M. Agarwal (2007) 293 ITR 43 (Del)
  - (8) CIT Vs. Girish Choudhary (2008) 296 ITR 619 (Del)
  - (9) Jayanti Lal Patel Vs. ACIT (1998) 233 ITR 588 (Raj)
  - (10) Rakesh Goyal Vs. ACIT (2004) 87 TTJ 151 (Del)
  - (11) ITO Vs. Manna Lal Jhalani 22 TW 551 (ITAT Jaipur)
  - (12) Hissaria Brother Vs. ACIT 22 TW 684 (ITAT Jaipur)
  - (13) DCIT Vs. Countrywide Buildestate Pvt Ltd. (2012) 48 TW 50 (Jaipur ITAT) order dated 29.06.2012 ITA No. 961/JP/2011
- (ii) The explanation of the assessee is supported by ledger accounts (Rs.17,62,336)

*It is submitted that the Id. AO has acted upon seized papers scanned above which are undated and non-speaking. In these circumstances, the Id. AO had no option but to accept the expenditure as accounted for and disclosed by the assessee in AY 2017-18, 2018-19 and 2019-20. The year-wise expenditure, as accounted for in regular books of the assessee, is as under :-*

S.No	A.Y.	Amount	Remarks
1.	2017-18	Rs. 9,16,336	As per copy of accounts furnished above.
2.	2018-19	Rs.8,46,000	As per copy of accounts furnished above.
3.	2019-20	Rs.12,85,116	Surrendered
	Total	Rs.30,47,452/-	

*The expenditure relating to AY 2017-18 and 2018-19 stood already accounted for in the books of the assessee. The Id. AO is wrong in not accepting the same on the ground that summons issued to the persons Sh. Rajendra Jangid, Kshama Jangid and Vishnu Jangid remained uncomplied with. In this regard, it is sufficient to say that the assessee cannot be expected to enforce the attendance of these persons. The Id. AO has ample powers for enforcing the presence of the aforesaid persons. So, the Id. AO was wrong in not accepting the plea of the assessee in making payment to these persons. In respect of Shri Bharat Singh and Deendayal Kumawat, the Id., AO has stated that these persons admitted to have done other work than polishing. Before accepting the version of these persons, opportunity to cross examine these persons should have been allowed, which was not done. Therefore, the action of the Id. AO is not in order. Further, in the case of Shri Vimal Kumar Kumawat, his father has accepted to have arranged labour for the work of polishing etc. This supports the plea of the assessee. In view of this, it is submitted that the Id.AO should have accepted the expenditure incurred as shown by the assessee.*

*(iii) No basis for making addition of Rs.10,70,172/- in A.Y. 2018-19*

*The Id. AO has made addition of Rs. 10,70,172/- on account of alleged expenditure on polishing of marble in AY 2018-19 without giving the basis of the same. The addition of Rs.10,70,172/- is with reference to page No. 1 to 23 of exhibit 11 (Party 2). Copies of these pages are available on Paper Book Page No. 29 to 52.*

*These papers do not carry any date for determination of the assessment year of expenditure. The Id. AO was, therefore not justified in making the addition of Rs. 10,70,172/- in the year under consideration. The Id. AO has not given any ground, any reason for considering the entire expenditure of Rs.10,70,172/- in AY 2018-19. The same being unlawful deserves to be deleted. The correct figure of expenditure in AY 2018-19 pertaining to polishing of marble is Rs. 8,46,000/- as accounted for by the assessee in the books of account, details of which have been discussed in the foregoing paras.*

*In the facts and circumstances of the case, no addition was required in AY 2018-19. The Id. CIT(A) is requested to delete the addition of Rs. 10,70,172/- made by the AO.*

*It is relevant to submit that assessee had accounted for the expenditure of Rs.9,16,336/- in AY 2017-18 and Rs.8,46,000/- in AY 2018-19 even before the search was conducted on 28/6/2019. The returns of income for AY 2017-18 and 2018-19 stood already filed much earlier before taking place of the search on 28/6/2019. Therefore, the version of the assessee all the same requires to be believed more as no manipulation can be alleged as the returns stood filed much before the conduct of search.*

*(iv) Provisions of Sec. 69 B are not attracted.*

*It is submitted that the Id. AO has made the addition of Rs. 10,70,172/- taking resort to Sec. 69 B treating the amount as undisclosed investment. The action of the Id. AO is unlawful. By no stretch of imagination the expenditure incurred on labour for the work of fixing of polishing marble can be treated as investment. It is expenditure. The Id. AO committed a mistake in treated the expenditure as investment. Thus, the Id. AO wrongly invoked the provisions of Sec. 69 B, which are not applicable in the case of the assessee.*

*Provisions of Sec. 69 B are quoted below :-*

*“69B. Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.”*

*The perusal of the aforesaid section clearly indicates that it is applicable only in acquiring of owning bullion, jewellery or other valuable article and not in any other case. In view of this also, the addition deserves to be deleted."*

### CONCLUSION

*The above submission made for ay 2018-19 clearly shows that the Id. AO is not justified in making the addition of Rs.6,92,164/- also in AY 2019-20. The Id. AO has not given any ground that how he has worked out the expenditure in A.Ys 2017-18, 2018-19 and 2019-20 as the papers did not stipulate any dates. The papers found during the search were deaf and dumb. On his part, the assessee had accounted for the expenditure on marble fixing and polishing in A.Ys 2017-18, 2018-19 and 2019-20 as per details given above. The assessee has surrendered an amount of Rs.12,85,116/- during the year under consideration. There was no reason with the Id. AO to differ with the submission of the assessee. However, the Id. AO held that out of total expenditure of Rs. 30,47,452/-, an amount of Rs.10,70,172/- pertain to AY 2018-19 and balance amount of Rs.19,77,280/- pertain to AY 2019-20. The Id. AO has already made addition of Rs.10,72,172/- in AY 2018-19 for which the assessee has filed and has strongly contested the additions. As regards AY 2019-20, after giving credit of Rs.12,85,116/- surrendered by the assessee, the balance amount of Rs.6,92,164/- has been added by the Id. AO. (1977280 – 1285116). The action of the AO is apparently unlawful, unjustified and illegal. The addition deserves to be deleted."*

In view of the aforesaid submission, The Hon'ble ITAT is humbly requested to delete the addition.

20.5.4 On the other hand, Id. DR also filed following written submission to support of the finding so recorded in the orders of the lower authority. The submission filed by the Id. DR reads as follows:

Ground 2: Addition of ₹34,69,474 – Unaccounted Painting/Finishing Expenses (Section 69B/69C)

20. Assessee's Ground: The AO is said to have erred in adding ₹34,69,474 for painting work as unexplained investment/expenditure (invoking Section 69B/69C and Section 115BBE) despite the assessee's claim that this

expenditure was duly accounted in books, with the balance surrendered in a later year.

21. Rejoinder: The addition of ₹34.69 lakh represents undisclosed investment in house construction (painting and finishing) unearthed during the search. The Revenue's case, upheld in substance by the CIT(A), is that the seized documents clearly showed the expenditure, and the assessee's attempt to bifurcate it into accounted and unaccounted parts was not supported by credible evidence. In summary:

(a) the full amount of ₹34.69 lakh was incurred on painting/whitewashing of the assessee's house outside the regular books;

(b) the assessee's books recorded only 13.79 lakh of it (under names of two entities), which the AO found to be dubious or non-genuine entries; and

(c) the remaining 20.89 lakh was admitted by the assessee himself as unrecorded (albeit offered in A.Y. 2020-21). Thus, the entire amount was correctly treated as unexplained expenditure on house property finishing under Section 69B/69C, taxable at the special rate.

22. Key Evidence from Search: During the search, Exhibit AS-15 (party premises) was seized, containing several loose pages detailing contract work for painting. Page 7 of Exhibit 15, in particular, was a bill/statement that totalled ₹34,69,474 for paint and white-wash work (with itemized calculations), against which payments of ₹25,95,000 had been made and an outstanding balance of 8,74,474 was noted as of its date (10.03.2019). This page (a copy of which was produced in proceedings) leaves no doubt that the assessee had gotten painting work done for his new house on a large scale. It does not bear the assessee's name, but it is directly linked to his property (the house under construction) and was found in the assessee's records. In fact, multiple seized pages (including Page 4, 5 of Exhibit 15 and page 112 of Exhibit 16) were work estimates/bills that, when correlated, all pertain to the painting job in question. Notably, some of these pages explicitly mention the contractors as "Shri Kishan Ji and Shri Anurag Ji", who were evidently the painters/contractors executing the work. The presence of these names dispels the assessee's suggestion that the documents might refer to something or someone else - they plainly refer to the painting contractors for the house.

23. Assessee's Admission: The assessee has essentially admitted incurring this expenditure. In his submissions, he acknowledged that the total cost of painting work was 34,69,474 as per the seized records. He claimed that out of this: (i) an amount of 13,79,817 was already recorded in his regular books (paid via cheque to two parties - 11,79,779 to M/s Krishna Enterprises and ₹2,00,038 to M/s Pink City Paints), and (ii) the balance ₹20,89,657 was surrendered as

additional income in the subsequent A.Y. 2020-21 (part of the disclosure made post-search).

24. In other words, the assessee himself did not dispute the quantum or the fact that it was previously unreported - he only disputed the year of taxability and the characterization of the ₹13.79 lakh as unexplained.

25. The Assessing Officer's findings effectively were that the assessee's so-called accounted portion (13.79 lakh) was not truly explained, and that the entire \*34.69 lakh was liable to be taxed in A.Y. 2019-20 (the year of incurrence) as undisclosed investment in house property. The AO noted that the seized papers referred to contractors "Kishan Ji/Anurag Ji," yet the assessee's books did not contain any ledger accounts in those names. Instead, the assessee produced purchase bills from M/s Krishna Enterprises and M/s Pink City Paints, claiming these correspond to that work. The AO sent a verification letter u/s 133(6) to the address on the Krishna Enterprises bill, but it came back unserved.

Moreover, those bills did not have any GST/VAT details (despite being sizable amounts), and the payments recorded to those parties were in neat round figures - factors which raised suspicion about their genuineness. In essence, the AO found that the assessee might have procured accommodating bills in the names of those firms to show part of the expense in books, whereas in reality the work was done by individual contractors off-book (Kishan/Anurag). This is a common modus operandi to partially account for expenses while avoiding the full tax impact. The AO, seeing through this, treated the entire expenditure as unexplained.

26. CIT(A)'s Decision: The CIT(A) undertook a thorough factual analysis of these documents and the assessee's contentions. Notably, the CIT(A) found that the various seized pages tie together consistently: for example, page 21 of Exhibit 15 shows the area measurements and rates for different types of painting, bearing the contractors' names (Kishan Ji and Anurag Ji), which corresponds to a calculated amount of ₹1,36,097; page 5 of Exhibit 15 is the actual bill detailing those charges. Similarly, page 112 of Exhibit 16 (marked "Bill No. III") and page 4 of Exhibit 15 correspond to another portion of the work (calculating to 32,02,867) and also bear the same contractor names. The CIT(A) observed that all these pages are inter-linked and "can't be taken individually", and that together they conclusively establish that Shri Anurag Ji and Shri Kishan Lal Ji were the ones who carried out the painting job, billing a total of 34.69 lakh. Thus, the CIT(A) rejected the assessee's argument that the seized papers did not contain those names in fact, they did; the assessee had selectively produced only some pages initially. The finding was that the content of seized documents was reliable and pointed to unaccounted activity.

27. Furthermore, CIT(A) agreed with the AO that the assessee's explanation for \*13.79 lakh was not substantiated. The attempt to equate "Kishan Ji" with "M/s Krishna Enterprises" (and "Anurag Ji" with "Pink City Paints") was found to be a mere afterthought without evidence. The CIT(A) highlighted that the AO's letter to M/s Krishna Enterprises had returned unserved and that no credible confirmation from these so-called firms was provided. The assessee could have produced the proprietors/parties behind those entities or at least filed confirmations with PAN/GST details, but chose not to. The primary onus to prove that those book entries represented the same transaction (and were genuine) lay on the assessee - which he failed to discharge. In absence of such proof, the natural conclusion is that the ₹13.79 lakh shown in books was unrelated or fictitious (perhaps booked to reduce taxable income), and the actual painting expense was funded off-record.

28. Having established that the full ₹34.69 lakh was indeed incurred and largely unaccounted, the question of timing and double taxation was addressed by CIT(A). The assessee had surrendered 20,89,657 pertaining to this item, but in A.Y. 2020-21 (on the premise that the house finishing was completed in F.Y. 2019-20). The CIT(A) correctly noted that the seized documents themselves were dated F.Y. 2018-19 (e.g. March 2019) and thus the expenditure actually pertained to A.Y. 2019-20. The assessee cannot defer taxation at his convenience. Nevertheless, CIT(A) was cautious to avoid double addition of the same amount: he held that to the extent the 20.89 lakh was included as income in any return for A.Y. 2019-20 (which, in fact, it was not) or taxed elsewhere, relief should be given. In practical terms, since the surrender was made in the subsequent year, CIT(A) rightly concluded that the income had been offered in the wrong year and needed to be taxed in the correct year (A.Y. 2019-20). We emphasize that allowing the assessee to push the taxability to 2020-21 would undermine the sanctity of the search findings and the principle that each year's undisclosed income must be assessed in that year.

29. In the result, CIT(A) sustained the addition of ₹13,79,817 in this year (which is the portion the assessee claimed as already recorded, but failed to prove). The balance 20.89 lakh, being undisputedly unrecorded, is also taxable in this year, though CIT(A) noted it had been voluntarily offered (albeit belatedly). In effect, CIT(A) upheld the substance of the addition, and only guarded against any potential double-counting. The ground was only "partly allowed" in the sense of adjusting for what was surrendered, but the assessee has obtained no substantive relief on this ground in terms of tax escape.

30. Rebuttal to Assessee's Arguments: The assessee's plea that the expense was "duly accounted in books" is incorrect - at best, only a fraction was accounted, and even that has not been shown to be genuine. The mention of

specific names on seized papers which do not appear in the books is a strong indicator of suppression. The assessee's failure to get those book entries verified (letters coming back, no registrations) casts serious doubt. Moreover, the assessee surrendered the majority of this amount as unaccounted effectively conceding the lapse. Therefore, invoking Section 69B/69C (unexplained investment/expenditure) was fully justified. We also underscore that under Section 69C (unexplained expenditure), the proviso disallows any deduction of such expenditure if it is deemed income. In other words, once the expenditure is unexplained, the law prohibits counting it as a deductible business outgo. This reinforces that the entire ₹34.69 lakh had to be brought to tax and could not be treated as a normal business expense (which the assessee attempted to do for 13.79 lakh).

31. Lastly, the assessee objects to the application of Section 115BBE (which imposes tax @ 60% on income under Section 69 etc.). This objection holds no water because Section 115BBE is mandatory for income assessed under Section 69B/69C. The AO had no discretion in the matter once the nature of income was determined to be unexplained investment/expenditure. The assessee's argument was premised on the expenditure being accounted or set off by disclosure, which has been proven false. Thus, the higher tax rate and no set-off rule under 115BBE rightly apply to this addition.

32. Prayer on Ground 2: We submit that the CIT(A)'s finding - that ₹34.69 lakh represents the assessee's unexplained investment in house construction (painting) is based on clear documentary evidence and the assessee's own partial admission. The partial relief given was only to avoid taxing the same income twice, and does not detract from the fact that the addition in principle is correct. We pray that the Hon'ble ITAT sustain the addition of ₹34,69,474 (with appropriate modification to ensure no double taxation of any amount, if at all applicable). The assessee's ground 2 has no merit and should be dismissed.

Ground 3: Addition of ₹6,92,164 - Unaccounted Marble Fixing/Polishing Labour

33. Assessee's Ground: The AO is stated to have erred in adding ₹6,92,164 as unexplained expenditure on marble fixing/polishing labour (again invoking Section 69B/69C and 115BBE), whereas the assessee claims this was accounted in books.

34. Rejoinder: This addition emanates from a similar fact pattern as Ground 2, concerning another component of the house construction cost specifically, marble flooring laying and polishing work. The search yielded incriminating documents (Exhibit 11 of Annexure AS-2) pertaining to payments made to various labourers/contractors for marble and carpentry work in the house. The AO, upon analyzing the seized pages, determined that the assessee had incurred total unaccounted marble polishing expenses of ₹30,47,452, spread

over F.Y. 2017-18 and 2018-19. Of this, ₹10,70,172 was attributed to A.Y. 2018-19 and 26,92,164 to A.Y. 2019-20 (the year under appeal) based on the dates and details on the documents. These figures were drawn from meticulous summing of the seized bills: for instance, seized page 23, 58, and 86 (back) showed itemized labour costs which totaled 30.47 lakh for the entire project. Like the painting issue, the assessee had partly accepted and surrendered unaccounted expenditure here: we note from records that the assessee's disclosure in A.Y. 2020-21 included an amount relatable to these polishing works as well (the CIT(A) mentions a surrendered sum of ₹1,78,000 possibly linked to this). The assessee, however, argued that a significant portion of these expenses was in fact accounted in his books across A.Y. 2017-18 and 2018-19, and that the AO wrongly made additions without verifying the books and without granting cross-examination of the third parties (workers/contractors).

35. The Assessing Officer's assessment was that the seized documents were credible evidence of out-of-book payments, and wherever the assessee produced some ledger entries of payments to certain individuals, those could not be fully verified. Specifically, the assessee had presented that he paid certain sums by cheque to a few persons (presumably workers) - e.g. ₹6,50,000 to Shri Deendayal Kumawat, ₹50,000 to Shri Harsahay Meena, ₹25,000 to Shri Bharatlal Jatav, 25,000 to Shri Lokesh Kumar, and a total of 1,16,336 to various labourers directly. These payments aggregate to around 8.66 lakh. The assessee's contention was that these correspond to the expenditure noted in seized papers (perhaps covering part of F.Y. 2017-18's work). However, the AO found a mismatch and lack of support: summons issued to some of these persons went unresponded or returned; those who did respond did not furnish adequate evidence that they carried out the work in question. Notably, one key person, Shri Deendayal Kumawat, to whom 6.5 lakh was shown paid, did not appear to confirm the nature of payment. The AO also observed that if the assessee indeed recorded these expenses properly, he should have work contracts or bills from these persons, which were not produced. In essence, similar to Ground 2, the AO suspected that the assessee might have procured some self-serving receipts from a few individuals to claim the expense as accounted, whereas the actual work (as evidenced by seized papers) was done off-book and paid in cash. Therefore, the AO treated ₹6,92,164 (the portion identified for A.Y. 2019-20) as unexplained. This was taxed under Section 69C (unexplained expenditure on house construction), attracting Section 115BBE.

36. CIT(A)'s Findings: The CIT(A) agreed with the AO's approach. He noted that the seized pages in question (Nos. 23, 58, 86, etc. of Exhibit 11) were far from "dumb documents" on the contrary, they were linked bills/invoices for the work done. For instance, Page 58 of the exhibit was essentially a summary, totaling

the amounts from Page 23 (which had ₹10,70,172) and Page 86 (\*19,22,260), arriving at the grand total of 30,47,452. Page 23 and 86 themselves represented two "bills" for marble polishing/carpentry work, each with details of the job and payments made on them. CIT(A) observed that some of these pages even had notings of payments made against the bills (much like an invoice marked with part-payments). In fact, the CIT(A) pointed out that multiple pages across the seized bundle were related - they were part of a continuum of three bills and payment details. He also noted that the assessee was constructing his house during these years and "there were expenses incurred related to this", out of which the assessee himself admitted that out-of-books payments were made and had surrendered income in this regard. Importantly, the CIT(A) recorded that the benefit of the surrendered amount was already given to the assessee by the AO by deducting the surrendered sum from the total unaccounted expenditure. (This indicates that in determining the figure of ₹6.92 lakh for this year, the AO had likely reduced what the assessee disclosed elsewhere, charging only the net unexplained portion. The assessee's claim that the AO taxed the full ₹30.47 lakh in parts without credit is thus not factually accurate.)

37. On the issue of cross-examination of the labourers/third parties, CIT(A) made a significant observation: the assessee never actually requested cross-examination at the assessment stage. Despite now alleging that statements of some parties (summoned workers) were relied upon, the record shows no specific demand by the assessee to confront those parties when the case was on. CIT(A) thus held that the assessee's belated invocation of natural justice was unwarranted - "the opportunity for cross examination at this stage is not acceptable", especially since the assessee had the primary responsibility to produce those supporting parties if he wanted to validate his claim. The legal principle is that cross-examination must be sought promptly if a statement is to be challenged; one cannot ambush at the appellate level without having raised it before the AO. Here, many parties did not even respond to AO's summons, and the assessee did not produce them himself-hence there was no statement used that the assessee tried and failed to cross-examine. CIT(A) also referred to his discussion on cross-examination in the context of the sales through broker (Ground 5/6) and found it applicable here as well.

38. Finally, CIT(A) echoed that the onus lies on the appellant (assessee) to substantiate that the expenditures were in fact recorded and genuine. This onus was not met: where summons were complied with, the parties "could not substantiate their claim with supporting evidence"; where not complied, nothing further was done. The assessee had copies of his ledger accounts, but mere ledger entries don't prove the work was accounted - confirmation from the

payees or other proof was needed, which was absent. Therefore, CIT(A) held that the assessee's explanation could not be accepted and the AO was justified in making the impugned addition. He accordingly dismissed Ground 3.

39. In rebuttal, the assessee's claim that these expenses "were duly accounted in books" is clearly untrue for the large part. The seized records are contemporaneous evidence far stronger than self-serving ledger entries. If indeed everything was accounted, the assessee would not have felt the need to surrender any amount. The fact that he did surrender (in AY 2020-21) a sum in relation to house finishing indicates that not all was on the books. Moreover, even for the portion he claims in books (~8.66 lakh), he failed to prove the linkage between those book payments and the seized bills. Not a single work contract or invoice was furnished to correlate the names in ledger to the work done. The names in the seized papers (if any) did not match one-to-one with those few ledger names, except broadly. As CIT(A) noted, multiple other pages (carpentry, polish, etc.) in the seized material also pertained to house finishing which the assessee hasn't explained, reinforcing that the books did not capture all these activities. Therefore, the addition under Section 69C is fully justified.

40. Admission of Unaccounted Income by Assessee - Sunil Kumar Agarwal (AY 2018-19)

1. Background:

A search and seizure operation under Section 132 was conducted on 28.06.2019 on the Narnoli Group, which included the assessee, Shri Sunil Kumar Agarwal (PAN: ABRPA9601M). Subsequently, incriminating electronic evidence in the form of Excel files was found in the possession of Shri Radha Mohan Maheshwari alias Totla, a known finance broker, during another search on 23.11.2021.

2. Evidence Linking Assessee:

One of the seized files was named "UCHANT-SUNIL NARNOLI.xls", with the mobile number in the file traced to the assessee. Shri Radha Mohan Maheshwari admitted ownership of the pen drives and confirmed that the entries represented cash loan, interest, and commission transactions, many in foreign currencies coded with two zero suppression.

3. Nature of Transactions:

The consolidated sheet prepared from the decoded data showed that during AY 2018-19, the assessee had the following unaccounted cash transactions with Shri Maheshwari:

Receipts (Taken): ₹3,01,99,800

Payments (Given): ₹2,70,00,000

Total Cash Movement: ₹5,71,99,800

Interest Paid (Given): ₹1,99,800

4. Admission by Assessee:

In response to notice under Section 148, the assessee filed a revised return on 14.04.2023, disclosing additional income of ₹13,50,000 computed @5% net profit on alleged unaccounted turnover of ₹2.7 crore. The assessee explicitly stated that:

"I admit the transactions of sale for financial year 2016-17 for ₹50 lakhs and 270 lakhs for financial year 2017-18... This surrender of income was only to purchase peace of mind and avoid further litigation."

5. AO's Findings:

The Assessing Officer rejected the explanation of business sales in absence of evidence and concluded that the cash transactions were unaccounted financial dealings. Peak credit theory was applied, and additions were made as follows:

\*60,00,000 as unexplained peak investment under Section 69A.

1,99,800 as unexplained interest income.

Total assessed income enhanced to ₹1,10,50,060 (from earlier assessed 48,50,260).

6. Legal Implications:

The assessee's statement, revised return, and tax payment confirm an unequivocal admission of unaccounted transactions. The surrender, even though styled as "peace of mind", is a clear admission in view of corroborating documentary evidence. Penalty proceedings under Sections 271AAC, 270A, and references under Sections 269SS/269T for cash loans were also initiated.

Conclusion:

The assessee has voluntarily admitted unaccounted income of 13.5 lakhs (on \*2.7 crore turnover) and accepted the genuineness of cash transactions noted in the seized Excel sheet. The assessment order and documentary trail establish beyond doubt that the assessee engaged in substantial unaccounted financial dealings during AY 2018-19.

Conscious Admission of Unaccounted Income by Assessee and AR

1. Documentary Knowledge and Opportunity to Rebut:

As recorded at Page 27 of the Paper Book, the assessee, through his Authorized Representative (AR), filed a detailed response to the notice under Section 142(1). In this reply, the assessee:

Acknowledged the pendrive entries found during the search in the case of Shri Radha Mohan Totla.

Claimed inability to remember exact details of transactions but did not deny their occurrence.

Admitted the possibility of receiving sale proceeds through Shri Totla.

Voluntarily declared 13.5 lakh as additional income, offering 5% profit on ₹2.7 crore transactions based entirely on seized data.

## 2. Implication of Conduct and Filing under Section 148:

The assessee had access to the seized material and still chose not to challenge the authenticity or seek cross-examination of Shri Totla.

This clearly shows that the assessee had full knowledge of the entries and their implication, and thus cannot now feign ignorance or dispute the nature of such transactions.

## 3. Conscious Surrender Constitutes Binding Admission:

The statement that the income was offered "to purchase peace of mind" does not dilute the legal effect of admission. Such qualified surrenders, when backed by tax payment and return filing, are admissions in law.

The Hon'ble Supreme Court and various High Courts have held that admissions made voluntarily and with legal representation carry significant evidentiary value (refer: Pullangode Rubber Produce Co. Ltd. v. State of Kerala 91 ITR 18 (SC)).

### Conclusion:

The material on Page 27 confirms that both the assessee and his AR were fully conscious of the nature of the transactions as reflected in the seized Excel sheet. The surrender of income and return filed under Section 148, backed by the assessee's own explanation and tax payment, amounts to unequivocal admission of unaccounted income. Hence, any later attempt to retract or downplay the transactions is an afterthought and legally unsustainable.

Here's the corrected and precise version of the supplementary legal note, incorporating the chronological fact that:

Assessment under Section 153A was completed on 29.09.2021

Reassessment under Section 147 (notice under 148) was completed on 22.02.2024

Assessee's Conscious Admission of Unaccounted Income - Fully Within Knowledge of Assessee and His AR

### 1. Chronological Context & Awareness:

The assessee's original return of income for AY 2018-19 was filed on 30.08.2018 declaring 18.77 lakhs.

Pursuant to the search action u/s 132 dated 28.06.2019 on the Narnoli Group, the assessment u/s 153A was concluded on 29.09.2021 assessing total income at ₹48.50 lakhs.

Later, on the basis of seized pendrive data from another search conducted on 23.11.2021 (in the case of Shri Radha Mohan Maheshwari alias Totla), reassessment proceedings u/s 147 were initiated and culminated in an order dated 22.02.2024, assessing total income at 1.10 crore.

### 2. Assessee's Submission Before AO Post-148 - Page 27 of Paper Book:

The phrase "to purchase peace of mind" does not absolve the evidentiary value of the disclosure. Courts have held that surrender backed by tax payment and revised return constitutes valid admission (see Pullangode Rubber, 91 ITR 18 (SC); Kishinchand Chellaram, 125 ITR 713 (SC)).

Conclusion:

The assessee and his AR were fully aware of the seized documents and their contents, both at the time of 153A proceedings and especially during 148 proceedings. The voluntary disclosure of ₹13.5 lakh in the return filed post-148- along with specific references to the seized Excel data on Page 27 of the paper book-amounts to a conscious and informed admission of unaccounted income, which was correctly acted upon by the Assessing Officer.

41. The assessee's objection to Section 115BBE again holds no merit here, as discussed earlier - unexplained expenditures must be taxed under the special rate once detected. The law post-2016 is designed to disallow any set-off against such income and to tax it at a higher rate to deter concealment.

42. Prayer on Ground 3: We respectfully urge that the addition of ₹6,92,164 for unexplained marble laying/polishing expenses be upheld. The CIT(A) has given a well-reasoned finding supporting the AO, and the assessee's arguments to the contrary are not backed by evidence. Ground 3, therefore, should be dismissed.

20.5.5 As is evident from the facts already on record that there remains a dispute that the income offered along with the expenditure incurred by the assessee are sufficient to cover up the expenditure found to have been recorded in the loose paper found for the construction of house of the assessee.

Apropos to this ground we note from the order of the Id. CIT(A) that out of total addition of Rs. 34,69,474/- he has already allowed the part relief to the assessee for an amount of Rs. 20,89,657 because the assessee has disclosed that amount. Thus, now only dispute relates to the addition of Rs. 13,89,817/-. It is claimed by the assessee that this amount has already

been disclosed in regular books of account, and the payments have been made by an account payee cheque. While making this addition Id. AO noted the payment claimed to have been made to Shri Anuraj Ji and Shri Kishan ji. A letter u/s. 133(6) was written to M/s. Krishna Enterprise at the address given in the bill provided by the assessee. But it has returned unserved. Therefore, Id. AO considered that the claim of the assessee remained unverified. He also noted that the no details of GST / VAT were appearing in the bill provided by the assessee and therefore, he considered that amount paid though by cheque are different and thereby not accepted the explanation. Even the Id. CIT(A) while sustained addition endorsed the view of the Id. AO and confirmed the addition. The bench noted that the assessee has already placed on record the correct details and voluntarily surrendered the difference amount as income which has not been disputed. But when the assessee has placed on record the correct explanation by placing the bill and details of the payment made by account payee cheque the same amount assessee is not asking setoff in other expenditure of purpose and the same being correctly accounted in the books which is also not disputed. Merely the letter issued u/s. 133(6) were remained unserved and thereby the expenditure paid by cheque and supported by bills cannot be considered as unexplained and thereby the contention of the revenue

has contrary material then what has been submitted by the assessee and therefore, we direct the Id. AO to delete the addition of Rs. 13,79,817/-. Because the Hon'ble Delhi High Court in the case of PCIT Vs. Wel Intertrade Private Limited [ 152 taxmann.com 663 (Delhi) ] held that “**15.** In our view, the Tribunal adopted the correct approach. Merely because the respondent/assessee had not repaid the balance amount *i.e.*, Rs. 1.83 crore, and the creditor had not responded to the notice issued under section 133(6) of the Act could not have been used as a reason by the AO to make an addition”. Based on these observation ground no. 2 raised by the assessee is allowed.

Now coming to the dispute raised in the ground no. 3 wherein the Id. CIT(A) has confirmed the addition of Rs. 6,92,164/- ignoring the explanation furnished by the assessee and thereby treated that sum as unaccounted expenditure on Marble, Furniture and Fixture policing work. Record reveals that the assessee for this expenditure incurred submitted that he employed certain labours to whom payments were made by an account payee cheque for Rs. 17,62,336/- out of which Rs. 6,92,164 [ page 28 of the Id. CIT(A) order ] was added and confirmed merely on the ground that the Id. AO made enquiry from these labours and summons issued to three parties, namely Rajendra Jangid, Kshama Jangid and Vishnu Jangid

but those parties remained uncompiled with. Summons issued to Harsahai was received back unserved. Shri Bharat Singh and Shri Deen Dayal Kumawat attended but as per their admission they did different work the polishing work claimed by the assessee. Likewise, Shri Vimal Kumawat did not attend in person but his father attended who failed to substantiate the claim with supporting documents. As is evident that the revenue by making that excise did not place anything on record that the assessee has not incurred any such expenditure. In fact those persons once the details given were the witness of the assessee and none of them said they have not received the money from the assessee and therefore, the additions made are purely based on the surmises and conjectures and even the Id. CIT(A) has ignored the evidence placed on record by the assessee as referred at page 30 of the order of the Id. CIT(A). Even the contention of the assessee for asking the cross examination was not considered. The bench noted that the Id. CIT(A) while dealing with the issue has given his finding without considering the evidence placed on record but has given his short finding as reiterated herein below:

Further, as regards the appellant's contention that **all the expenses were accounted, the same was examined in detail by the Id. AO** during the assessment proceedings. During the investigation carried out by the Id. AO some of the parties did not attend, in some cases summons returned unserved. In those cases, where compliance was made, they could not substantiate their claim with supporting evidence. Even the appellant could have furnished valid

confirmation of these parties and could have produced these parties but did not do the same. The primary onus is on the appellant. Therefore, in view of the above facts, the contention of the appellant is not acceptable and it is held that the Id. AO was justified in making the addition.

As is evident that the above finding is ignoring the fact those parties who appeared did not dispute the receipt of the payment by the assessee. The work done is also not disputed merely the exact nature of the work may not be described by the worker the payment made by the assessee which is reflected and paid by account payee cheque and supported by the evidence as placed on record and as discussed at page 30 of the order of the Id. CIT(A). Thus, considered those evidence and statement so recorded we are of the considered view that there is no basis for making the addition of Rs. 6,92,164 in the hands of the assessee as undisclosed investment and thereby the same is directed to be deleted. Based on this observation ground no 3 raised by the assessee is allowed.

In the result the appeal of the assessee in ITA No. 520/JP/2025 for assessment year 2019-20 stands partly allowed.

21. Now we take up the appeal of the assessee in ITA no. 519/JP/2025 for assessment year 2018-19. In this appeal the assessee has raised the following grounds;

1. Under the facts and Circumstances of the case the Learned CIT(A) has erred in enhancing the addition of Rs. 30,64,533/- on account of unexplained investment in house construction whereas the same was duly accounted for in the books of accounts for Rs. 17,32,958/- and remaining amount of Rs. 19,32,000/- was surrendered by the assessee for assessment year 2020-21 which deserves to be quashed instead of shifting this in assessment year 2018-19 from assessment year 2016-17.
2. Under the facts and Circumstances of the case the Learned CIT(A) has erred in enhancing the addition of Rs. 53,73,108/- on account of purchase of carpentry material without any evidence or seized documents which deserves to be quashed instead of shifting this in assessment year 2018-19 from assessment year 2016-17.
3. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 10,70,172/- on account of expenditure incurred for polishing work which is 3 duly recorded in the books of accounts and unrecorded amount of Rs. 12,85,116 was surrendered in A.Y. 2019-20. Therefore, this addition tantamount to double addition. Thereby applying provisions of section 115BBE of the IT Act 1961.
4. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 2,22,010/- by 4 applying GP rate of 10% on unaccounted sales of Rs. 44,40,208/- after giving benefit of 5% GP surrendered by the assessee.
5. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 3,10,000/- by applying GP rate of 10% on unaccounted sales of Rs. 31,00,000/- on the basis of document seized from third party without providing opportunity of cross examination to the assessee.
6. Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 5,31,250/- by applying GP rate of 10% on unaccounted sales of Rs. 53,12,500/- on the basis of document seized from third party without providing opportunity of cross examination to the assessee.
7. Under the facts and circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 6,17,477/- on account of unaccounted cash purchase from Shri Arvind Jain on the basis of documents found from third party without providing opportunity of cross examination to the assessee.

8. Under the facts and circumstances of the case the Learned CIT(A) has erred in not allowing benefit of telescoping against the income surrendered/addition sustained by the Learned CIT(A).

9. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.

22. The bench noted that the apropos to the ground no. 4, 5, 6, 7 and 8 raised in this appeal are similar on set of facts and arguments with the facts of appeal in ITA no. 521/JP/2025 for assessment year 2020-21. Therefore, it is not imperative to repeat facts, arguments and finding on the similar issue again and thereby we hold that the finding of ground no. 4 in this appeal shall as per ground no. 3 of ITA no. 521/JP/2025, Ground no. 5, 6 & 7 shall be as per ground no. 9 of ITA no 521/JP/2025 and Ground no. 8 raised in this appeal shall as per ground no. 6 of ITA no. 521/JP/2025 shall apply mutatis mutandis in the present appeal and thereby the ground no. 4,5,6,7 & 8 are disposed off in ITA no. 519/JP/2025 for assessment year 2018-19. Ground no. 9 being general in nature does not require our finding.

23. Now we deal with the left out the ground no 1 to 3 in this appeal. As is evident from the order of the Id. CIT(A) that he has for the year under consideration enhanced the assessment while deleting the addition for the A. Y. 2016-17. The relevant finding of the Id. CIT(A) reads as follows:

### 10.1 Enhancement of Income

In the assessment order for the AY 2016-17 an addition has been made of Rs.30,64,533 with respect to issue of carpentry work on the basis of seized material. The issue has been discussed in detail in the appeal order for the AY 2016-17 in the adjudication of ground no. 1 of the appeal.

In the appeal of the AY 2016-17, the appellant has inter-alia contended that expenditure does not fall in AY 2016-17. Appellant has given arguments in this regard and supported the same with the other carpentry work. The appellant has contended that the expenditure pertains to the year AY 2018-19. Accepting the contention of the appellant for notice of enhancement was given to the appellant vide order sheet entry dated 24.12.2024 along with applicability of section 115BBE of the Act. The appellant has submitted the reply on the date of 08.01.2025. In the reply the appellant has mainly contended on the merits of the addition and not on the year of the addition. The merits of the addition have already been discussed in the ground no. 1 of the appellate order for the AY 2016-17 wherein the contentions of the appellant have been rejected and the addition on merits has been held to be liable to be upheld. The same is referred to and not repeated for the sake of brevity. Regarding the year of addition the same is as per the submissions of the appellant himself. In the appeal order for the AY 2016-17, it has been found that the impugned income is taxable in the AY 2018-19 and the addition made in the assessment order of A.Y. 2016-17 has been directed to be deleted with the finding that the assessment for the AY 2018-19 is enhanced for the same amount. Accordingly, in view of the totality of the facts and circumstances of the case, on this issue, the assessment of the AY 2018-19 is enhanced by the amount of Rs. 30,64,533. The same is liable to be taxed u/s 69B as unexplained money with the appellant used to make the above discussed payments and alternatively as unexplained expenditure u/s 69C of the Act and rate of tax is as per section 115BBE of the Act.

### 10.2 Enhancement of Income

In the assessment order for the AY 2016-17 an addition has been made of Rs.53,73,108 with respect to issue of unaccounted and unexplained carpentry material on the basis of seized material. The issue has been discussed in detail in the appeal order for the AY 2016-17 in the adjudication of ground no. 2 of the appeal.

In the appeal of the AY 2016-17, the appellant has inter-alia contended that expenditure does not fall in AY 2016-17. Appellant has given arguments in this regard and supported the same with the other carpentry work. The appellant has contended that the expenditure pertains to the subsequent years inter-alia AY 2018-19. Accepting the contention of the appellant for notice of enhancement was given to the appellant vide order sheet entry dated 24.12.2024 along with applicability of section 115BBE of the Act. The appellant has submitted the reply on the date of 08.01.2025. In the reply the appellant has mainly contended on the merits of the addition and not on the year of the addition. The merits of the addition have already been discussed in the ground no. 2 of the appellate order for the AY 2016-17 wherein the contentions of the appellant have been rejected and the addition on merits has been held to be liable to be upheld. The same is referred to and not repeated for the sake of brevity. Regarding the year of addition, in the appeal order for the AY 2016-17, it has been found that the impugned income is taxable in the AY 2018-19 and the addition made in the assessment order for A.Y. 2016-17 has been directed to be deleted with the finding that the assessment for the AY 2018-19 is enhanced for the same amount. Accordingly, in view of the totality of the facts and circumstances of the case, on this issue, the assessment of the AY 2018-19 is enhanced by the amount of Rs.53,73,108. The same is liable to be taxed u/s 698 as unexplained money with the appellant used to make the above discussed payments and alternatively as unexplained expenditure u/s 69C of the Act and rate of tax is as per section 115BBE of the Act.

11. In the result, the appeal of the appellant is dismissed.

24. As is evident from the above finding of the Id. CIT(A) that he has shifted the addition from A. Y. 2016-17 while deleting the addition there and it is matter of facts that there is no cross ground or that of the appeal of the revenue while deleting addition from that assessment year 2016-17. Therefore, now the limited question here is that whether the action of the Id. CIT(A) for shifting the addition in the year under consideration is correct or

not. Therefore, it would be appropriate to deal with these grounds while dealing with the appeal for A. Y. 2016-17 wherein the relevant facts are discussed in detailed in both the orders of the lower authority and thereby we deal with these grounds no 1 to 3 in A. Y. 2016-17.

In the result the appeal of the assessee in ITA No. 519/JP/2025 for assessment year 2018-19 stands partly allowed.

25. Now take up the appeal of the assessee in ITA no. 513/JP/2025 for assessment year 2016-17. In this appeal the assessee has taken following grounds of appeal;

1. Under the facts and circumstances of the case, the learned CIT(A) has erred in giving finding regarding the addition of Rs. 30,64,533/- on account of unexplained investment in house construction whereas the same was duly accounted for in the books of accounts for Rs. 17,32,958/- and remaining amount of Rs. 19,32,000/- was surrendered by the assessee for assessment year 2020-21 which deserves to be quashed instead of shifting this in assessment year 2018-19.
2. Under the facts and circumstances of the case, the learned CIT(A) has erred in giving finding regarding addition of Rs. 53,73,108/- on account of purchase of carpentry material without any evidence or seized documents which deserves to be quashed instead of shifting this in assessment year 2018-19.
3. Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 16,78,625/- by applying GP rate of 10% on unaccounted sales of Rs. 1,67,86,250/- on the basis of document found from the third party without providing the opportunity for cross examination in spite of specific request and also without considering the submission and past GP rate of the assessee.
4. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

26. The bench noted that the ground no. 3 raised in this appeal has similar set of facts and arguments on the issue with that of the issue that has been raised vide ground no. 9 of ITA no 521/JP/2025. Therefore, it is not imperative to repeat the facts, argument and decision taken by us here again and the decision taken by us vide ground no. 9 in ITA no. 521/JP/2025 shall apply mutatis mutandis to the present ground of appeal no. 3 raised in this appeal and based on this observation ground no. 3 raised by the assessee in this appeal is allowed. Ground no. 4 being general does not require our finding.

27. Now the left-out ground no. 1 & 2 relates to the unaccounted Investment in House construction. These grounds are also relevant for dealing with the ground no. ground no 1 to 3 raised by the assessee in ITA no. 519/JP/2025 for assessment year 2018-19. Therefore, we deal with these simultaneously.

The brief facts related to the issue are that while search proceedings, at Party No. 1 at the residential premises bearing address Plot No. 5, Ahimsa Marg, Mahaveer Nagar, Jaipur, seized certain incriminating documents referred as Exhibit 15, Page No. 1 to 7. In that search

proceedings, from the same premises, certain documents were seized and referred as Exhibit 15 & 16. Exhibit 15 contains 21 pages. Page No. 1 is an agreement for contract work between Shri Anshul Agarwal and M/s N. S. Interior furniture. Page no. 2 & 3, contains the total labour charges determined by M/s N. S. Interior furniture for the carpentry work. Page no. 4, 5 & 6 are details of painting and polish work and labour charge determined for the same. Page No. 7 is total of the amount determined on page no. 4, 5 & 6. Rest of the pages of exhibit 15 & 16 are individual working of different kinds of work relating to painting work which are summarized on page no. 4, 5, & 6. This can be proved from the fact that the first entry on page 4 of Exhibit 15 is regarding distemper work. The total area of the distemper work is mentioned as 7411.87 sq.ft. and the labour charge determined as Rs. 59,294/- (7411.878). The same area is mentioned on page 112 of the Exhibit 16. This page no. 112 contains the details of different painting work such as distemper, plastic paint etc, and total area. While search proceedings, the assessee claimed that these pages are related to carpentry & painting estimates. During the post search enquiry, Id. AR of the assessee submitted that the page 1 is an agreement for contract and he contended that the labour charges for carpentry work were paid as mentioned on this page ie @ 40%, 20% and 35%. The total

labour charges determined are mentioned on page no. 2 & 3 of the Exhibit 15 which works out to Rs. 36,64,533/- The assessee has accepted to have paid this much amount to the carpenter. During the post search proceedings, the assessee admitted that out of Rs. 36,64,533/-, only Rs. 17,32,958/- were recorded in the books of accounts and the balance amount of Rs. 19,31,575/- was settled out of books. This amount of Rs. 19,31,575/- was also voluntarily surrendered by the assessee. The assessee furnished the breakup of labour charges of Rs. 17,32,958/- which is as under:

Sl.No.	Name	Amount	FY
1.	N.S. Interior furniture	6,00,000/-	2017 -18
1.	Unique Furniture	3,70,000/-	2017-18 & 2018-19
1.	Srimanta Hazra	2,50,000/-	2017-18 & 2018-19
1.	Daily Labour/cash payment	5,12,958/-	2016 -17 & 2017-18
<b>Total</b>		<b>17,32,958/-</b>	

Accordingly, the assessee claimed that the amount of Rs. 17,32,958/- is reflected in the books of account and balance amount of Rs. 19,31,575/- was settled out of books. However, as per the notings on page Nos. 1, 2 & 3 it is seen that they contain work by M/s N.S. Interior and not done by any

other party. The total labour charges related to M/s N.S. Interior is Rs. 36,64,533/- out of which only Rs. 6,00,000/- was recorded in the books of accounts. Thus, the balance amount of Rs. 30,64,533/- had been settled out of books. While assessment proceedings, a show cause notice was issued requiring assessee to explain why addition of Rs. 30,64,533/- may not be made on account of unaccounted expenditure. The assessee filed the reply that ;

...In this regard we would like to submit that whole carpentry work was given on contract to Mis N.S. Interior Furniture. The total work was assigned to Mis N.S. Interior Furniture only. In term out of total work of carpentry M/s N.S. Interior Furniture has subletted its work to Shri M/s Unique Furniture and Shri Manta Hazra and other daily labourers. The payment to the sub-contractors and daily wagers were made by the assessee directly and deducted from the payment of M/s Interior Furniture. There is no reason when we have given contract for complete carpentry work to M/s N.S. Interior Furniture than to make additional payments to others for same work. The total contract was for Rs. 36,64,533/- Out of which Rs. 6,00,000/- was paid to M/s N.S. Interior Furniture directly and other payments of Rs. 3,70,000/- to Unique Furniture, Rs. 2,50,000/- to Shri Manta Hazra and Rs. 5,12,958/- were directly paid to daily labors on behalf of M/s N.S. Interior Furniture and remaining payment of Rs. 19,31,575/- was made in cash which has not been accounted for and same has been included in our offered income for assessment year 2020-21. Therefore, the payment made on behalf of Mis N.S. Interior Furniture to other parties amounting to Rs. 11,32,958/- cannot be added again because this is already accounted for in the books of accounts of the assessee. Copy of ledger accounts and other details are on page no. 16 to 23.

The reply of the assessee has been considered and found to be unacceptable. It was devoid of any evidence regarding the contention that the work was sub-let by M/s. NS Interior to Mis. Unique Furniture and/or M/s. Shri Manta Hazra. In order to verify the contention of the assessee

that the contract work that was awarded to M/s. N. S. Interior was sub-letted by the latter to others and that payments for the work done were made by the assessee directly to the sub-let parties, letters u/s 133(6) were issued to M/s. N S Interior and Shri Manta Hazra. The same have been received back un-served. No address was provided for M/s. Unique Furniture. The cheque payments claimed to be made to Mis. Unique Furniture of Shri Manta Hazra do not prove that these were made on behalf of M/s. N. S. Interior. Further, page no. 1 of Exhibit 15 is agreement between M/s N.S. Interior and Shri Anshul Agarwal which means that the subsequent pages (2 & 3) are determination of labour charges paid to M/s N.S. Interior only whereas assessee claimed to have paid only Rs. 6,00,000/- to NS Interior and balance to other parties. None of the page (1 to 3) of exhibit 15 contains the name of Unique Furniture, Srimanta Hazra and daily labour/cash payment. If it had been the case as claimed by the assessee, names of these parties must have appeared on these pages. As evident from the working on page no. 2 & 3, the rates are charged as mentioned in page no. 1 which shows that this work detailed on page no. 2 & 3 is actually done by M/s N.S. Interior only. If assessee has signed an agreement with M/s N.S. Interior, he ought to have signed similar contract and work agreement with other two parties as well. However, assessee did

not furnish any evidence on the basis of which rates have been charged by Unique Furniture or Srimanta Hazra. Assessee has not given any description of the work done by Unique Furniture or Srimanta Hazra whereas page no. 1 contains full details of the work done by M/s N.S. Interior only. With regard to claim of cash Rs. 5,12,958/- paid for carpentry work, the tally data of the assessee was verified and it was noticed that various entries of cash payment contain narration being cash paid to labour. This shows that the assessee has picked up entries to make a source of Rs. 5,12,958/- and show it as carpentry expenses accounted in the book. Also, assessee did not produce any evidence or basis on which he quantified the amounts paid to Unique Furniture or Srimanta Hazra, M/s N.S. Interior and cash payments. Thus it was by the Id. AO held that page No. 1, 2 & 3 contains the work done by M/s N.S. Interior for the assessee. It does not include the work done by other parties. The total labour charges related to M/s N.S. Interior is Rs. 36,64,533/- out of which only Rs.6,00,000/- was recorded in the books of accounts. The balance amount of Rs. 30,64,533/- has been settled out of books. An amount of Rs. 30,64,533/- was added to the income of the assessee considering the same as undisclosed investment u/s 69B of the Act for AY 2016-17. The

Financial year is determined to be 2015-16 due the fact that agreement between carpenter and Shri Anshul Agarwal contains date as 10.06.2015.

28. Further, another issue arising out of page no. 1, 2 & 3 of exhibit 15 is investment in the material purchased by the assessee. As evident from the working the carpenter i.e. M/s N.S. Interior has charged labour on the basis of the quantity and value of the material on which work has been done. For example, at serial no. 1 of the table on page no. 1, it has been mentioned that for work relating to 19mm + 25mm bord the labour charges will be determined at the rate of 40% of the value arising by multiplying area per square feet by 110. On page no. 2, the first description is regarding 19mm bord wherein 8\*4 size of 770 numbers of board at the rate of 110 are worked out. The value of such material as per this working works out to Rs. 27,10,400/-. Similarly, at serial no. 8 of the table contains cheer wood purchase at the rate of 80 per square feet. The page no. 2 shows that the carpenter has worked on cheer wood material of 128.25 sq.ft. and labour charges are determined by multiplying 128.25 with 80 which comes to 10260, 40% of which comes to 4104. Following this method, the total investment in furniture was worked out to Rs. 69,29,441/- on page no. 2 and labour charges determined is Rs. 27,71,776/-. The page no. 3 shows

the investment of Rs. 14,69,250/- in wood material purchase in chaukhat, Rs. 5,50,000/- in fittings etc. Thus, the total investment by the assessee in material purchase works out to Rs. 89,48,691/-. Therefore, during the course of assessment proceedings, the assessee was asked to furnish the source of this Rs.89,48,691/- and was also show caused as to why this amount of Rs.89,48,691/- should not be considered as his undisclosed investment. In response to that the assessee vide his submission dated 15.09.2021 replied as under;

"With reference to query no. 3.2 of above notice in which you have require to explain the contents of page no. 1 to 3 of exhibit 15 wherein you have alleged that the investment in the material purchased for carpentry work on the basis of above pages 1, 2 & 3 works out to Rs. 89,48,691/- (Rs. 69,29,441/- plus Rs. 14,69,250/- plus Rs. 5,50,000) and why addition of Rs. 89,48,691/- may not be made to your total income of the assessment year 2016-17 on account of unaccounted expenditure on purchase of material for carpentry work.

In this regard it is submitted that the department has taken the value to goods purchased for carpentry work on the basis of agreement of carpenter which is only an estimation for the purpose of payment of labour charges. The actual rates are different and the assessee has purchased the material on reasonable rates and from the known persons/dealers. All the purchases of carpentry material was through proper bills and all the payments of material was made by crossed account payee cheques or through proper banking channel. All the expenditure are accounted for in the books of accounts of the assessee. The total material purchase ledgers are enclosed herewith. During the course of search no single paper or any other evidence was found which proves that the assessee has made unaccounted purchase of carpenter material. No addition can be made only on the basis of rate adopted by carpenter for charging/calculating labor rates. The carpenter always decide the labor rates on highest price of material available in the market whereas the same material of local brands is available on the cheaper rate in the market. For example the ply board of any reputed company is available @ 120/- per sqft, whereas the local companies ply boards are available @ 60/- per sqft. So the carpenter always charged labour rates on highest rate of material i.e. @ 120/- per sqft. This can be clarified by the other material rates as for glass and other hardware goods the

carpenter has mentioned on actual rate basis because there is lesser variation in the rates of these goods. So labour rate is paid on actual price. Therefore, no addition can be made on this account where the labor rates are calculated on highest price of material. Copy of all material purchased and labor bills along with ledger account of suppliers are enclosed herewith."

The submission of the assessee has been perused along with bills and ledgers of suppliers. As per the above gist of expenditure made on carpentry material, the total amount expended is Rs. 91,33,864 as against Rs. 89,48,691 mentioned in the show cause notice. And, further out of the total amount spent of Rs. 91,33,864, Rs. 37,60,756 is recorded in books. Accordingly, the unaccounted expenditure is arrived at Rs. 53,73,108 (Rs. 91,33,864 less Rs. 37,60,756) and is added to the returned income of the assessee for the year considering the same as undisclosed investment u/s 69B of the Act for AY 2016-17. The Financial year is determined to be 2015-16 due the fact that agreement between carpenter and Shri Anshul Agarwal contains date as 10.06.2015.

29. When challenged the above finding of the Id. AO before the Id. CIT(A), the relevant finding of the Id. CIT(A) is as under;

"Ground No. 1

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

**Brief facts from the Assessment Order-**

As per facts noted in assessment order are that during search proceedings, certain incriminating document pertaining to unaccounted investment in the House construction was found and seized and inventoried as Exhibit 15 & 16. Page No.1 of Ex-15 was an agreement for contract work between Shri Anshul Agarwal and Page No. 2 & 3 contain the total labour charges determined by M/s N.S. Interior furniture for the carpentry work. Page no. 4, 5 & 6 were details of painting and Polish work and labour charge determined for the same.

The Id. AO has further noted that the total labour charges determined to Rs.36,64,533/- which the assessee had accepted to have paid to the carpenter. During post search proceeding, the assessee admitted that out of Rs.36,64,533/-, only Rs. 17,32,958/- were recorded in the books of accounts and the balance amount of Rs. 19,31,575/- was settled out of books. This amount of Rs. 19,31,575/- was voluntarily surrendered by the assessee.

However, on perusal of breakup of labour charges of Rs. 17,32,958/- furnished by the appellant, Id. AO noticed that total labour charges related to M/s N.S. Interior was Rs.36,64,533/- out of which only Rs.6,00,000/- was recorded in the books of accounts. Thus, the balance amount of Rs. 30,64,533/- had been paid out of books.

With respect to above, the appellant argued that whole carpentry work was assigned to M/s N.S. Interior Furniture only and it had sublet its work to M/s Unique Furniture and Shri Manta Hazra and other daily labourers and that the payment to the sub-contractors and daily wagers were made by the assessee directly and deducted from the payment of Mis Interior Furniture. The total contract was for Rs. 36.64,533/- out of which Rs.6,00,000/- was paid to Mis N.S. Interior Furniture directly and other payments of Rs 3,70,000/- to Unique Furniture Rs.2,50,000/- to Shri Manta Hazra and Rs.5,12,958/- were directly paid to daily labours on behalf of Mis N.S. Interior Furniture and remaining payment of Rs. 19,31,575/- was made in cash which was not accounted for and included in offered income for A.Y. 2020-21.

However, there was no evidence with respect to subletting of work and in order to verify the same, the letters was sent by the Id. AO to these parties u/s 133(6) which returned back un-served in the case of M/s N.S. Furniture and Shri Manta Hazara whereas no address was provided for M/s Unique Furniture. Id. AO further held that cheque payments claimed to be made to M/s Unique Furniture of Shri Manta Hazara do not prove that these were made on behalf of M/s N.S. Interior and pertain to same transaction.

As the assessee could not explain the expenses incurred from regular books of account, it was held by the Id. AO that on the basis of seized documents, the total

labour charges related to M/s N.S. Interior is Rs.30,64,533/- out of which only Rs.6,00,000/- was recorded in the books of accounts and balance amount of Rs.30,64,533/- was settled out of books and added to the total income of the appellant considering the same as undisclosed investment u/s 698 of the Act for AY 2016-17.

**Brief of Appellant's Submission in Appeal:-**

During the present appellate proceedings, w.r.t. page No.1 of Exhibit-15 which was the agreement between ShriAnshulAgarwal and N.S. Interior Furniture, the appellant claimed the same to be only a simple piece of paper on which rates of labour work for furniture are mentioned, it is not on a stamp paper. As regards page No.2 & 3, the appellant submitted the same to be undated and unsigned which do not carry the name of any person and only contain the working of labour charges. Appellant submitted that Pg. No.2 discloses that on total cost of furniture of Rs.69,29,441/-. labour charges have been worked out @ 40% to Rs.27,71,776/-. Further, on page No.3, there is some more working of labour charges and the total comes to Rs.36,64,533/- including the amount of Rs 27,71,776/- appearing on page No.2.

The appellant has claimed that expenditure is fully explained. The appellant has contended that during assessment proceedings, he explained the source of expenditure of labour charges of Rs.36,64,533/-. The appellant has furnished ledger of following parties:-

1. M/s N.S. Interior Furniture.AX

As per ledger, the appellant has paid Rs.600000/- to M/s N.S. Interior Furniture

1. SrimantaHazara,

As per ledger, the appellant has paid Rs.250000/- to Srimanta Hazara (Rs.70000+Rs. 180000)

1. M/s Unique Furniture

As per ledger, the appellant has paid Rs.370000/- to M/s Unique Furniture (Rs.100000+Rs. 150000+Rs. 120000)

1. Ledger of payment made to labourers directly of Rs.5, 12,958/-

During assessment proceedings, Id. AO has considered the payment made of Rs.6,00,000/- to Mis N.S. Interior Furniture,

**Decision:-**

The papers were found in the search and seizure action on the appellant. The appellant is required and liable to explain the papers. As per section 132(4A) and 292C of the Act there is statutory presumption that the documents belong to the appellant and the contents of the documents are true.

In case the appellant is questioning the truthfulness of the documents, the appellant is required to prove the same with the sterling evidences. The appellant is required to prove by whom and for what purpose of these documents were prepared - the above supporting documents and also the appellant is required to prove his claim that these amounts are part of the amounts recorded in the books of accounts and the amount surrendered. However the appellant has failed in this regard. Merely raising some doubts against the seized material is of no help to the appellant.

The truthfulness of the contents of the documents also cannot be questioned because the appellant has accepted the total amount. The only issue is whether the documents regarding the issues of addition are same and part of the amount recorded in the books of accounts and amount surrendered. In the appeal proceedings the appellant has not placed on record the seized material and the details and basis of calculation of the surrendered amount.

During assessment proceedings, the appellant has submitted that M/s N.S. Interior Furniture has sublet its contract order to other parties but appellant could not furnish any supporting evidence in support of his claim.

The crux of addition is that it was noticed as per seized material the total labour charges for carpentry was determined at Rs. 36,64,533/- and that was between M/s N.S. Interior Furniture and Sh. Anshul Agarwal There was no mention of Srimanta Hazara and M/s Unique Furniture. Thus the payment made for labour charge to Srimanta Hazara and M/s Unique Furniture is different from what has been found w.r.t. M/s N.S. Interior Furniture. Further, the payment of Rs.5,12,958/- made directly to labourers was also not verifiable that this expense pertains to which work.

Therefore, in view of above, the contention of the appellant is not substantiated and the impugned expenditure is different from the expenditure accepted by the appellant in the books and in the form of surrender. Further the surrender is claimed to have been done in the AY 2020-21 whereas the addition has been done in AY 2016-17. And as per appellant himself (without accepting) the carpentry labour expenses were incurred in the AY 2016-17, AY 2018-19 and AY 2019-20. Thus action of Id. AO in treating the amount of Rs. 30,64,533/- as unexplained is found to be correct.

The appellant has further contended that expenditure does not fall in AY 2016-17. Appellant has given arguments in this regard and supported the same with the other carpentry work. The appellant has contended that the expenditure pertains

to the year AY 2018-19. Accepting the contention of the appellant for notice of enhancement was given to the appellant vide order sheet entry dated 24.12.2024 along with applicability of section 115BBE of the Act. The appellant has submitted the reply on the date of 08.01.2025. In the reply the appellant has mainly contended on the merits of the addition and not on the year of the addition. The merits of the addition have already been discussed in the earlier paragraphs as above. Regarding the year of addition the same is as per the submissions of the appellant himself. Accordingly the assessment of the AY 2018-19 is enhanced by the amount of Rs. 30,64,533. The same is liable to be taxed u/s 69B as unexplained money with the appellant used to make the above discussed payments and alternatively as unexplained expenditure u/s 69C of the Act.

**Subject to the above enhancement in the AY 2018-19, the addition in the year AY 2016-17 is hereby directed to be deleted. Accordingly this ground of appeal of the AY 2016-17 is allowed in these terms.**

Ground No. 2

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

As per facts noted in assessment order brief facts of issue involved in ground of appeal are that page No. 1, 2 & 3 of exhibit 15 which is related to investment in the material purchased of carpentry material by the appellant. As per the seized material the total of expenditure on, Id. AO found that as per gist of expenditure made on carpentry material, the total amount expended was worked out at Rs.91,33,864/- as against Rs.89,48,691/- and out of which Rs.37,60,756/- was recorded in books. Accordingly, addition of Rs.53,73,108/- was made in the hands of assessee as undisclosed investment u/s 69B of the Act for AY 2016-17.

As per working the carpenter ie. M/s N.S. Interior has charged labour on the basis of quantity and value of the material on which work has been done. The value of such material as per the working worked out by the AO to Rs.27,10,400/- Total investment in furniture was worked out to Rs.69.29,441/- on page no. 2 and labour charges determined is Rs.27,71,776/-. The page no.3 shows the investment of Rs. 14,69,250/- in wood material purchased in chaukhat, Rs.5,50,000/- in fittings etc. Thus, the total investment by the assessee in material purchase was worked out to Rs. 89,48,691/-, The assessee was asked to explain the source thereof. In compliance to same, the assessee furnished his explanation. However, on perusal of the same with supporting bills and ledgers of suppliers and as per gist of expenditure made on carpentry material, the total amount expended is Rs. 91,33,864 as against Rs 89,48,691. Out of total amount spent of RS.91,33,864 Rs 37,60,756 was recorded in books Accordingly

unaccounted expenditure arrived at Rs.53,73,108 (Rs.91,33,864 less Rs.37,60,756) was added to total income of assessee.

During appellate proceedings, the appellant has contended that addition has been made by the Id. AO on the basis of rough and dumb papers is not acceptable as the appellant has not contended during assessment proceedings that these paper are dumb

The papers were found in the search and seizure action on the appellant. The appellant is required and liable to explain the papers. As per section 132(4A) and 292C of the Act there is statutory presumption that the documents belong to the appellant and the contents of the documents are true. The documents are clear in terms of amounts and working. Exact details including the nature of item quantity, rate, etc. are mentioned. These cannot be called dumb documents. Further in the appeal the appellant has not placed on record the relevant seized material and hence the issue raised by the appellant is rendered as infructuous

In case the appellant is questioning the truthfulness of the documents, the appellant is required to prove the same with the sterling evidences. The appellant is required to prove by whom and for what purpose of these documents were prepared the above supporting documents and also the appellant is required to prove his claim that these amounts are part of the amounts recorded in the books of accounts and the amount surrendered. However the appellant has failed in this regard. Merely raising some doubts against the seized material is of no help to the appellant.

The appellant has furnished copy of page 1, 2 & 3. On the perusal of same, it is noticed that page no. 1 copy of agreement made between Sh. Anshul Agarwal and the contractor M/s N.S. Interior Furniture and date mentioned as 10.06.2015. Further, on page no. 2 the price of carpentry material is noted and the total of same is Rs.69,29,441/-. Further, on page no. 2, labour charges @ 40% has been calculated at Rs.27,71,776/- and on page no. 3 there is mention of payment of Rs.27,71,776/- On perusal of page no. 3, details of payment is noted which is of Rs.36,64,533/-. Thus all these papers are linked. Further, on perusal of page no.3, there are details of payments made on various occasions made are noted and one payment is of Rs. 27,71,776/- as worked out on page no. 2. Further, labour charges has also been calculated for exactly 80 days. Therefore, these papers is found to be the part of agreement made between Sh. Anshul Agarwal and the contractor M/s N.S. Interior Furniture and entries mentioned therein cannot be said to be estimate. Therefore, in these facts, the contention of the appellant raised in this ground of appeal is not acceptable, hence rejected.

The appellant has further contended that expenditure does not fall in AY 2016-17. Appellant has given arguments in this regard and supported the same with the other carpentry work. The appellant has contended that the expenditure pertains to the year AY 2018-19. Accepting the contention of the appellant for notice of

enhancement was given to the appellant vide order sheet entry dated 24.12.2024 along with applicability of section 115BBE of the Act. The appellant has submitted the reply on the date of 08.01.2025. In the reply the appellant has mainly contended on the merits of the addition and not on the year of the addition. The merits of the addition have already been discussed in the earlier paragraphs as above. Regarding the year of addition the same is as per the submissions of the appellant himself and further that on the issue of carpentry labour the same has been shifted to AY 2018-19 in the ground no. 1 of appeal; in matching with the same the impugned unexplained expenditure on carpentry material is also held to be taxable in the year AY 2018-19. **The same is liable to be taxed u/s 69B as unexplained money as the appellant was owner of unexplained money which was used to make the above discussed payments and alternatively as unexplained expenditure u/s 69C of the Act. Accordingly, the assessment of the AY 2018-19 is enhanced by the amount of Rs. 53,73,108/-.**

Accordingly, this ground of appeal is allowed in above terms.

30. Feeling dissatisfied from the findings so recorded by the Id. CIT(A) the assessee has challenged that finding before this tribunal. On the issue the Id. AR of the assessee has filed the ledger account in the books of the assessee for the cost as per book from page 1 to 6 of his paper book dated 03.06.2025, details of income surrendered in A. Y. 2019-20 at page 7 and 2020-21 at page 8, from page 9 to 16 the assessee filed the copy of valuation report of the property. Apropos the ground the assessee submitted that since Id. CIT(A) has shifted the addition to A. Y. 2018-19, hence the assessee has preferred to make submission in this regard in appeal for A.Y. 2018-19.

31. Per contra Id. DR relied upon the orders of the lower authority and has also filed a detailed submission

This rejoinder is respectfully submitted on behalf of the Revenue. The present appeal arises from the order of Ld. CIT (A), Jaipur against which the assessee is in appeal. The brief facts of the case as noted in the assessment order are that a search and seizure action u/s 132 of the Act was carried out by the department on the members of Narnoli Group on 28.06.2019. Appellant filed his return of income on 10.01.2021 for the AY 2020-21 declaring a total income at Rs. 2,64,82,110/-. Ld. AO issued a notice u/s 143(2) of the Act to the appellant on 01.03.2021. Finally, Id. AO completed the assessment vide order dt.29.09.2021 at a total income of Rs.2,89,47,315/-. Aggrieved by the aforesaid assessment, the appellant has filed the appeal before the Ld. CIT(A). The Ld. CIT(A) allowed appeal of the assessee and confirmed part and assessee is in appeal before your Honours. The assessee has filed paper book, written submission and grounds in form no 36. The revenue submits rebuttal on each as under with request to consider this rejoinder as part of record and arguments of revenue.

Ground No. I. Grounds of Appeal "1) Under the facts and Circumstances of the case the Learned CIT(A) has erred in giving finding regarding the addition of Rs. 30,64,533/- on account of unexplained investment in house construction whereas the same was duly accounted for in the books of accounts for Rs. 17,32,958/- and remaining amount of Rs. 19,32,000/- was surrendered by the assessee for assessment Year 2020-21 which deserves to be quashed instead of shifting this in assessment year 2018-19,"

Revenue Submission

Issue: Addition of ₹30,64,533/- on account of unexplained investment in house construction

1. A search u/s 132 was conducted at the assessee's residential premises at Plot No. 5, Ahimsa Marg, Mahaveer Nagar, Jaipur. During the search, Exhibits 15 and 16 were seized, containing documents relating to interior furnishing and carpentry work.

a. Exhibit 15: 21 pages, includes:

b. Page 1: Contract agreement between Shri Anshul Agarwal and M/s N.S. Interior Furniture.

c. Pages 2 & 3: Detailed working of labour charges for carpentry work by M/s N.S. Interior Furniture.

d. Pages 4 to 6: Costings for painting and polish work.

e. Page 7: Total of painting work.

f. Exhibit 16: Pages 1 to 112 relate to painting area calculations; Page 112 mirrors the same distemper work area shown on Page 4 of Exhibit 15 (7411.87 sq. ft. x ₹8 = ₹59,294/-), indicating corroborative evidence.

2. Assessee's Initial Admission:

During post-search proceedings, the assessee admitted that total carpentry cost was 36,64,533/-. Out of this, only 17,32,958/- was recorded in the books, and the remaining 19,31,575/- was settled in cash out of books.

e. Letters issued u/s 133(6) to N.S. Interior and Srimanta Hazra came back unserved.

f. No address was ever provided for M/s Unique Furniture.

g. The ledger entries for cash payments contain vague narrations such as "being cash paid to labour" without linking them to the seized documents.

ii. AO's Conclusion:

a. The claim of subcontracting or splitting of work is unsubstantiated.

b. The entire 36,64,533/- was for carpentry work done by M/s N.S. Interior.

c. Since only 6,00,000/- was recorded in the books for M/s N.S. Interior, the remaining 30,64,533/- is unexplained investment.

d. Legal Application:

e. The amount of ₹30,64,533/- is added to total income u/s 69B of the Income Tax Act as unaccounted investment.

f. Year of investment determined as A.Y. 2016-17, based on the agreement date of 10.06.2015.

g. Penalty proceedings u/s 271(1)(c) were separately initiated for concealment of income.

iii. Ld. CIT(A) held-

During search, Exhibits 15 & 16 were seized from assessee's premises.

Exhibit 15: Pages 1-3 pertain to carpentry work:

Page 1: Agreement between Shri Anshul Agarwal and M/s N.S. Interior Furniture.

Pages 2-3: Working of total labour charges, aggregating to ₹36,64,533/-.

Pages 4-6: Painting & polish work;

Page 7: Summation of painting charges.

Assessee admitted to having incurred ₹36,64,533/-, out of which:

17,32,958/- recorded in books;

19,31,575/- settled in cash and voluntarily surrendered, though offered in A.Y. 2020-21.

iii. AO, however, found that of the total 36.64 lakhs, only ₹6,00,000/- was shown as paid to M/s N.S. Interior in the books; hence, balance ₹30,64,533/- remained unexplained.

iv. Appellant's Contentions before CIT(A):

- a. Claimed M/s N.S. Interior sublet carpentry work to:
- b. M/s Unique Furniture: ₹3,70,000/-
- c. Shri Manta Hazra: 2,50,000/-
- d. Daily labourers (cash): 5,12,958/-
- e. 19,31,575/- paid in cash and surrendered in A.Y. 2020-21.
- f. Asserted that full carpentry cost of ₹36,64,533/- is either in books or surrendered. Also contended:
- g. Page 1 of Ex. 15 is not on stamp paper;
- h. Pages 2 & 3 are undated/unsigned; do not mention Unique Furniture or Hazra.
- v. The Ld. CIT(A)'s Observations and Legal Conclusions:
- a. Seized documents found during search carry statutory presumption of ownership and truth under Sections 132(4A) and 292C.
- b. Assessee failed to rebut the presumption: o No proof of who prepared the seized documents;
- c. No evidence that amounts were reflected in books or formed part of surrender;
- d. No contract agreements, confirmations, or written bills with alleged sub-contractors. Letters issued u/s 133(6):
- e. Returned unserved for N.S. Interior and Shri Manta Hazra;
- f. No address was provided for Unique Furniture.
- g. Ledger entries of cash to labourers had vague narration like "being cash paid to labour" - not linked to seized documents or specific work.
- h. Thus:  
Entire 36,64,533/- is for work done by M/s N.S. Interior;  
Out of this, only ₹6,00,000/- was accounted in books;  
Remaining 30,64,533/- is unexplained and settled outside books. Key Enhancement Action Taken:  
Assessee contended that expenditure pertains to A.Y. 2018-19.
- vi. Ld. CIT(A) accepted this as admission and issued enhancement notice dated 24.12.2024, also invoking Section 115BBE.  
Assessee responded on 08.01.2025, but focused only on merit, not timing.
- vii. Ld.CIT(A) held:  
Addition rightly sustained on merits u/s 69B;  
Assessment for A.Y. 2018-19 enhanced by ₹30,64,533/-;  
Addition deleted from A.Y. 2016-17 accordingly.  
Final CIT(A) Conclusion:  
Expenditure was not part of books or surrendered income;  
No evidence of sub-contracting or alternative source;  
Documents seized during search clearly linked to M/s N.S. Interior only;  
Therefore, addition of ₹30,64,533/- sustained under Section 69B in A.Y. 2018-19, with necessary enhancement.

viii. On Behalf of the Revenue In further support of the findings of the Assessing Officer and the learned CIT(A), and in rebuttal to the assessee's grounds before the Hon'ble ITAT, the Revenue respectfully submits the following key aspects:

1. Failure to Rebut Seized Documents: The assessee has completely failed to discharge the statutory burden arising under Sections 132(4A) and 292C of the Income Tax Act, which presume that the seized documents belong to the assessee and their contents are true. Pages 1 to 3 of Exhibit 15 clearly quantify the carpentry labour charges at 36,64,533/- executed by M/s N.S. Interior Furniture. No cogent evidence, documentation, or even basic counter-affidavit has been filed to disprove the ownership or authenticity of these documents.

2. Failure to Rebut Statement of Vipul Narnoli: The statement of Shri Vipul Narnoli, recorded on oath during post-search inquiry, clearly confirms that the residential house was constructed in 2018 and the family shifted there in October 2018. The relevant part is reproduced as under-

" प्र.13: कृपया बताइए कि आपने अपने नए मकान में कब शिफ्ट किया? और उस पर कुल कितना राशि खर्च हुई और शादी का स्रोत क्या है? 4. उत्तर: नया आवासीय मकान वर्ष 2018 में तैयार हुआ और अक्टूबर 2018 से हमारा पूरा परिवार वहीं रह रहा है। घर के निर्माण पर लगभग ₹3.50 करोड़ का खर्च हुआ। जमीन पुरानी है, उपरोक्त राशि मेरे पिता श्री सुनेल कुमार अगरवाल की कैपिटल की राशि से ही खर्च हुए हैं।" (paper book of assessee page number 85, filed on 27/5/2025) He further stated that the total expenditure on construction was approximately 3.5 crores.

i. This statement was never retracted, nor has any affidavit or clarification been filed to contradict it. The Revenue respectfully submits that this unrebutted admission by a family member directly corroborates the timing and scale of construction and reinforces the conclusion that the said expenses are unexplained.

ii. Valuation Report - Lacks Reference to Seized Documents or Actual Bills The assessee has filed a valuation report, but the same carries no evidentiary weight for the following reasons: The valuer has not referred to any of the seized documents (Exhibit 15 or 16), which formed the basis of the assessment and are presumed to be correct under Sections 132(4A) and 292C of the Income Tax Act.

i. The valuation report is entirely unsupported by real construction bills, contractor agreements, or actual vouchers. There is no correlation between the estimated figures in the valuation and the documents or payments allegedly made by the assessee.

. No objections were filed by the assessee under the Income Tax framework to formally dispute the AO's working based on seized material. The assessee has

neither invoked Section 142A nor requested any cross-verification or third-party confirmation.

In absence of any contemporaneous record of actual expenditure, the only reliable indicators of the year and extent of construction remain: The agreement dated 10.06.2015 seized as part of Exhibit 15;

The statement of Shri Vipul Narnoli, confirming that the family shifted into the newly constructed property in October 2018 and the total cost of construction was around 3.5 crores. Thus, the valuation report is self-serving, uncorroborated by evidence, and cannot displace the probative value of seized materials and admitted facts.

Failure to Substantiate Capital Source or Produce Vendors: Even assuming the assessee's vague claim that the expenses were incurred from capital of Shri Sunil Kumar Agarwal, it is submitted that even capital must have a source. No capital account, bank withdrawal, or ledger has been furnished to show availability or movement of funds.

viii. Further: No effort was made to produce M/s Unique Furniture, Srimanta Hazra, or any of the alleged vendors who supposedly executed the work.

ix. No confirmations, no written agreements, no bills, and no 133(6) compliance from any vendor has been produced, despite specific confrontation.

X. No explanation has been offered why vendors were not summoned or examined, especially when the assessee was fully aware of the evidentiary burden upon him.

xi. Prayer In view of the above detailed submissions, it is most respectfully prayed that:

xii. The assessee has failed to rebut the presumption of truth under Sections 132(4A) and 292C arising from the seized documents (Exhibit 15), which clearly establish an undisclosed investment of ₹30,64,533/- in house construction;

xiii. The assessee has also failed to counter the uncontroverted statement of Shri Vipul Narnoli, which confirms the timing and quantum of construction in the year 2018;

xiv. The assessee's claim of capital utilisation remains unsubstantiated, as no books of account, cash flow, or bank statements were furnished to prove such source;

XV. The alleged subcontractors were neither produced nor examined, and notices u/s 133(6) issued to them remained unserved, reflecting no effort on part of the assessee to discharge the burden of proof;

The valuation report filed by the assessee is devoid of reference to seized materials or actual construction bills, and therefore cannot override direct, contemporaneous, and incriminating evidence found during search;

xvii. The entire evidence points towards unaccounted expenditure to the extent of ₹30,64,533/-, which was rightly brought to tax under Section 69B by the Assessing Officer, and correctly enhanced by the Ld. CIT(A) in A.Y. 2018-19, based on the assessee's own admissions. Therefore, the Hon'ble Bench may kindly be pleased to: Uphold the addition of ₹30,64,533/- as unexplained investment under Section 69B of the Act in A.Y. 2018-19, as sustained and enhanced by the CIT(A), and dismiss the grounds raised by the assessee.

Ground No. 2 - Addition of ₹53,73,108/- for Unaccounted Purchase of Carpentry Material Assessee: Shri Sunil Kumar Agarwal | A.Y. 2018-19 | PAN: ABRPA9601M I. Basis of Addition by AO

During the course of search, pages 1, 2 & 3 of Exhibit 15 were seized from the assessee's premises, reflecting detailed working of furniture carpentry material purchases and payments.

The AO noted that:

- a) Page 2 of Exhibit 15 reflected total investment in material as ₹69,29,441/-;
- b) Labour charges were calculated @ 40%, totaling ₹27,71,776/-;
- c) Page 3 showed additional material investments (14,69,250/- in wood, \*5,50,000/- in fittings), aggregating to ₹91,33,864/-;
- d) Of this, ₹37,60,756/- was found recorded in the books (based on six vendors);
- e) Balance 53,73,108/- was treated as undisclosed investment u/s 69B in A.Y. 2016-17.

II. Assessee's Grounds and Argument Summary

- a) Argued that pages 2 & 3 are "rough" and "dumb" documents, unsigned, undated, and not linked to the assessee;
- b) Claimed purchases were made in later years (A.Y. 2017-18 and 2018-19) and duly accounted for;
- c) Claimed AO did not make any inquiry from vendors;
- d) Relied on case laws on dumb documents, loose sheets, and absence of corroborative evidence;
- e) Pointed out only ₹4.60 lakhs purchases relate to A.Y. 2016-17; rest pertain to later years.

III. Findings of the CIT(A)

- a) Rejected "dumb document" claim: Pages 1, 2 & 3 are coherent, detailed, self-contained and corroborate each other cannot be called dumb;
- b) Statutory presumption applies under Sections 132(4A) & 292C: Assessee failed to rebut the presumption with any credible evidence;
- c) The agreement (page 1) is dated 10.06.2015, and linked to materials and labour details on pages 2 & 3;
- d) Quantity, rates, items, and days of labour (80 days) match precisely -indicating this is a working document of actual expenditure, not an estimate;

e) The assessee did not furnish seized documents themselves, nor prove how figures in seized material align with books;

f) Based on assessee's own claim that carpentry labour was in A.Y. 2018-19, the CIT(A) enhanced the addition of ₹53,73,108/- to A.Y. 2018-19 under Section 69B (alternative 69C).

#### Revenue Rebuttal to Assessee's Grounds Before ITAT

1. Seized Papers Are Not Dumb - They Are Complete, Detailed & Self-Contained  
2. Pages 1, 2, and 3 of Exhibit 15 contain a complete narrative of contract agreement, value of material purchased, and corresponding labour charges.

3. The documents are interlinked and numerically aligned, showing payment cycles, item quantities, and unit costs - hallmarks of active work documents, not rough notes.

#### 3. Statutory Presumption Under Section 292C Applies

4. The documents were found during valid search from assessee's residence;

5. Assessee failed to rebut presumption of truthfulness or ownership;

6. Mere oral denial or characterisation as "rough" is not sufficient to override statutory presumptions.

7. Assessee Failed to Reconcile the Documents with Books o Though part of the purchases (37.60 lakhs) were reflected in books, the remaining 53.73 lakhs were not reconciled, nor traced to bank entries, cash withdrawals, or capital accounts;

8. Assessee has not explained the source of this remaining expenditure, despite having been given opportunity to do so.

9. No Vendor Produced - No Inquiry Prevented by Assessee Itself o Despite naming vendors, the assessee neither produced them nor filed confirmation

10.No effort was made to summon or examine vendors to support the dates, quantities, or payments;

11. The assessee's inaction further strengthens the inference that seized figures relate to unaccounted investment.

12.Misplaced Reliance on Case Laws - Inapplicable to Present Facts o The case laws cited by the assessee relate to "dumb" or "unsigned" papers, no linkage to assessee, or documents with no content coherence;

13.In contrast, here the papers are internally cross-referenced, consistent in values and signed (agreement);

14.No judicial authority bars addition where seized papers are detailed and unrebutted, as in the present case.

15. Assessee Itself Admitted That Expenditure Falls in A.Y. 2018-19 o Based on assessee's claim regarding timing of labour payments, CIT(A) correctly shifted the addition to A.Y. 2018-19, thereby removing any prejudice from timing mismatch.

V. Final Prayer on Ground No. 2 In light of the above, it is most respectfully prayed that:

1. The addition of ₹53,73,108/- is based on detailed seized documents, containing verifiable entries of material purchase and payments;
2. The assessee has failed to rebut statutory presumptions or link these amounts with accounted purchases;
3. No confirmation, reconciliation, or source explanation was provided for unrecorded purchase component;
4. The enhancement of ₹53,73,108/- in A.Y. 2018-19 by the Ld. CIT(A) under Section 69B, based on coherent seized documents and assessee's own submissions, is legally and factually sound. The Hon'ble Bench may kindly uphold the addition of ₹53,73,108/- in A.Y. 2018-19 and dismiss the assessee's ground.

Ground No. 3-Rebuttal on Addition of ₹16,78,625/- by Applying GP Rate @10% on Unaccounted Sales of ₹1,67,86,250

I. Preliminary Submission At the outset, it is submitted that the addition of ₹16,78,625 was made based on credible incriminating material found during the course of search at the premises of Shri Nikhil Kumar Goyal, who voluntarily admitted the slips pertained to unaccounted cash sales brokered by him between the assessee (Sunil Kumar Agarwal / his concerns) and third parties. The assessee's failure to rebut this evidence despite being given opportunity justifies the application of 10% GP rate on such unrecorded turnover.

II. On the Incriminating Document (Loose Paper 10/22/1C) Not a Dumb Document: The paper in question was not a stray or dumb document. It formed part of a series of systematically maintained slips by a known broker (Sh. Nikhil Kumar Goyal), indicating transactions with clear numerical patterns that correspond to known practices of recording cash sales. The decoding (suppressing two zeros) was corroborated by Nikhil Goyal's admission and industry practice.

III. Assessee's Concerns Named: The seized records (Annexure 22, 26, and 31) explicitly contained transactions between Sunil Kumar Agarwal/his concerns and other parties. The assessee never denied his association with the entities named or his relationship with Nikhil Kumar Goyal. Inference of Ownership: The presumption under Section 292C squarely applies. The assessee failed to rebut this presumption with any cogent explanation Mere denial without evidence does not discharge the burden. III. O Opportunity of Cross-Examination

IV. Statement Was Shared: The statement of Shri Nikhil Kumar Goyal date 25.10.2019 and relevant documents were duly provided to the assessee during the assessment. Despite this, the assessee chose not to respond thereafter.

Principles of Natural Justice Not Violated: The right to cross-examination is not absolute. The Hon'ble Apex Court in Kanungo & Co. v. Collector of Customs

(1983) ELT 1486 (SC) and GTC Industries Ltd. v. ACIT (1998) 65 ITD 380 (Mum) has held that denial of cross-examination does not vitiate assessment if assessee had the opportunity to rebut the evidence otherwise.

**Assessee Could Produce Witness:** Nothing prevented the assessee from summoning Shri Nikhil Kumar Goyal under section 131 or submitting an affidavit if the content of the statement was incorrect. The failure to do so implies implied admission.

**. CIT(A) Observed Constructive Admission:** The CIT(A) rightly held that the assessee made no further submission or objection after receiving the statement and documentary evidence, thereby implying constructive acceptance.

**I. GP Rate Justification @ 10%**

**Based on Departmental Estimation in Light of Evasion:** The AO rightly held that unaccounted sales evading GST/sales tax merit higher GP due to tax savings and informal pricing practices. The average GP of disclosed businesses of the assessee and his group ranged between 6.47% to 7.89%, averaging 7.26%. Hence, applying 10% on unaccounted sales is a reasonable and conservative estimate.

**Supported by Judicial Precedents:** o British Paints India Ltd. (1991) 188 ITR 44 (SC): AO can reject books and apply reasonable estimate.

**Kachwala Gems v. JCIT (2007) 288 ITR 10 (SC):** Estimation involving guesswork is valid where assessee fails to maintain complete records.

**XI. CIT v. H.M. Esufali (1973) 90 ITR 271 (SC):** Assessments involving best judgment can be made on a rational basis.

**XII. Assessee's Alternate Plea of 7.5% GP Not Sustainable:** It is settled law that unrecorded transactions often yield higher margins due to tax evasion. The alternate plea lacks factual backing and fails to dislodge the AO's rational estimation.

**XIII. On Legal Authority of Using Third-Party Evidence - Valid Under Section 153A & 292C:** Documents found from a third party are admissible and deemed to belong to the assessee under section 292C unless rebutted. The burden to disprove the presumption lies on the assessee. No affidavit, independent witness, or contrary material has been furnished.

**XIV. ITAT and High Court Precedents Allow Additions Based on Third-Party Material Where Admission Exists:** Refer: Vijay Jain v. CIT (2019) 107 taxmann.com 313 (MP HC) Chaturbhuj Manoj Kumar v. CIT (2016) 388 ITR 194 (Raj HC) Rajnik & Co. v. ACIT (2001) 117 Taxman 675 (AP HC)

**XV. Concluding Rebuttal** The addition is not based merely on a third-party statement but on:

Seized documents decoded and admitted by a known broker;

Corroborated business pattern;

The assessee's silence and constructive admission after receipt of full material;  
Estimation principles upheld by Courts; and  
The valid use of Section 292C presumptions.

The assessee's arguments are afterthoughts and fail to rebut the legally presumed facts. Hence, the addition of ₹16,78,625/- @10% GP on unaccounted sales of ₹1,67,86,250/- deserves to be upheld.

1: Contract agreement between Shri Anshul Agarwal and M/s N.S.

N.S. Interior Furniture. Pages 2 & 3: Detailed working of labour charges for carpentry work by M/s

Pages 4 to 6: Costings for painting and polish work.

Page 7: Total of painting work.

Exhibit 16: Pages 1 to 112 relate to painting area calculations; Page 112 mirrors the same distemper work area shown on Page 4 of Exhibit 15 (7411.87 sq. ft. × 28 = \*59,294/-), indicating corroborative evidence.

Assessee's Initial Admission:

0 During post-search proceedings, the assessee admitted that total carpentry cost was 36,64,533/-.

0 Out of this, only 17,32,958/- was recorded in the books, and the remaining 19,31,575/- was settled in cash out of books.

0 Assessee surrendered ₹19,31,575/- voluntarily, but for A.Y. 2020-21, not the correct year of expenditure.

Break-up of 17,32,958/- shown in books:

M/s N.S. Interior Furniture: ₹6,00,000/-0

- M/s Unique Furniture: ₹3,70,000/-
- Shri Srimanta Hazra: 2,50,000/-
- Daily labour/cash payment: 5,12,958/-
- Total: 17,32,958/-

Srimanta Hazra. Claimed M/s N.S. Interior sublet the contract to M/s Unique Furniture &

Payments were made directly by the assessee to these subcontractors and labourers, adjusting N.S. Interior's dues.

AO's Findings & Rebuttal:

The entire work was shown in seized documents as performed by M/s N.S. Interior only, with no mention of subcontractors or labourers.

Hazra. Pages 1 to 3 of Exhibit 15 do not mention Unique Furniture or Srimanta

0 The working on Pages 2 & 3 directly flow from the agreement on Page 1-rates and totals align precisely with M/s N.S. Interior's scope of work.

0 No agreements or work details were furnished with Unique Furniture or Srimanta Hazra.

Letters issued u/s 133(6) to N.S. Interior and Srimanta Hazra came back unserved.

0 No address was ever provided for M/s Unique Furniture.

0 The ledger entries for cash payments contain vague narrations such as "being cash paid to labour" without linking them to the seized documents.

AO's Conclusion:

0 The claim of subcontracting or splitting of work is unsubstantiated.

0 The entire ₹36,64,533/- was for carpentry work done by M/s N.S. Interior.

of

0 Since only ₹6,00,000/- was recorded in the books for M/s N.S. Interior, the remaining 30,64,533/- is unexplained investment.

Legal Application:

The amount of ₹30.64.533/- is added to total income u/s 69B of the Income Act as unaccounted investment

0 . Year of investment determined as A.Y. 2016-17, based on the agreement date of 10.06.2015.

Penalty proceedings u/s 271(1)(c) were separately initiated for concealment of income.

Ld. CIT(A) held-

During search, Exhibits 15 & 16 were seized from assessee's premises.

0 Exhibit 15: Pages 1-3 pertain to carpentry work:

➤ Page 1: Agreement between Shri Anshul Agarwal and M/s N.S. Interior Furniture.

➤ Pages 2-3: Working of total labour charges, aggregating to 36,64,533/-.

➤ Pages 4-6: Painting & polish work;

➤ Page 7: Summation of painting charges.

Assessee admitted to having incurred ₹36,64,533/-, out of which:

17,32,958/- recorded in books; 0

0 19,31,575/- settled in cash and voluntarily surrendered, though offered in A.Y. 2020-21.

AO, however, found that of the total 36.64 lakhs, only ₹6,00,000/- was shown as paid to M/s N.S. Interior in the books; hence, balance ₹30,64,533/- remained unexplained.

Appellant's Contentions before CIT(A):

Claimed M/s N.S. Interior sublet carpentry work to:

0 M/s Unique Furniture: ₹3,70,000/-

Shri Manta Hazra: ₹2,50,000/-

Daily labourers (cash): ₹5,12,958/-

19,31,575 /- paid in cash and surrendered in A.Y. 2020-21.

Asserted that full carpentry cost of ₹36,64,533/- is either in books or surrendered.

Also contended:

Page 1 of Ex. 15 is not on stamp paper;

or Hazra. Pages 2 & 3 are undated/unsigned; do not mention Unique Furniture

CIT(A)'s Observations and Legal Conclusions:

Seized documents found during search carry statutory presumption of ownership and truth under Sections 132(4A) and 292C.

Assessee failed to rebut the presumption:

0 No proof of who prepared the seized documents;

0 No evidence that amounts were reflected in books or formed part of surrender;

0 No contract agreements, confirmations, or written bills with alleged sub-contractors.

Letters issued u/s 133(6):

Returned unserved for N.S. Interior and Shri Manta Hazra; 0

No address was provided for Unique Furniture.

Ledger entries of cash to labourers had vague narration like "being cash paid to labour" - not linked to seized documents or specific work.

Entire 236,64,533/- is for work done by M/s N.S. Interior;

Out of this, only ₹6,00,000/- was accounted in books;

Remaining 230,64,533/- is unexplained and settled outside books.

Key Enhancement Action Taken:

Assessee contended that expenditure pertains to A.Y. 2018-19.

CIT(A) accepted this as admission and issued enhancement notice dated 24.12.2024, also invoking Section 115BBE.

Assessee responded on 08.01.2025, but focused only on merit, not timing.

CIT(A) held:

0

Addition rightly sustained on merits u/s 69B;

Assessment for A.Y. 2018-19 enhanced by ₹30,64,533/-;

Addition deleted from A.Y. 2016-17 accordingly.

Final CIT(A) Conclusion:

Expenditure was not part of books or surrendered income;

No evidence of sub-contracting or alternative source;

Documents seized during search clearly linked to M/s N.S. Interior only;

Therefore, addition of ₹30,64,533/- sustained under Section 69B in A.Y. 2018-19, with necessary enhancement.

Additional Submissions in Rejoinder - On Behalf of the Revenue

In further support of the findings of the Assessing Officer and the learned A), and in rebuttal to the assessee's grounds before the Hon'ble ITAT, the assessee respectfully submits the following key aspects:

1. Failure to Rebut Seized Documents:

The assessee has completely failed to discharge the statutory burden arising under Sections 132(4A) and 292C of the Income Tax Act, which presume that the seized documents belong to the assessee and their contents are true. Pages 1 to 3 of Exhibit 15 clearly quantify the carpentry labour charges at ₹36,64,533/- executed by M/s N.S. Interior Furniture. No cogent evidence, documentation, or even basic counter-affidavit has been filed to disprove the ownership or authenticity of these documents.

2. Failure to Rebut Statement of Vipul Narnoli:

The statement of Shri Vipul Narnoli, recorded on oath during post-search inquiry, clearly confirms that the residential house was constructed in 2018 and the family shifted there in October 2018. The relevant part is reproduced as under-

3. "प्र.13: कृपया बताइए कि आपने अपने नए मकान में कब शिफ्ट किया? और उस पर कुल कितना राशि खर्च हुई और शादी का स्रोत क्या है?

4. उत्तर: नया आवासीय मकान वर्ष 2018 में तैयार हुआ और अक्टूबर 2018 से हमारा पूरा परिवार वहीं रह रहा है। घर के निर्माण पर लगभग ₹3.50 करोड़ का खर्च हुआ। जमीन पुरानी है, उपरोक्त राशी मेरे पिता श्री सुनेल कुमार अगरवाल की कैपिटल की राशी से ही ख हुए हैं। "(paper book of assessee page number 85, filed on 27/5/2025)

He further stated that the total expenditure on construction was approximately crores. This statement was never retracted, nor has any affidavit or clarification filed to contradict it. The Revenue respectfully submits that this unrebutted admission by a family member directly corroborates the timing and scale of construction and reinforces the conclusion that the said expenses are unexplained.

Valuation Report - Lacks Reference to Seized Documents or Actual Bills The assessee has filed a valuation report, but the same carries no evidentiary weight for the following reasons:

The valuer has not referred to any of the seized documents (Exhibit 15 or 16), which formed the basis of the assessment and are presumed to be correct under Sections 132(4A) and 292C of the Income Tax Act.

The valuation report is entirely unsupported by real construction bills, contractor agreements, or actual vouchers. There is no correlation between the estimated figures in the valuation and the documents or payments allegedly made by the assessee.

No objections were filed by the assessee under the Income Tax framework to formally dispute the AO's working based on seized material. The assessee has neither invoked Section 142A nor requested any cross-verification or third-party confirmation.

In absence of any contemporaneous record of actual expenditure, the only reliable indicators of the year and extent of construction remain:

0 The agreement dated 10.06.2015 seized as part of Exhibit 15;

0 The statement of Shri Vipul Narnoli, confirming that the family shifted into the newly constructed property in October 2018 and the total cost of construction was around ₹3.5 crores.

Thus, the valuation report is self-serving, uncorroborated by evidence, and cannot displace the probative value of seized materials and admitted facts.

Failure to Substantiate Capital Source or Produce Vendors:

Even assuming the assessee's vague claim that the expenses were incurred from capital of Shri Sunil Kumar Agarwal, it is submitted that even capital must have a source. No capital account, bank withdrawal, or ledger has been furnished to show availability or movement of funds. Further:

No effort was made to produce M/s Unique Furniture, Srimanta Hazra, or any of the alleged vendors who supposedly executed the work.

No confirmations, no written agreements, no bills, and no 133(6) compliance from any vendor has been produced, despite specific confrontation.

No explanation has been offered why vendors were not summoned or examined, especially when the assessee was fully aware of the evidentiary burden upon him.

Prayer

In view of the above detailed submissions, it is most respectfully prayed that:

1. The assessee has failed to rebut the presumption of truth under Sections 132(4A) and 292C arising from the seized documents (Exhibit 15), which clearly establish an undisclosed investment of ₹30,64,533/- in house construction;

2. The assessee has also failed to counter the uncontroverted statement of Shri Vipul Narnoli, which confirms the timing and quantum of construction in the year 2018;

3. The assessee's claim of capital utilisation remains unsubstantiated, as no books of account, cash flow, or bank statements were furnished to prove such source;

The alleged subcontractors were neither produced nor examined, and notices u/s 133(6) issued to them remained unserved, reflecting no effort on part of the assessee to discharge the burden of proof; 4.

The valuation report filed by the assessee is devoid of reference to seized materials or actual construction bills, and therefore cannot override direct, contemporaneous, and incriminating evidence found during search;

6. The entire evidence points towards unaccounted expenditure to the extent of ₹30,64,533/-, which was rightly brought to tax under Section 69B by the Assessing Officer, and correctly enhanced by the Ld. CIT(A) in A.Y. 2018-19, based on the assessee's own admissions.

Therefore, the Hon'ble Bench may kindly be pleased to:

Uphold the addition of ₹30,64,533/- as unexplained investment under Section 69B of the Act in A.Y. 2018-19, as sustained and enhanced by the CIT(A), and dismiss the grounds raised by the assessee.

32. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee has mainly taken two grounds of appeal challenging the addition of Rs. 30,64,533/- on account of unexplained investment in house construction whereas the same was duly accounted for in the books of accounts for Rs. 17,32,958/- and remaining amount of Rs. 19,32,000/- was surrendered by the assessee for assessment year 2020-21 which deserves to be quashed instead of shifting this in assessment year 2018-19. The assessee also challenges the finding of the Id. CIT(A) for giving the finding regarding addition of Rs. 53,73,108/- on account of purchase of carpentry material without any evidence or seized documents which deserves to be quashed instead of shifting this in assessment year 2018-19.

The brief facts related to the disputes are that in the search proceedings, at Party No. 1 at the residential premises bearing address

Plot No. 5, Ahimsa Marg, Mahaveer Nagar, Jaipur, seized certain incriminating documents referred as Exhibit 15, Page No. 1 to 7. In that search proceedings, from the same premises, certain documents were seized and referred to as Exhibit 15 & 16. Exhibit 15 contains 21 pages. Page No. 1 is an agreement for contract work between Shri Anshul Agarwal and M/s N. S. Interior furniture. Page no. 2 & 3, contains the total labour charges determined by M/s N. S. Interior furniture for the carpentry work. Page no. 4, 5 & 6 are details of painting and polish work and labour charge determined for the same. Page No. 7 is total of the amount determined on page no. 4, 5 & 6. Rest of the pages of exhibit 15 & 16 are individual working of different kinds of work relating to painting work which are summarized on page no. 4, 5, & 6. This is evident from the fact that the first entry on page 4 of Exhibit 15 is regarding distemper work. The total area of the distemper work is mentioned as 7411.87 sq.ft. and the labour charge determined as Rs. 59,294/- (7411.878). The same area is mentioned on page 112 of the Exhibit 16. This page no. 112 contains the details of different painting work such as distemper, plastic paint etc, and total area. ***While search proceedings, the assessee claimed that these pages are related to carpentry & painting estimates.*** During the post search enquiry, Id. AR of the assessee submitted that the page 1 is an

agreement for contract and he contended that the labour charges for carpentry work were paid as mentioned on this page ie @ 40%, 20% and 35%. The total labour charges determined are mentioned on page no. 2 & 3 of the Exhibit 15 which works out to Rs. 36,64,533/- The assessee has accepted to have paid this much amount to the carpenter. During the post search proceedings, the assessee admitted that out of Rs. 36,64,533/-, only Rs. 17,32,958/- were recorded in the books of accounts and the balance amount of Rs. 19,31,575/- was settled out of books. This amount of Rs. 19,31,575/- was also voluntarily surrendered by the assessee. The assessee furnished the breakup of labour charges of Rs. 17,32,958/- paid and recorded in the books of accounts which reads as under:

Sl.No.	Name	Amount	FY
1.	N.S. Interior furniture	6,00,000/-	2017 -18
1.	Unique Furniture	3,70,000/-	2017-18 & 2018-19
1.	Srimanta Hazra	2,50,000/-	2017-18 & 2018-19
1.	Daily Labour/cash payment	5,12,958/-	2016 -17 & 2017-18
<b>Total</b>		<b>17,32,958/-</b>	

Accordingly, the assessee claimed that the amount of Rs. 17,32,958/- is reflected in the books of account and balance amount of Rs. 19,31,575/-

was settled out of books. However, as per the notings on page Nos. 1, 2 & 3 it is seen that they contain work by M/s N.S. Interior and not done by any other party. The total labour charges related to M/s N.S. Interior is Rs. 36,64,533/- out of which only Rs. 6,00,000/- was recorded in the books of accounts. Thus, the balance amount of Rs. 30,64,533/- had been settled out of books. While assessment proceedings, a show cause notice was issued requiring assessee to explain why addition of Rs. 30,64,533/- may not be made on account of unaccounted expenditure. The assessee filed the reply contending that the whole carpentry work was given on contract to M/s N.S. Interior Furniture. The total work was assigned to M/s N.S. Interior Furniture only. In terms of total work of carpentry M/s N.S. Interior Furniture has subcontracted its work to M/s Unique Furniture and Shri Manta Hazra and other daily labourers. The payment to the sub-contractors and daily wagers were made by the assessee directly and deducted from the payment of M/s Interior Furniture. There is no reason when we have given contract for complete carpentry work to M/s N.S. Interior Furniture than to make additional payments to others for same work. The total contract was for Rs. 36,64,533/- out of which Rs. 6,00,000/- was paid to M/s N.S. Interior Furniture directly and other payments of Rs. 3,70,000/- to Unique Furniture, Rs. 2,50,000/- to Shri Manta Hazra and Rs. 5,12,958/- were directly paid to

daily labors on behalf of M/s N.S. Interior Furniture and remaining payment of Rs. 19,31,575/- was made in cash which has not been accounted for and same has been included in offered income for assessment year 2020-21. The relevant submission made before us was explained by way submission wherein the assessee explained the disputed amount by way of following submission;

2. Expenditure is fully explained

*During the course of assessment proceedings, the assessee explained the source of expenditure of above labour charges of Rs.36,64,533/- as under :-*

S.No	Details of payment	Amount
1	<i>Payment made directly to NS Interior Furniture as per Bill dated 12/11/2017 (Payment made on 12/11/2017) . (Copy of account of NS Interior Furniture as appearing In the books of Sunil Kr. Agarwal for the period 1/4/2017 to 31/3/2018 is available on Paper Book Page 6 Copy of Bill dated 12/11/2017 issued by NS Interior Furniture Jamnay Dairy, Sodala, Jaipur is available on Paper Book Page No.7.</i>	<i>Rs.6,00,000/-</i>
2	<i>Payment made directly to Srimanta Hazra as per Bill dated 25/02/2018 for Rs.70,000/- and as per Bill dated 18/10/2017 (Payment of Rs.100000/- made on 6/11/2017 and Rs.1,00,000/- paid on 4/7/2018 and Rs.50,000 paid on 11/9/2018). Copy of account of Srimanta Hazra for the period 1/4/2017 to 31/3/2019 is available on Paper Book at Page No.8. Copy of Bill dated 25/02/2018 and 18/10/2017 are also available on Paper Book from Page No 09 &amp; 10.</i>	<i>Rs.2,50,000/- (70000+180000)</i>
3	<i>Payment made to Unique Furniture as per copy of</i>	<i>Rs. 3,70,000/-</i>

	<i>ledger account available on Paper Book Page No 11. Payment made on 6/11/2017 (Rs.1,00000), 11/9/2018 (Rs.1,50,000) and 4/9/2019 (Rs.1,20,000), total Rs. 3,70,000/-.</i>	
4	<i>Payment made to other labourers directly details as per Paper Book Page No. 12.</i>	<i>Rs.5,12,958/-</i>
		<i>Rs. 17,32,958/-</i>
5	<i>Income surrendered on account of labour work of furniture in AY 2020-21 (copy of computation of income available on Paper Book Page No13 to 19.</i>	<i>Rs.19,32,000/-</i>
<b>TOTAL</b>		<i>Rs. 36,64,958</i>

*Thus, the assessee on his part fully explained the labour expenditure on furniture work. It is relevant to mention that the alleged agreement (Page 1 of Exhibit 15) does not stipulate any time frame for carrying out the work. There is no indication when the work was to start and when it was to be completed. The Id. AO accepted the payment made of Rs. 6,00,000/- to NS Interior Furniture and did not accept the other part of the explanation of the assessee. Accordingly, the Id. AO has made the addition of Rs. 30,64,533/- (Rs.3664533 – 600000).*

As is evident from the above submission of the assessee that these expenditure does not pertain to the year under consideration but pertains to the assessment year 2018-19 and thereby the Id. CIT(A) has rightly directed to delete it from the year under consideration. Having held so the assessee challenges that even that addition cannot be made in the assessment year 2018-19 because out of disputed amount of Rs. 17,32,958/- is duly recorded in the books of accounts and supported by bills and vouchers placed on record. Thus, the addition made by the Id. AO deserve to be deleted. Having held so we see no infirmity in the finding of

the Id. CIT(A) that the addition of Rs. 30,64,533/- is not sustainable for the year under consideration but at the same we are not in agreement for the enhancement proposed by the Id. CIT(A) in A. Y. 2018-19 on the reason that the assessee has explained that Rs. 17,32,958/- is accounted in the books based on the evidence placed on record and Rs. 19,32,000/- was surrendered on the issue on hand in the assessment year 2020-21 and therefore, we hold that the Id. CIT(A) has rightly deleted the addition from A. Y. 2016-17 and at the same time the shifting of that addition from that year to A. Y. 2018-19 is not correct for the reasons stated herein above.

Now coming to the issue of addition of Rs. 53,73,108/- arising out of page no. 1, 2 & 3 of exhibit 15 is investment in the material purchased by the assessee. As evident from the working of the carpenter i.e. M/s N.S. Interior has charged labour on the basis of the quantity and value of the material on which work has been done. For example, at serial no. 1 of the table on page no. 1, it has been mentioned that for work relating to 19mm + 25mm bord the labour charges will be determined at the rate of 40% of the value arising by multiplying area per square feet by 110. On page no. 2, the first description is regarding 19mm bord wherein 8\*4 size of 770 numbers of board at the rate of 110 are worked out. The value of such material as per this working works out to Rs. 27,10,400/-. Similarly, at serial no. 8 of

the table contains cheer wood purchase at the rate of 80 per square feet. The page no. 2 shows that the carpenter has worked on cheer wood material of 128.25 sq.ft. and labour charges are determined by multiplying 128.25 with 80 which comes to 10260, 40% of which comes to 4104. Following this method, the total investment in furniture was worked out to Rs. 69,29,441/- on page no. 2 and labour charges determined is Rs. 27,71,776/-. The page no. 3 shows the investment of Rs. 14,69,250/- in wood material purchase in chaukhat, Rs. 5,50,000/- in fittings etc. Thus, the total investment by the assessee in material purchase works out to Rs. 89,48,691/-. When the assessee asked to furnish the source of this investment of Rs.89,48,691/- and was also show caused as to why this amount of Rs.89,48,691/- should not be considered as his undisclosed investment. In response to that the assessee vide his submission dated 15.09.2021 replied that the department has taken the value to goods purchased for carpentry work on the basis of agreement of carpenter which is only an estimation for the purpose of payment of labour charges. The actual rates were different and the assessee has purchased the material on reasonable rates and from the known persons / dealers. All the purchases of carpentry material were through proper bills and all the payments of material was made by crossed account payee cheques or through proper

banking channel. All the expenditure were accounted for in the books of accounts of the assessee. The total material purchase ledgers was placed on record. The Id. AR of the assessee also submitted that in the search proceeding no single paper or any other evidence was found which proves that the assessee has made unaccounted purchase of carpenter material. Thus, merely the estimation which was made to decide the labour charges no addition can be made for which the carpenter has estimated rate just to derive his charging/calculating labor rates. Be that it so may no prudent men by this much of material at once this itself suggest that the paper relied upon by the revenue is mere estimation only. The carpenter always decides the labor rates on highest price of material available in the market whereas the same material of local brands is available on the cheaper rate in the market or from the dealer or wholesaler. For example the ply board of any reputed company is available @ 120/- per sqft, whereas the local companies ply boards are available @ 60/- per sqft. So the carpenter always charged labour rates on highest rate of material i.e. @ 120/- per sqft. This can be clarified by the other material rates as for glass and other hardware goods the carpenter has mentioned on actual rate basis because there is lesser variation in the rates of these goods. So labour rate is paid on actual price irrespective of the price at which the assessee purchased

the goods. Therefore, no addition can be made on this account where the labor rates are calculated on highest price of material. Copy of all material purchased and labor bills along with ledger account of suppliers were placed on record and were not disputed.

Record reveals that as per the gist of expenditure made on carpentry material, the total amount expended was worked out at Rs. 91,33,864/- as against Rs. 89,48,691/- mentioned in the show cause notice. And, further out of the total amount spent of Rs. 91,33,864/-, Rs. 37,60,756/- was recorded in books. Accordingly, the unaccounted expenditure was derived at Rs. 53,73,108/- (Rs. 91,33,864 less Rs. 37,60,756) and was added to the returned income of the assessee for the year considering the same as undisclosed investment u/s 69B of the Act for AY 2016-17. The Financial year is determined to be 2015-16 due the fact that agreement between carpenter and Shri Anshul Agarwal contains date as 10.06.2015. On this when the assessee filed a detailed reply the same was not considered stating that it was devoid of any evidence regarding the contention that the work was sub-let by M/s. NS Interior to Mis. Unique Furniture and/or M/s. Shri Manta Hazra. In order to verify the contention of the assessee that the contract work that was awarded to M/s. N. S. Interior was sub-letted by the latter to others and that payments for the work done were made by the

assessee directly to the sub-let parties, letters u/s 133(6) were issued to M/s. N S Interior and Shri Manta Hazra. The same have been received back un-served. No address was provided for M/s. Unique Furniture. The cheque payments claimed to be made to M/s. Unique Furniture of Shri Manta Hazra do not prove that these were made on behalf of M/s. N. S. Interior. Further, page no. 1 of Exhibit 15 the agreement between M/s N.S. Interior and Shri Anshul Agarwal which means that the subsequent pages (2 & 3) are determination of labour charges paid to M/s N.S. Interior only whereas assessee claimed to have paid only Rs. 6,00,000/- to NS Interior and balance to other parties. None of the page (1 to 3) of exhibit 15 contains the name of Unique Furniture, Srimanta Hazra and daily labour/cash payment. If it had been the case as claimed by the assessee, names of these parties must have appeared on these pages. As evident from the working on page no. 2 & 3, the rates are charged as mentioned in page no. 1 which shows that this work detailed on page no. 2 & 3 is actually done by M/s N.S. Interior only. If assessee has signed an agreement with M/s N.S. Interior, he ought to have signed similar contract and work agreement with two other parties as well. However, assessee did not furnish any evidence on the basis of which rates have been charged by Unique Furniture or Srimanta Hazra. Assessee has not given any

description of the work done by Unique Furniture or Srimanta Hazra whereas page no. 1 contains full details of the work done by M/s N.S. Interior only. With regard to claim of cash Rs. 5,12,958/- paid for carpentry work, the tally data of the assessee was verified and it was noticed that various entries of cash payment contain narration being cash paid to labour. This shows that the assessee has picked up entries to make a source of Rs. 5,12,958/- and show it as carpentry expenses accounted in the book. Also, assessee did not produce any evidence or basis on which he quantified the amounts paid to Unique Furniture or Srimanta Hazra, M/s N.S. Interior and cash payments. Thus Id. AO held that page No. 1, 2 & 3 contains the work done by M/s N.S. Interior for the assessee. It does not include the work done by other parties. The total labour charges related to M/s N.S. Interior is Rs. 36,64,533/- out of which only Rs.6,00,000/- was recorded in the books of accounts. The balance amount of Rs. 30,64,533/- has been settled out of books. An amount of Rs. 30,64,533/- was added to the income of the assessee considering the same as undisclosed investment u/s 69B of the Act for AY 2016-17. The Financial year is determined to be 2015-16 due the fact that agreement between carpenter and Shri Anshul Agarwal contains date as 10.06.2015. When the matter carried before the Id. CIT(A) he took a view that the addition cannot be

made in the year under consideration but is required to be made in the A. Y. 2018-19 [ page 29 of the order of the Id. CIT(A)]. Thus, Id. CIT(A) while holding so it self-support the submission of the assessee that while considering the merits of the assessee we hold that the addition in the assessment year 2018-19 also cannot be sustained as discussed herein above as part of the some expenditure accounted and part of the same were disclosed and accepted by the revenue and thereby these additions so made by the Id. AO and sustained in the assessment year 2018-19 is directed to be deleted.

In the result the appeal of the assessee in ITA No. 513/JP/2025 for assessment year 2016-17 stands partly allowed.

33. Now, we take up appeal of the assessee in ITSS A No. 03/JP/2025 for A.Y 2015-16. In this appeal, the assessee has raised following grounds;

1. The Learned CIT(A) has erred confirming the action of the Learned Assessing Officer in framing the assessment u/s 153A/143(3) of the Income Tax Act, 1961 and addition to income made therein is void ab-initio and the assessment deserves to be quashed. The addition of Rs. 4,20,000/-made is not based on any incriminating document found/ seized during the course of search from the custody of the assessee or any other finding recorded by him on account of action u/s 132 of the Income Tax Act 1961. The learned AO has wrongly assumed the jurisdiction/has made additions without reference to any seized document/material.

2. Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 4,20,000/-made by the Learned AO on account of unexplained investment made for purchase of agricultural land in the

name of Shri Nanda Ram Meena.

3. The Appellant requests its right to add, amend or alter all or any of the grounds of appeal on or before hearing.

34. Succinctly, the fact as culled out from the records is that a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") was carried out by the Income Tax Department on the members of Narnoli Group on 28-06-2019 of which the assessee is one of the members. On account of that fact notice under section 153A of the Act dated 09-02-2021 was issued and served upon the assessee requiring him to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules, 1962 within 30 days of the service of the said notice. In response to the said notice(s), a return declaring an income of Rs. 23,84,470/- was filed by the assessee on 09-02-2021. It is noticed that in the return of income filed in response to notice u/s 153A of the Act wherein no undisclosed income pertaining to the relevant year has been declared by the assessee. The assessee primarily derives his income from House property, Business Capital Gain and Other Sources. Statutory notices as required under the law were issued to the assessee and information and details pertaining to the case relevant to assessment of his income were called by means of a

questionnaire. The information furnished by the assessee was examined and placed on record by the Id. AO.

While conducting the assessment proceeding the Id. AO noted that in the course of Search & Survey operation at the residence of Shri Sunil Kumar Agarwal at Plot No. 5. Ahimsa Marg, Mahaveer Nagar, Jaipur, certain incriminating documents were seized which were inventoried as Exhibit 13 of the Party No. 1. These papers related to original sale deed made between Shri Nanda Ram Meena and Shri Hariom Meena as per which Shri Nanda Ram Meena purchased agricultural land situated at Vill-Beedpinarpura, Tehsil-Chaksu, Jaipur, Khasra No. 697 having area of 0.06 hectare from Shri Hari Om Meena. As per the registered deed, the DLC rate of the property was Rs. 4,20,000/-. During the course of search proceedings, Shri Vipul Narnoli submitted that Shri Nanda Ram Meena is working as peon in his office and this property was purchased by him. Statement of Shri Nanda Ram Meena was also recorded on 30.06.2019 wherein he was confronted and asked to explain about the purchase of the said property. Shri Nanda Ram Meena categorically denied to have purchased any property from Shri Hariom Meena. He was also asked regarding the thumb impression on the relevant sale deed. He submitted that he is a literate person and puts his signature on the papers instead of

thumb impression. In the statement his thumb impression as well as signature was obtained. Thereafter, the statement of Shri Nanda Ram Meena was shown to Shri Vipul Namoli. He was asked as to why the property should not be considered as his benami property. Shri Vipul Narnoli submitted that the said property is not benami as it belongs to Shri Nanda Ram Meena though he might not be aware of the same. However, Shri Nanda Ram Meena subsequently claimed that he was asked to put thumb impression on some papers by Shri Anshul Agarwal. He has denied to have paid any consideration for purchase of property. In view of the statements recorded u/s 132(4) of the Income Tax Act, 1961, was clear that the agricultural land discussed above was a benami property of Shri Anshul Agarwal and he had purchased it in the name of Shri Nanda Ram Meena. The entire consideration to the seller was paid in cash. Therefore, there was no evidence to establish that the investment was made by Shri Nanda Ram Meena. The original sale deed of the property was found from the premises of Shri Anshul Agarwal ie. Plot No. 5. Ahinsa Marg, Mahaveer Nagar, Jaipur. Had it been the property of Shri Nanda Ram Meena, why original papers relating to it would have been found from the custody of Shri Anshul Agarwal. Therefore, a reference has been sent to the Asst. Commissioner of Income Tax (BPU), Jaipur by the office of DDIT (Inv.)-II,

Jaipur vide office letter No. 2099 dated 14.11.2019 for necessary action. In the assessment proceedings, vide order sheet entry dated 24.09.2021, the assessee was required to show cause why cash payment of Rs. 4,20,000 made by Shri Anshul Agarwal for purchase of the property in question should not be treated as his undisclosed income for the year. In response it was submitted that the above payment was made Sunil Agarwal out of withdrawals made for household purposes and accumulated earnings. The reply has been perused and found unacceptable as it is devoid of any evidence or supporting documents. The source of investment is unexplained. Accordingly, an amount of Rs. 4,20,000/- was added to the returned income of the assessee for A.Y 2015-16.

35. Aggrieved from the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“Ground No. 1

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

From the discussion above and from the perusal of the facts of the case it emerges that the document under question was in the name of Shri Nand Ram Meena for the purchase of land of Rs. 4,20,000/-. He categorically stated that he was unaware of the same and further stated in his statements that he signs the

documents and does not put his thumb impression on documents. Then he has further reiterated in his statements dated 30/06/2019 at page no. 9 that he is working in the assessee's office since 2008 and once he was taken to Chaksu and made to put thumb impression on some documents and copies of his ID and photo were also collected from him.

He has categorically denied making any payment for the same in his documents. The Id. Assessing Officer has clearly stated the sequence of events in his order and has summarized it as benami transaction of the assessee and hence in view of the factual matrix of the case, this addition deserves to be sustained. Hence, this ground of appeal is dismissed.

#### Ground No. 2

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

In this ground, the appellant has raised issue in respect of charging of interest u/s 234A, 234B and 234C. In this regard it is stated that charging of interest is mandatory and consequential in nature, therefore the AO is directed to give effect of the same on the income determined vide this appellate order. Accordingly, the ground of appeal raised by the appellant on this issue is disposed off.

#### Ground No. 3

7.1 The appellant has added an additional ground of appeal which has been discussed and adjudicated by me in the above paras. Accordingly such mention by the appellant in its ground is treated as disposed off.”

36. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds raised by the assessee, Id. AR of the assessee, has filed the written submissions which is reproduced herein below:

The assessee is carrying out business activity in partnership firm M/s K Sunil Narnoli and M/s Gulmohar Developers from which he has received remuneration, share of profit & interest on capital. The assessee was also having income under the head "income from house property" "capital gains" and "other sources" during the year under consideration.

Search and seizure operations u/s 132 of the Income Tax Act, 1961 were carried out in "Narnoli Group" of cases on 28/06/2019, in which the assessee was also covered. Notice u/s 153 A was issued on 09/02/2021. In response to this notice, the assessee filed return declaring total income of Rs.23,84,470/- on 09/09/2021. Copy of acknowledgment of return of income and computation of income are available on paper book page no. 1 to 6. Notice u/s 143(2) was issued on 02/03/2021. The Learned Assessing Officer has completed the assessment u/s 143(3)/153A of the IT Act 1961 on 29.09.2021 determining total income of Rs. 28,04,470/- While framing the assessment, the Assessing Officer made an addition of Rs. 4,20,000/- on account of alleged purchase of agricultural land in the name of Shri Nand Ram Meena treated as "benamidar" of the assessee. The addition has been made with reference to copy of sale deed showing purchase of land of Rs. 4,20,000/- by Shri Nand Ram Meena found during the course of search from the possession of the son of the assessee, Shri Anshul Agarwal.

Aggrieved with the order of the learned Assessing Officer the assessee preferred before the learned CIT(A). The learned CIT(A) dismissed the appeal of the assessee without considering his submission.

Aggrieved with the order of the learned the learned CIT(A) the assessee has preferred appeal before your honour. The individual grounds of appeal are as under :-

*Ground No. 1 –*

The Learned CIT(A) has erred confirming the action of the Learned Assessing Officer in framing the assessment u/s 153A/143(3) of the Income Tax Act, 1961 and addition to income made therein is void ab-initio and the assessment deserves to be quashed. The addition of Rs.4,20,000/- made is not based on any incriminating document found/ seized during the course of search from the custody of the assessee or any other finding recorded by him on account of action u/s 132 of the Income Tax Act 1961. The learned AO has wrongly assumed the jurisdiction/has made additions without reference to any seized document/material.

1. Facts of the case:-

A search u/s 132 was conducted at the business/residential premises of the assessee group on 28.06.2019. However, no incriminating documents or loose papers or any material pertaining to the year under consideration was found / seized pertaining to the assessee disclosing unaccounted income relating to the year under consideration. No surrender of undisclosed income was made pertaining to the year under consideration in the hands of the assessee.

It is submitted that at the time of search conducted on 28.06.2019, no assessment in this case was pending. Therefore, on the date of search, assessment for the A.Y. 2015-16 did not abate. In such circumstances, the established position of law is that while completing assessment under section 153A, additions are warranted only on the basis of seized material. Since in this case, specifically for A.Y. 2015-16, no seized material was found, as such, no additions were warranted. The learned AO has erred in law in making addition on the basis of documents which were found from the premises/custody of Shri Anshul Agarwal as mentioned by the Id. AO herself on page 3 of the assessment order. The relevant para is quoted below:-

*“ In view of the statements recorded u/s 132(4) of the Income Tax Act, 1961, it was clear that the agricultural land discussed above was a benami property of Shri Anshul Agarwal and he had purchased it in the name of Shri Nand Ram Meena. The entire consideration to the seller has paid in cash. Therefore, there was no evidence to establish that the investment was actually made by Shri Nanda Ram Meena. The original sale deed of the property was found from the premises of Shri Anshul Agarwal, i.e. Plot No.5, Ahinsa Marg, Mahaveer Nagar, Jaipur. Had it been the property of Shri Nand Ram Meena, why original papers relating to it would have been found from the custody of Shri Anshul Agarwal.”*

In view of the aforesaid facts, the papers relating to purchase of land of Rs. 4,20,000/- in the name of Shri Nand Ram Meena purchased on 09.10.2014 were found from the custody of Shri Anshul Agarwal and not from the possession of the assessee. These papers did not pertain to the assessee and hence did not require to be considered in the hands of the assessee. The Id. AO has wrongly considered these papers in the hands of the assessee and has unlawfully made addition of Rs. 4,20,000/- in the hands of the assessee. The addition is ab-initio void.

Thus the addition in this case was totally misplaced and unwarranted. The same is totally against the established position of law. The settled position of law is that in a case of search additions to income can be made only with reference to and on the basis of incriminating material and not otherwise. If no incriminating

material has been found in search, in such a situation no additions are called for. Therefore, the addition is not based on incriminating material pertaining to the assessee. Simply on the basis of a registered sale deed which was found in possession of a family member during the course of search, cannot be treated as incriminating material. This sale deed was in the possession of the Shri Anshul Agarwal for safe keeping purpose and the investment was not made by the assessee. No such evidence was found during the course of search. Therefore, without bringing any material on record the addition cannot be made in the hands of the assessee. The same deserves to be deleted. The following case laws are quoted in support as under: -

2. Favourable Case Laws: -

In view of the aforesaid discussion and facts of the case it is apparently clear that the assessment was not pending at the time of the search as such it could not abate. Further there was no incriminating material found during the course of search relating to the year under consideration and hence no addition could have been made. The following case laws are quoted in support: -

(i) Latest decision of the Apex court on the issue –

It is submitted that during the course of search, no incriminating material was found during the course of search either with reference to the addition made. In view of this, by making additions on these grounds, the Learned Assessing Officer travelled beyond his jurisdiction. The Hon'ble Supreme Court in their latest decision in the case of PCIT Central-3 Vs. Abhisar Buildwell P. Ltd (454 ITR 212) dated 24/04/2023, has held as under :-

*".. 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."*

In view of the aforesaid decision, it is clear that in case of unabated assessment, no addition can be made by the Learned Assessing Officer in the absence of any incriminating material found during the course of search. In the case of the assessee, assessment for the ASSESSMENT YEAR 2015-16 was not pending, as such, it was unabated and hence, additions were possible only with reference to incriminating material found during search. Since no incriminating material was found and none has been referred to in the assessment order, the Learned

Assessing Officer was precluded in making additions. The additions made by the Learned Assessing Officer deserve to be deleted.

(ii) Saumya Construction Pvt Ltd Vs. Pr. CIT Tax Appeal No. 24 of 2016 (High Court of Gujarat)

Assessee was engaged in business of construction and development of properties, trading in fabrics and garments—Search and seizure operation was carried out and assessment came to be framed u/s.143(3) r.w. section 153A(1)(b) determining total income of assessee at Rs.14,49,51,130/- against declared income at Rs.3,44,00,130— During course of assessment proceedings, assessee had paid Rs.11,05,51,000/- to one Shri Rohit Modi in respect of land through sale deed—Shri R in his assessment, admitted receipt of Rs.11,05,51,000/- as on-money received in cash in transaction of land—AO held that on- money had been paid by assessee in transaction for purchase of land from Shri R and P and accordingly, added amount of Rs.11,05,51,000/- to total income of assessee u/s.68 in respect of unexplained investment for purchase of land—Commissioner(A) confirmed addition on ground that payment was made by assessee because assessee was purchaser as all rights of development had been vested in assessee by virtue of conveyance deed—Tribunal placed reliance upon its earlier decision in case of Sanjay Aggarwal v. DCIT, held that addition was not based on any incriminating material found during search operations on assessee and hence, such addition could not be made u/s.153A—Held, it was not case of revenue that any incriminating material in respect of AY under consideration was found during course of search—At relevant time when notice came to be issued u/s.153A, assessee filed its return of income—Much later, at fag end of period within which order u/s.153A was to be made, in other words, when limit for framing assessment as provided u/s.153 was about to expire, notice had been issued seeking to make proposed addition of Rs.11,05,51,000/- on basis of the material which was not found during course of search, but on basis of statement of another person—It was admitted position that no incriminating material was found during course of search, however, it was on basis of some material collected by AO much subsequent to search, that additions came to be made—On behalf of revenue, it had been submitted that if any incriminating material was found, notwithstanding that in relation to year under consideration, no incriminating material was found, it would be permissible to make additions and disallowance in respect of all six AYs—In opinion of this court, said submission did not merit acceptance, inasmuch as, assessment in respect of each of six AYs was separate and distinct assessment—U/s.153A, assessment had to be made in relation to search or requisition, namely, in relation to material disclosed during search or requisition—If in relation to any AY, no incriminating material was found, no addition or disallowance could be

made in relation to that AY in exercise of powers u/s.153A and earlier assessment should have to be reiterated—In this regard, this court was in complete agreement with view adopted by Rajasthan HC in case of Jai Steel (India), Jodhpur v. Assistant CIT (supra)—Besides, as rightly pointed out by assessee, controversy involved stands concluded by decision of this court in case of CIT -1 v. Jayaben Ratilal Sorathia (supra) wherein it had been held that while it could not be disputed that considering section 153A, AO could reopen and/or assess return with respect to six preceding years; however, there must be some incriminating material available with AO with respect to the sale transactions in particular AY—It was not possible to state that order passed by Tribunal suffered from any legal infirmity so as to give rise to question of law, much less, substantial question of law, warranting interference—Appeal, was, accordingly, dismissed.

(iii) The issue has now been decided by the High Court of Rajasthan in the case of Jai Steel India Vs. ACIT 88 DTR 1. The Hon'ble High Court has held as under—

"Section 153A cannot be read in isolation, in as much as, the same is triggered only on account of any search/requisition u/s 132 or 132A. If any books of accounts or other documents relevant to the assessment had not been produced in the court of original assessment and found in the course of search, such books of accounts or other documents have to be taken into consideration while assessing or reassessing the total income under the provisions of s. 153A. Even in a case where undisclosed income or undisclosed property has been found as a consequence of the search, the same would also be taken into consideration. The requirement of assessment or reassessment under the said section has to be read in the context of s. 132 or s. 132A, in as much as in case nothing incriminating is found on account of such search or requisition, then the question of reassessment of the concluded assessments does not arise."

The decision of the Hon'ble High Court has held that proceedings u/s 153A are warranted only on existence of incriminating material which in this case was absent.

(iv) COMMISSIONER OF INCOME TAX vs. KABUL CHAWLA HIGH COURT OD DELHI (2015) 126 DTR 0130 (Del)

The court has summarized the legal position in para 37 of the order which is as under:-

37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under: i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place. ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise. iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax". iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material." v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings. vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

(v) Pr. CIT vs MEETA GUTGUTIA Prop. M/s FERNS "N" PETALS (2017) 395 ITR 526 (DELHI) ; 152 DTR 153 (DELHI) (Confirmed by the Supreme Court of India)

Under section 153A of the Act, assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of *Jai Steel (India) v. Asst. CIT (supra)*. Besides, as rightly pointed out by the learned

counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court In the case of CIT v. Jayaben Ratilal Sorathia (supra) wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years ; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year." 62. Subsequently, in Principal Commissioner of Income Tax- 1 v. Devangi alias Rupa (supra), another Bench of the Gujarat High Court reiterated the above legal position following its earlier decision in Principal Commissioner of Income Tax v. Saumya Construction P. Ltd. (supra) and of this Court in Kabul Chawla (supra). As far as Karnataka High Court is concerned, it has in CIT v. IBC Knowledge Park P. Ltd. (supra) followed the decision of this Court in Kabul Chawla (supra) and held that there had to be incriminating material qua each of the AYs in which additions were sought to be made pursuant to search and seizure operation. The Calcutta High Court Pr. Commissioner Of Income Tax ... vs Meeta Gutgutia Prop. M/S Ferns N ... on 25 May, 2017 Indian Kanoon - <http://indiankanoon.org/doc/155307643/> 25 in CIT-2 v. Salasar Stock Broking Ltd. (supra), too, followed the decision of this Court in Kabul Chawla (supra). In CIT v. Gurinder Singh Bawa (supra), the Bombay High Court held that: "6...once an assessment has attained finality for a particular year, i.e., it is not pending then the same cannot be subject to tax in proceedings under section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under section 153A of the Act which are contrary to and/or not disclosed during the regular assessment proceedings."

It is also significant to state in this connection that the SLP filed by the Income-Tax Department before the Supreme Court against this judgment of the Delhi High Court, has already been dismissed by the Supreme Court, by judgment in the case of Pr. CIT v. Meeta Gutgutiya (2018) 405 ITR (St.) 28 : (2018) 257 Taxman 441(SC).

(vi) CIT v. SKS Ispat and Power Ltd (2017) 398 ITR 584 (Bom).

In this case, in the appeals filed by the Income-tax Department, it was contended that the Tribunal was not justified in deleting the addition made on account of unaccounted sundry creditors and unexplained share of the money and thereby limited the scope of assessment under section 153A on the basis of incriminating material discovered during the search only and thus, did not allow the Department to assess undisclosed income on the basis of other evidence or post-search enquires or investigation during the subsequent assessment proceedings.

Dismissing the appeals of the Income-Tax Department, it was held that the scope of assessment under section 153A was limited to the incriminating evidence found during the search and no further. It was also held that section 153A of the Act did not make any distinction between the assessment conducted under section 143(1) and section 143(3) of the Act.

In this context, observations of the High Court in Paragraph (5) on pages 585 and 586 of the report are relevant, which are reproduced as follows :-

*“We have considered the arguments canvassed by the learned counsel for the respective parties. On perusal of Section 153A of the Act, it is manifest that it does not make any distinction between assessment conducted under Section 143(1) and 143(3). This Court had occasion to consider the scope of Section 153A of the Act in case of The Commissioner of Income Tax v. Gurinder Singh Bawa and in the case of The Commissioner of Income Tax v. Continental Warehousing Corporation & Anr.(referred to supra). It has been observed that Section 153A cannot be a tool to have a second inning of assessment either to the Revenue or the Assessee. Even in case of The Commissioner of Income Tax v. Gurinder Singh Bawa (referred to supra) the assessment was under Section 143(1) of the Act and the Court held that the scope of assessment after search under Section 153A would be limited to the incriminating evidence found during the search and no further. In the said Judgment, the Judgment of this Court in The Commissioner of Income Tax v. Continental Warehousing Corporation & Anr. (referred to supra) has been followed.”*

Conclusion: -

Thus, it is established position of law up to the stage of the APEX Court as is apparent from the afore-cited case laws that addition is not warranted in the absence of incriminating material. Hence, the addition made in the case being without jurisdiction deserves to be deleted as the same is not based on any search material / incriminating material found during search.

Ground No. 2 –

Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 4,20,000/- made by the Learned AO on account of unexplained investment made for purchase of agricultural land in the name of Shri Nanda Ram Meena.

(1) Statement of Shri Nand Ram Meena

It is submitted that in this case, the whole and sole basis of making addition in the hands of the assessee is the statement of Shri Nand Ram Meena. A copy of the statement of Shri Nand Ram Meena recorded on 30.06.2019 u/s 132(4) is

available on Paper Book Page No 7 to 15. It is submitted that during the course of search, copy of sale deed dated 09.10.2014 showing purchase of land by Shri Nand Ram Meena was found from the possession of Shri Anshul Agarwal son of the assessee. This fact is apparent from the relevant para of the assessment order quoted above. Copy of the sale deed is available on Paper Book from Page 16 to 20.

Shri Nand Ram Meena was examined on 30.06.2019. The perusal of his statement reveals the following :-

- (i) Shri Nandram Meena is educated up to 8<sup>th</sup> class. He operates bank account in State Bank of India. He has also got a mobile No.9602404229.
- (ii) At first in reply to Question No.14, when he was shown the copy of the sale deed, Shri Nand Ram Meena deposed that he did not purchase any such land.
- (iii) In reply to Question No.15, Shri Nand Ram Meena stated that the thumb impression on the sale deed does not belong to his thumb. Later on, in reply to Q.No. 20 and 21, Shri Nand Ram Meena stated that he was working with the Narnoli Group since 2008 and was getting salary of Rs.12,500/-. On being further pressed to recollect his memory, Shri Nand Ram Meena stated specifically in response to Q. No. 21 that somewhere in Oct. 2014, Shri Anshul S/o Shri Sunil Kumar had taken him to Village Chaksu along with his ID. Thus, he has an impression that it was at that time that his thumb impression and ID were used for purchasing the agricultural land (reply to Q.No. 22). He has also stated that for fear of being discharged from service, he did not object to Shri Anshul and not questioned him for obtaining his thumb impression and using his ID card for the purpose of purchase of land.

The above statements of Shri Nand Ram Meena show that he was having good knowledge about the purchase of the land. Further, in his statement, he has nowhere stated that this land was purchased by the assessee, Shri Sunil Kumar Agarwal. He has only stated that Shri Anshul S/o Shri Sunil Kumar had taken him to Village Chaksu where the sale deed was executed and his signatures, thumb impression and ID were used. In these circumstances, it is clear that on the basis of statement of Sh. Nand Ram Meena, the purchase of land could not be considered as belonging to the assessee. Although in his statement, Shri Nand Ram Meena stated first that the thumb impression on the stamp paper of sale deed did not belong to him, but later on he retracted from the same. So his statement cannot be taken on face value. On account of fear of the Department, Shri Nand Ram Meena avoided acceptance of the ownership of land. Further, although Shri Nand Ram meena stated that he did not pay anything for the

purchase of the land, but at the same time he did not say who paid for purchase of the land. It is not known how the Id. AO concluded that the investment in purchase of the land was made by the assessee.

In view of the aforesaid position, no addition could have been made in the hands of the assessee on the basis of statement of Shri Nand Ram Meena, which is the only material in the possession of the AO.

Shri Nand Ram Meena is not “benamidar” of the assessee.

(Parameters of holding benami property – Not Followed)

The Ld. AO has further erred in holding that the agricultural land purchased by Shri Nand Ram Meena was benami property of the assessee. The Ld. AO has not brought any material on record to establish that investment in the purchase of the agricultural land was done by the assessee and not by Sh. Nand Ram Meena. Without establishing that the assessee had made investment in the purchase of the agricultural land in the name of Sh. Nand Ram Meena, the said land could not be termed as benami property of the assessee. No evidence has been brought on record in this regard. It is further submitted that during the course of search no paper was found indicating that the assessee made investment either in the purchase of agricultural land in the name of Sh. Nand Ram Meena. In absence of any such paper or document the Ld. AO was not justified in treating the agricultural land as Benami Property of the assessee and in treating Nand Ram Meena as Benamidar of the assessee.

It is further submitted that in the following decisions of various courts including the Supreme Court of India, guide lines and parameters have been laid down for determining the character of a Benami Property. The property has to be tested on these parameters before holding the same as Benami.

(a) It is submitted that the Supreme Court of India in the case of Bhim Singh & Anr Vs Kan Singh (And Vice Versa) on 21, Dec., 1979, 1980 AIR 727 laid down tests for deciding benami transactions. The Court held as under:-

“2. The principles governing the determination of the question whether a transfer is a benami or not are:

(1) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;

(2) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima-facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary;

(3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and

(4) the question as to what his intention was, has to be decided on the basis of the surrounding circumstances, the relationship of the parties the motives governing their action in bringing about the transaction and their subsequent conduct. [641C-E]”

(b) The Supreme court further held in the case of Smt. P. Leelavathie (D) Vs. Shankarnarayana Rao (Civil Appeal No. 1099 of 2008, Dt. Of judgment 09.04.2019) with regard to benami transactions and laid down important propositions:

“It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact”

(c) In yet another case of Valliammal Vs. Subramaniam, Hon'ble Supreme Court has held that:-

“There is a presumption in law that the person who purchases the property is the owner of the same. This presumption can be displaced by successfully pleading and proving that the document was taken benami in the name of another person for some reason, and the person whose name appears in the document is not the real owner, but only a benami. Heavy burden lies on the person who pleads that the recorded owner is a benami-holder.”

(d) The above propositions have been reiterated by the AFTP (Tribunal) in the case of Ramneek Singh Vs. IO FPA-PBPT-3/CHD/2018 date 21.06.2019 wherein it has been held that:-

“37. In proceedings pertaining to Benami Property / Transaction, it is the initiating officer who is the party asserting the existence of benami transaction, therefore the burden of proving such assertion qua cogent evidence is upon the initiating officer only and unless such burden is discharge, the other party is not legally obliged to be called upon to prove his case ”

(e) USHA BHAR VS SANAT KUMAR BHAR (135 TM 526) HC of Calcutta  
Benami transaction :

*The principle 3. In a suit claiming a property as Benami, there must be cogent and sufficient evidence to conclude that the apparent is not the real. In order to ascertain whether a particular sale is Benami and the apparent purchaser is not the real owner, the burden lies on the person asserting to prove so. Such burden has to be strictly discharged through legal evidence of definite character. Such evidences either directly prove the fact of Benami or establish circumstances unerringly and reasonably raising an inference of that fact. It is the intention of the parties, which is to be discovered. Very often such intention is shrouded in a thick veil. It is not possible to pierce the veil easily. But such difficulties would not relieve the person asserting the transaction to be Benami of any part of the serious onus that rests on him. The difficulty would not justify the acceptance of mere conjecture or surmise as a substitute for proof. The proof has to be weighed against a document prepared and executed showing the person expressly as purchaser or transferee. This follows the initial presumption in favour of the apparent state of affairs being the real state of affairs. However, the question is largely one of facts. For determining this question, no absolute formula could be evolved nor can a formula so evolved be uniformly applied in all situations. But in such circumstances, it is the probabilities and inferences, which are to be gathered in order to discover the relevant indicia. It is not sufficient to show circumstances, which might create suspicion. The Court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence. There have been various decisions by different High Courts and the Supreme Court on these questions. By now these propositions are well-settled through those decisions. In order to determine whether a transaction was or is a Benami one, the following guidelines may be followed :-*

- (1) The source from which the purchase money came;*
- (2) the nature and possession of the property, after the purchase;*
- (3) motive, if any, for giving the transaction a Benami colour;*
- (4) the position of the parties and the relationship, if any, between the claimant and the alleged Benamidar;*
- (5) the custody of the title deeds after the sale; and*
- (6) the conduct of the parties concerned in dealing with the property after the sale.*

In view of the aforesaid decisions it is submitted that so far as the burden of proving the property as Benami is concerned the same lies on the authority

claiming / stating the property to be so. The position has not changed in this regard even after the amendment of 2016. Therefore, in this case it was for the department to bring on record evidences that the agricultural land in the name of Sh. Nand Ram Meena was in fact purchased by the assessee . It was for the Ld. AO to prove that investment in the purchase of the agricultural land was made by assessee. In the assessment order the Ld. AO has not discussed the same. In view of this, the addition made deserves to be deleted.

(2) Finding of the Id. AO

It is submitted that the perusal of the assessment order the following findings have been recorded by the AO :-

(i) On page 2 of the assessment order, it is mentioned by the Id. AO that "...thereafter, the statement of Shri Nand Ram Meena was shown to Shri Vipul Narnoli. He was asked as to why the property should not be considered as his benami property. Shriu Vipul Narnoli submitted that the said property is not benami as it actually belongs to Shri Nand Ram Meena though he might not be aware of the same".

Copy of statement of Shri Vipul Narnoli is available in Paper Book from Page 21 to 44 .

It is submitted that the above para clearly indicates that the Id. AO was considering Shri Vipul Agarwal, son of the assessee as holding the property of Shri Nand Ram Meena as benami property, despite this, the addition has been made in the case of the assessee. Whereas, statement of Shri Vipul Agarwal was recorded who has no concern. It was also stated that was keeping for safe purpose. The addition have wrongly been made in the face of the aforesaid finding, where the Id. AO considered Vipul Narnoli as holding the property as benami property.

(ii) On page 3 of the assessment order, the Id. AO has observed as under :-  
" In view of the statements recorded u/s 132(4) of the Income Tax Act, 1961, it was clear that the agricultural land discussed above was a benami property of Shri Anshul Agarwal and he had purchased it in the name of Shri Nand Ram Meena. The entire consideration to the seller has paid in cash. Therefore, there was no evidence to establish that the investment was actually made by Shri Nanda Ram Meena. The original sale deed of the property was found from the premises of Shri Anshul Agarwal, i.e. Plot No.5, Ahimsa Marg, Mahaveer Nagar, Jaipur. Had it been the property of Shri Nand Ram Meena, why original papers relating to it would have been found from the custody of Shri Anshul Agarwal."

The perusal of the aforesaid para reveals that here the Id. AO has considered Shri Anshul Agarwal as the real owner of the land purchased in the name of Shri Nand Ram Meena.

The aforesaid two positions adopted by the Id. AO in treating the land owned by Nand Ram Meena, are contradictory. At one stage, Shri Vipul Agarwal is considered as the owner of the land belonging to Shri Nand Ram Meena, but in the second stage, Shri Anshul Agarwal is considered as the owner of the land belonging to Shri Nand Ram Meena. This discloses the confused state-of-affairs at the level of the Id. AO. The Id. AO herself was not sure how to deal the issue of land owned by Shri Nand Ram Meena. In any case the name of the assessee does not figure in the mind of the Id. AO while deciding the issue of the land owned by Shri Nand Ram Meena. It is not clear from the assessment order as how the Id. AO concluded that Shri Nand Ram Meena was benamidar of the assessee. In these circumstances, the addition made deserves to be deleted.

(3) Violation of principles of natural justice

It is submitted that the addition in the case of the assessee has been made with reference to the statement of Shri Nand Ram Meena recorded on 30.06.2019. In this regard, the Id. AO has acted unlawfully and illegally. He has used the statement of Shri Nand Ram Meena in making the addition with affording opportunity of cross-examination to the assessee. It is settled position of law that statement which has remained untested by cross examination is not good evidence. It is submitted that the statement of Sh. Nand Ram Meena was recorded on 30.09.2019 u/s 132(4) of the IT Act at the back of the assessee. Such statement is not considered above aboard. In the absence of cross examination the Ld. AO was precluded in utilizing the statement against the assessee. Therefore, the assessment proceedings stand vitiated.

Similarly, the Id. AO has acted on the submission of Shri Anshul Agarwal, who is alleged to have stated that it was the assessee who made the payment for the purchase of the land. Again no opportunity was given to the assessee to cross-examine Shri Anshul Agarwal before acting upon his submission. In view of this also, the Id. AO has acted against the established principles of law. Before using the submission of Shri Anshul Agarwal against the assessee, it was incumbent upon the Id. AO to have allowed opportunity of cross-examination of Shri Anshul Agarwal. This has not been done. Hence, the assessment proceedings stand vitiated. The addition made deserves to be deleted.

The following case laws are quoted in support:-

(a) C. VASANTLAL CO VS COMMISSIONER OF INCOME TAX (45 ITR 206) SC:-

The ITO is not bound by any technical rules of the law of evidence. It is open to him to collect materials to facilitate assessment even by private enquiry. But if he desires to use the material so collected, the assessee must be informed of the material and must be given an adequate opportunity of explaining it. The statements made by Achaldas and Poonamchand before the ITO were material on which the IT authorities could act provided that the material was disclosed and the assessee had opportunity to render their explanation in that behalf.

*(b) KALRA GLUE FACTORY VS SALES TAX TRIBUNAL ORS (167 ITR 498) SC*

Statement which was not tested by cross examination is not good evidence.

*(c) HEIRS AND LRS OF LATE LAXMANBHAI S PATE VS COMMISSIONER OF INCOME TAX (222 CTR 138) HC Gujrat*

The legal effect of the statement recorded behind the back of the assessee and without furnishing the copy thereof to the assessee or without giving an opportunity of cross-examination, is that if the addition is made, the same is required to be deleted on the ground of violation of the principles of natural justice.

*(d) PRAKASH CHAND NAHTA VS COMMISSIONER OF INCOME TAX (218 CTR 367) HC of MP*

The aforesaid circumstances eloquently speak that the addition in the order of assessment has been made on the basis of the statement made by M. There is no cavil that a prayer was made under s. 131 to summon said M for cross-examination. That has not been done. The language employed under s. 131 empowers the AO to ensure the attendance of any person. When the statement of M was used against the assessee and an affidavit was filed controverting the same, it was obligatory on the part of the AO to allow the prayer for cross-examination. That would have been in the fitness of things and in compliance of principles of natural justice. As the AO had not summoned M, the proprietor of R & Co., in spite of the request made under s. 131, the evidence of said M could not have been used against the assessee and in the absence of affording reasonable opportunity of being heard by summoning the said witness the assessment order is vitiated and cannot be saved as the addition has been made on the foundation of his deposition.

*(e) COMMISSIONER OF INCOME TAX VS BIJU PATNAIK (190 ITR 396) HC of Orissa*

A statement recorded ex-parte u/s 131 cannot be used against the assessee without providing opportunity to him to place materials for rebutting the same. A

final finding can be arrived at only after giving reasonable opportunity to the assessee in that regard.

The ratio of the aforesaid decisions is squarely applicable to the fact of the case of the assessee. Hence, the assessment order has been passed violating the principles of natural justice. The assessment order is vitiated and therefore deserves to be quashed.

### Conclusion

In the facts and circumstances of the case, and in view of the submissions made above, the addition of Rs. 4,20,000/- deserves to be deleted. The following points need to be highlighted :-

(a) The alleged sale deed of land was not recovered from the possession of the assessee. It was found from the premises/custody of Shri Anshul Agarwal as stated by the Id. AO in page 3 of the assessment order. Therefore, Id. AO acted wrongly in considering the ownership of the land in the hands of the assessee.

(b) The Id. AO has largely acted on the basis of statement of Shri Nand Ram Meena, but the assessee was not allowed opportunity for cross-examination. This vitiates the entire assessment proceedings.

(c) In this case, on the date of search, i.e. on 28.06.2019, no assessment was pending for A.Y. 2015-16. In such circumstances, addition to income could have been made only on the basis of incriminating material found during search for this assessment year, which is not the case. Hence, addition made deserves to be deleted.

(d) Possession of the deed with Shri Anshul Agarwal alone is not a deciding factor for holding the land of Shri Nand Ram Meena as a benami property. Unless it is held that sources of investment in the purchase of land came from the assessee, the land cannot be held as a benami property of the assessee and addition cannot be made.

### Ground No. 3-

The Appellant requests its right to add, amend or alter all or any of the grounds of appeal on or before hearing.

### Not pressed.

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

Sr. No.	Particular	Page no.
1	Copies of acknowledgement of original return of income filed for AY 2015-16	1-6
2.	Copy of statement of Shri Nand Ram Meena	7-15
3.	Copy of sale deed in respect of purchase of agricultural land	16-20
4.	Copy of statement of Sh. Vipul Narnoli	21-44

38. Per contra, Id. DR relying on the finding of the lower authority also vehemently raised the contention which were filed in the detailed written submission which reads as under :

Ground I: Legality of Addition under Section 153A (Alleged absence of incriminating material)

This rejoinder is respectfully submitted on behalf of the Revenue. The present appeal arises from the order of Ld. CIT (A), Jaipur, against which the assessee is in appeal. The brief facts of the case as noted in the assessment order are that a search and seizure action u/s 132 of the Act was carried out by the department on the members of Narnoli Group on 28.06.2019. Appellant filed his return of income on 10.01.2021 for the AY 2020-21 declaring a total income at Rs. 2,64,82,110/-. Ld. AO issued a notice u/s 143(2) of the Act to the appellant on 01.03.2021. Finally, Id. AO completed the assessment vide order dt.29.09.2021 at a total income of Rs.2,89,47,315/-. Aggrieved by the aforesaid assessment, the appellant has filed the appeal before the Ld.CIT(A). The Ld.CIT(A) allowed appeal of the assessee and confirmed part and assessee is in appeal before your Honours. The assessee has filed paper book, written submission and grounds in form no 36. The revenue submits rebuttal on each as under with request to consider this rejoinder as part of record and arguments of revenue.

Assessee's Contention: The assessee asserts that the addition of ₹4,20,000 in the 153A/143(3) assessment is void ab initio, claiming no incriminating material

was found during the search under Section 132. He relies on judicial precedents that in an unabated/completed assessment, no addition can be made under Section 153A absent seized incriminating evidence, rendering the assessment beyond jurisdiction.

Revenue's Rejoinder: This objection is misconceived on facts and law.

In the present case, the search operations did yield incriminating material pertaining to the assessee's undisclosed income. Notably, a registered sale deed for the agricultural land (purchased in the name of Shri Nand Ram Meena) was seized from the premises of Shri Anshul Agarwal during the search. This seized document directly links the assessee to an unexplained investment and thus constitutes incriminating material unearthed during the search. The assessee's reliance on cases like *Kabul Chawla* (Del. HC) and *Saumya Construction* (Guj. HC) is distinguishable - those rulings bar additions in completed assessments only when no incriminating evidence at all is found. Here, by contrast, the recovered sale deed is a specific incriminating evidence, satisfying even the test laid down in those cases.

Jurisdiction under Section 153A: It is further submitted that Section 153A, by its very text, empowers the Assessing Officer ("AO") to assess or reassess the "total income" of the six years preceding the search.

There is no statutory stipulation that additions must be confined solely to seized material. Indeed, as the Revenue has previously argued in similar cases, the very scheme of Section 153A would be stultified if no addition could be made absent seized material. In this case, however, that debate need not detain us because material was in fact seized supporting the addition. The revenue therefore submits that the initiation of Section 153A proceedings and the impugned addition are valid. The addition is not ultra vires Section 153A; rather, it is a direct result of evidence unearthed by the search, and thus the assessee's legal ground has no merit.

Ground II: Addition of ₹4,20,000 on Merits Unexplained Investment in Benami Purchase of Land

Assessee's Contention: On merits, the assessee denies any unaccounted investment, contending that the agricultural land standing in Shri Nand Ram Meena's name is not the assessee's property. He argues that the AO had no basis to treat the ₹4.20 lakh payment for purchase of the land as the assessee's undisclosed income. The assessee may also claim that no funds were provided by him and that the document found is unreliable or unrelated to his finances.

Revenue's Rejoinder: The addition of ₹4,20,000 for unexplained investment is fully justified by the evidence gathered. The following points clearly establish that the assessee is the real investor in the land and that the amount constitutes his undisclosed income:

1. Seized Sale Deed as Evidence: A registered sale deed dated //\*\* (for ₹4,20,000 consideration) in the name of Shri Nand Ram Meena was found and seized during the search of Shri Anshul Agarwal's premises. This document, being in the custody of a person other than the ostensible buyer, is a crucial incriminating piece of evidence. It indicates that the assessee's business associate/relative had possession of the deed, strongly suggesting the assessee's involvement in the purchase. The assessee has not disputed the authenticity of this sale deed. He was confronted with this document during assessment proceedings, yet failed to produce any credible explanation as to why this land purchase document was found in the group's premises if he truly had no connection.

2. Statements under Oath (Section 132(4)): Statements recorded during the search further corroborate the assessee's role. Shri Anshul Agarwal, in his statement under Section 132(4), admitted to having knowledge of this land deal and indicated that it was arranged on behalf of the assessee (being part of the assessee's group's unaccounted investments). Likewise, Shri Nand Ram Meena's statement (recorded later during post-search enquiries) revealed that he did not fund the purchase from his own resources. In fact, Shri Nand Ram is a person of modest means with no proof of income or assets to justify a ₹4.2 lakh purchase. These statements - recorded on oath - carry significant evidentiary weight under the Act. The presumption of truth attaches to duly recorded Section 132(4) statements, especially when corroborated by documents. The assessee has not provided any evidence of retraction or falsity in those statements.

3. Onus on Assessee to Explain Source: When an investment is detected, the law places the onus on the assessee to explain the nature and source of funds (Section 69 of the Income Tax Act).

This principle has been affirmed in numerous rulings - if the assessee cannot explain the source of an investment, it is treated as unexplained income. In the present case, the assessee has not furnished any documents (such as bank statements, cash books, or confirmation from Shri Nand Ram) to demonstrate that ₹4,20,000 was paid out of accounted funds or by Nand Ram's own means. In similar cases, where assessee failed to explain the source of a purchase found in search, the entire investment has been treated as unexplained income in the hands of the real owner. Here too, the AO was correct to add ₹4.20 lakh as the assessee's unaccounted investment, since no contrary evidence was produced.

4. Circumstantial Evidence - Conduct of Parties: All surrounding circumstances point toward a benami arrangement. The assessee's conduct, e.g. not disclosing this asset in his books or returns, and the involvement of a close associate (Shri Anshul Agarwal) safeguarding the documents - betrays the truth that the assessee is the beneficial owner of the land. Shri Nand Ram Meena, by contrast,

appears to be a name-lender: he did not occupy or cultivate the land (to the best of our knowledge), and the benefit of owning the land accrued to the assessee's business interest (the land was strategically useful to the assessee's group). The motive for benami purchase is evident: the land in question is agricultural, and it is a matter of record that the assessee (a non-agriculturist) would not have been legally eligible to buy agricultural land in that area. Hence, a benamidar (a local agriculturist) was used to facilitate the purchase. Such an arrangement, far from being speculative, is supported by the seized documents and the assessee's failure to provide any alternative explanation.

In light of the above, the Revenue submits that the addition of ₹4,20,000 is fully supported on merits. The evidence meets the standard of proof required: we have a documentary trail of the transaction and sworn testimony, which together establish that the assessee deployed his undisclosed funds to purchase the land in Nand Ram Meena's name. The assessee's mere denial, unaccompanied by evidence, cannot override these proven facts.

Ground III: Alleged Violation of Natural Justice - Denial of Cross-Examination & Reliance on Third-Party Statements

Assessee's Contention: The assessee argues that the addition is vitiated by breach of natural justice, claiming that the AO relied on statements of third parties (e.g. the statements of Shri Anshul Agarwal or Shri Nand Ram Meena) without offering the assessee an opportunity to cross-examine those individuals. He has cited case laws which hold that no addition can be made solely on a third-party statement if cross-examination is denied. The assessee likens his case to those precedents, contending that the statements used against him are untested hearsay and should be discarded, thereby nullifying the addition.

Revenue's Rejoinder: The Revenue respectfully submits that the principle of cross-examination, while sound, has not been violated in any manner that prejudices the assessee's rights in this case. Our response is as under:

1. Documentary Evidence is Primary: Unlike cases where an addition is based only on an informant's statement, here we have primary documentary evidence - the seized sale deed. The addition was fundamentally based on this document, which was disclosed to the assessee and formed part of the show-cause during assessment. The third-party statements were used merely to corroborate and explain the circumstances of this document. Thus, even if (arguendo) the statements are disregarded, the hard evidence of the sale deed remains, pointing to the assessee's unexplained investment. The assessee was fully confronted with this evidence and given the chance to rebut it. There is, therefore, no fatal infirmity in relying on corroborative statements where the core fact (existence of the undisclosed purchase) is proven by a seized document.

2. Opportunity and Utilization: It is noteworthy that the assessee never made a specific request at assessment stage to cross-examine Shri Anshul Agarwal or Shri Nand Ram Meena. The assessment proceedings record indicates that the assessee was provided the gist of relevant statements and asked to explain the transaction, but no protest or request for summoning those persons was raised at that time. It is only at the appeal stage that this issue has been raised. Courts have held that if an assessee fails to seek cross-examination at the proper stage, he cannot later claim a natural justice violation as an afterthought. In any event, the assessee has not demonstrated what contradiction or rebuttal he would elicit from those persons if cross-examined. Mere theoretical denial of cross-exam is not enough - prejudice must be shown, which is absent here.

3. Assessee's Own Onus to Rebut: Importantly, the assessee could himself have produced Shri Nand Ram Meena (the ostensible purchaser) as his own witness to support his story that the land was independently purchased by Nand Ram. Nothing prevented the assessee from doing so. The fact that neither Nand Ram nor any evidence on his behalf was presented by the assessee speaks volumes. It suggests that cross-exam would not have aided the assessee; on the contrary, Nand Ram's testimony under oath (already on record) indicates the assessee's involvement. When a party withholds the best evidence available (here, failing to bring Nand Ram to confirm his independent ownership), an adverse inference may be drawn that the evidence would be unfavorable to that party's claim. The Revenue urges that such an inference is warranted here - the logical conclusion is that Shri Nand Ram would not support the assessee's claim of genuine ownership, consistent with the Department's position.

4. Distinguishing Case Law: The case laws cited by the assessee (such as Andaman Timber, etc., which stress cross-examination) are distinguishable on facts. Those cases involved scenarios where a sole third-party statement (often confessional in nature) was the basis of the addition, with the assessee kept completely in the dark or denied any chance to question the source. In the present matter, we reiterate that the addition is anchored in a seized document, not merely a statement. The assessee was informed of all materials and given chance to respond. Unlike the cited cases, here the third-party statements only corroborate a transaction evidenced elsewhere. Moreover, the statements in question were recorded under Section 132(4) (during a lawful search) and carry a presumption of truth. They were not casual, out-of-context remarks but part of a coordinated investigation into the assessee's financial dealings. Thus, the situation is far removed from a blind reliance on a tainted witness. The core ratio of the assessee's cited precedents - that unverified third-party allegations cannot form the sole basis of an addition. - does not apply here, since we have direct evidence and the assessee's own failure to refute it.

In sum, no violation of natural justice has occurred that would nullify the assessment. The assessee's rights were respected - he was confronted with material, and he could have challenged the witnesses' version during the long duration of proceedings but chose not to. The addition is based on undisputed documents and unrebutted testimony. Therefore, this ground of appeal by the assessee is devoid of merit and should be rejected. The focus of adjudication should remain on the substance of the evidence, which clearly establishes the assessee's unaccounted investment.

#### Ground IV: Benami Property Findings & Burden of Proof under the Benami Transactions Act

**Assessee's Contention:** The assessee contends that the AO's finding of the land being "benami" (purchased in Nand Ram's name for the assessee's benefit) is legally unsustainable. He argues that the Benami Transactions (Prohibition) Act, 1988 imposes a high burden of proof on anyone alleging a transaction to be benami, and that the Revenue has not discharged this burden. The assessee may also assert that, under the Benami Act, the real owner cannot be recognized in law, implying that the Department cannot both label the transaction benami and treat the assessee as owner for tax purposes. He likely cites the seminal case *Jaydayal Poddar vs Bibi Hazra (SC)* which held that the burden to prove benami lies on the accuser and must be strictly discharged with evidence.

**Revenue's Rejoinder:** The Revenue submits that the finding of a benami transaction is amply supported in this case, and the burden of proof has been met. We address the legal and factual aspects point-wise:

1. **Benami Nature of the Transaction:** In income-tax proceedings, identifying a transaction as "benami" simply means recognizing that the apparent purchaser is not the real investor. This is exactly what the evidence demonstrates here. The documentary and oral evidence establishes that Shri Nand Ram Meena is a name-lender (benamidar), while the assessee is the actual party behind the purchase. In a factually similar case, the Hon'ble ITAT observed that where documents indicated one person as buyer but funds were provided by another, the former was merely a "benamidar" or name-lender and the latter the actual investor. In that case, it was even recorded that such facts warranted proceedings under the Prohibition of Benami Property Transactions Act, 1988. Likewise, here the circumstantial and documentary evidence is so cogent that it leaves no doubt about the benami nature of the land purchase.

2. **Burden of Proof - Discharged by Revenue:** The Revenue is conscious that the burden of proving a benami transaction lies on the person alleging it. We respectfully submit that this burden has been successfully discharged through a combination of direct and circumstantial evidence. The classic criteria recognized

by courts for proving a benami transaction include: (a) source of funds, (b) possession and custody of the title documents, (c) relationship of the parties, (d) motive for the arrangement, and (e) conduct of the parties before and after the transaction. All these factors, applied to the present case, tilt decisively in the Revenue's favour:

**Source of Funds:** Shri Nand Ram Meena had no independent source of income or savings that could fund the ₹4.20 lakh purchase. The assessee, on the other hand, had ample unaccounted cash transactions detected during the search (as evidenced by other papers and the very necessity of 153A assessment). The money trail (to the extent discernible) and the financial profile of parties indicate that the funds originated from the assessee. The assessee has not produced any evidence (like bank withdrawal by Nand Ram, etc.) to show Nand Ram paid the consideration. This satisfies the primary test that the real financing came from someone other than the ostensible owner.

**Custody of Documents:** The sale deed was found in the premises of Shri Anshul Agarwal, a close associate of the assessee, rather than with Shri Nand Ram Meena. This fact is very telling it shows who was truly interested in and in control of the property. If Nand Ram were the genuine owner, ordinarily the title deed would be with him. Its recovery from the assessee group's domain is strong circumstantial proof of benami. As noted by the Hon'ble ITAT in a similar context, when the relevant documents are found with the alleged real owner and not the benamidar, it fortifies the inference of a benami purchase.

**Relationship of Parties:** There is a clear link between the assessee and Shri Nand Ram Meena. Evidence on record suggests that Nand Ram was either an employee, distant relative, or otherwise under the influence of the assessee's family (the exact relation, as per case facts, is that he is a villager known to the assessee's group). This kind of relationship where the ostensible owner is a person of little means, friendly or beholden to the real owner - is a hallmark of benami arrangements noted in jurisprudence. It explains why Nand Ram lent his name to the transaction.

**Motive for the Arrangement:** The assessee's motive for purchasing the land in another's name is apparent: to conceal his investment and possibly to circumvent legal restrictions on land purchase. Rajasthan (where this land is situated) has laws restricting purchase of agricultural land by non-agriculturists or entities; using a local individual's name would bypass such restrictions. Moreover, by keeping his name off records, the assessee intended to avoid detection of this asset and the associated income in his tax filings. This motive aligns with the evidence and gives a rational explanation for why the transaction was structured benami.

Conduct Post-Purchase: After the purchase, the assessee's conduct has been consistent with ownership control. It has come on record that the subsequent dealings with the land (improvement, attempts to sell or develop, etc.) were all done at the behest of the assessee's family, not by Shri Nand Ram. Shri Nand Ram never asserted ownership benefits; he remained a figurehead. Such conduct is consistent with him being a benamidar. The assessee, notably, never disclosed this asset in his wealth statements or balance sheets, which is consistent with an intent to hide rather than an oversight -especially since he knew the property wasn't even in his name formally.

3. Assessee's Counterpoints on Law: The assessee's invocation of the Benami Act's provisions is misplaced in a tax proceeding. It is true that under the Prohibition of Benami Property Transactions Act, 1988, a benamidar is the ostensible owner and the real owner is prohibited from enforcing his title in a court. However, that prohibition exists to deter civil claims; it does not immunize the real owner from tax implications. The Income Tax Act looks at the substance of ownership for taxing income. If X provides the money for a purchase in Y's name, it is undisputed law that tax can be levied on X for the amount of that investment, treating it as X's unexplained income, even though X is not the legal owner of the asset. The Benami Act's bar on enforcing ownership rights does not mean the government cannot treat X as the owner in fact for purposes of taxing the money he expended. In short, the real owner's liability to income-tax on unaccounted investment is untouched by the civil law prohibition. The Department here is not conferring any legal title on the assessee; we are simply taxing his unexplained expenditure on the benami purchase. This approach has been upheld in numerous cases and is entirely in harmony with the objective of both statutes to expose and penalize hidden assets and income.

4. Burden Shifting and Discharge: Even if one were to argue that the initial burden lay on the Department to establish the transaction as benami, we have shown that the Department has done so through clear evidence (seized deed, statements, surrounding circumstances). Once a prima facie case of benami is made out by the Department, the onus shifts to the assessee to rebut it with evidence - for example, by demonstrating genuine source of the ostensible owner's funds, or producing the benamidar to testify that he is the true owner. The assessee has not discharged this shifted burden. He produced no evidence that Shri Nand Ram had the financial wherewithal or that the funds came from legitimate sources belonging to Nand Ram. He did not produce Shri Nand Ram to corroborate his claim of ownership. In the absence of any rebuttal, the Department's evidence remains unchallenged and must be accepted on balance of probabilities (indeed, approaching near certainty in this case). The Supreme Court in *Jaydayal Poddar* emphasized that mere conjectures cannot prove

benami without "concrete evidence". Here, we have concrete evidence, whereas the assessee offers only conjecture (a bare claim that "it's not my money"). Thus, even under the stringent standard, the Revenue's case satisfies the requirements.

In view of the above, the Revenue submits that the AO's finding treating the agricultural land as benami property of the assessee is well-founded. The burden of proof on the Revenue has been met through cogent evidence, and the assessee has failed to counter-prove his theory. Far from being arbitrary, the conclusion that the assessee is the real owner is the only logical inference from the facts. Accordingly, taxing the assessee for the ₹4,20,000 investment is not only legally permissible but necessary to prevent the misuse of benami arrangements to hide taxable income.

Evidence Not submitted by the Assessee before the Appellate authority including Hon'ble ITAT, and Falsification of Facts

Vide note sheet dated 17/9/2021 the Ld. AO asked AR of the assessee for clarification. Replica of same is reproduced as evidence-

"कार्यवाही टिप्पणी/NOTE SHEET

Sh. Sunil Kumar Agarwal  
AY 2014-15 to AY 2020-21  
Date: 17/9/2021

Present: Sh. xxx, AR of the assessee.

Reply submitted which is placed in file. It is submitted that the current address of M/s. Unique Furniture, Srimanta Hazra & M/s. N.C. Interior Furniture is as per the address given in their bills.

Copies of annexures of Party no. 8 - as requested - provided.

Reiterated that the remaining documents as per the Questionnaire in all the cases where Sh. S. Poddar is the representative, be furnished by 18.09.2021.

The counsel has also requested that any addition to the total income may be it on any accounting head or seized asset/document be made in the hands of Sh. Sunil Kumar Agarwal. For verification of digital data, the case is adjourned for 19.09.2021.

The request for addition if any is to be made in the hands of any entity, group concern, family member, HUF. For that our request is to be made only in the hands of Sh. Sunil Kumar Agarwal as the owner of all the documents and evidences was also made. The hands we will submit reason for the same in writing in next hearing.

Sd/-xxxxr"

And the next date note sheet is as under-

"कार्यवाही टिप्पणी/NOTE SHEET

Sh. Sunil Kumar Agarwal  
AY 2014-15 to AY 2020-21

Date: 24/9/2021

Present: Sh. S. L. Poddar, Advocate. He is requested to show cause why cash payment of 4,20,000 made by Sh. Ankur Agarwal for purchase of property - Khasra No. 697, 0.06 hectare, Village Beedpura, Tehsil Chaksu, Jaipur, in the name of Sh. Nanda Ram Meena on 3-10-2014 - a property which has been referred to the ACIT (BP), Jaipur - should not be added to the total income of Sh. Ankur Agarwal for the relevant AY.

[Signature]

The above payment was made by Sunil Agarwal out of withdrawals made for house hold purpose & accumulated savings.

Sd/-"

An affidavit was also filed. Same is reproduced as. Under-  
"RAJASTHAN

AFFIDAVIT

1, Sunil Kumar Agrawal, S/o Late Shri Kunj Behari Lal Agrawal, aged about 63 years, R/o 15, 395, Narnoli Mansion, Outside Sanganeri Gate, Jaipur, Rajasthan, do hereby solemnly affirm and declare on oath as under:

1. That I am assessed to income with PAN-ABRPA9601M.
2. That a search was carried out on 29.06.2019 on my premises.
3. That during the course of search, several incriminating documents and other undisclosed income was found and on the basis of which I have surrendered undisclosed income in my hand.
4. That I have also surrendered/offered undisclosed income for taxation in my hand in various years in the return filed u/s 153A of the Income Tax Act, 1961 and u/s 139(1) of the Income Tax Act, 1961 for assessment year 2019-20 & 2020-21.
5. That once again I confirm and request to consider all the discrepancies and income regarding undisclosed assets, documents and seized materi only in my hand.
6. That I am alone responsible for all affairs of all group entities includir companies, partnership firms, HUF and all family members.
7. That I will not contest the issue of addition on the ground that the addition has been made in my hands pertains to others.

d/- Sunil Kumar Agrawal  
deponent"

1. Sunil Kumar Agrawal, S/o Late Shri Kunj Behari Lal Agrawal, do hereby verify that the contents of this affidavit from para no. 1 to 7 are true and correct to the best of my personal knowledge and belief.

Date: 18.09.2021

Place: Jaipur

Sd/- Sunil Kumar Agrawal

Deponent"

And an letter was also filed by the AR of the assessee same is reproduced as under-

"To

Sub: Request for considering all the additions only in the case of Shri Sunil Kumar Agarwal 395, Narnoli Mansion, Outside Sanganeri Gate, Jaipur for the whole group and all entities

Respected Madam,

With reference to above, we would like to submit that a search was carried out on 29.06.2019 on the assessee's premises. During the course of search several incriminating documents and other undisclosed income was found. During the course of search also the undisclosed income was surrendered in the hands of Shri Sunil Kumar Agarwal, head of the family. He also owned all responsibilities and undisclosed income during the course of search. We have also surrendered/offered undisclosed income for taxation in the hands of Shri Sunil Kumar Agarwal in various years in the return filed u/s 153A of the Income Tax Act, 1961 and u/s 139(1) of the Income Tax Act, 1961 for assessment year 2019-20 & 2020-21

Therefore once again you are requested to consider all the discrepancies and income regarding undisclosed assets, documents and seized material only in the hands of Shri Sunil Kumar Agarwal. Shri Sunil Kumar Agarwal is alone responsible for all affairs of all group entities including companies, partnership firms, HUF and all family members.

Kindly accept the above request and oblige.

Thanking You,

Date: 18.09.2021

Place: Jaipur

Yours faithfully,

XXX

Counsel for the assessee"

"The average higher GP rate is 7.89% and lower GP rate is 6.47% whereas the average higher NP rate is 3.74% and average lower NP rate is 2.84% and the mean of NP rate is 3.29%.

Therefore, you are requested to adopt NP rate of 3.29% on unaccounted sales effected by the assessee group and oblige

Thanking You,

Date: 18.09.2021

Place: Jaipur

Yours faithfully,

xxxxxxx

Counsel for the assessee"

" Sub: Reply of your notice u/s 142(1) along with annexure in the case of Shri Sunil Kumar Agarwal 395, Narnoli Mansion, Outside Sanganeri Gate, Jaipur

Respected Madam,

With reference to above notice and as required by you, the explanation regarding source of properties purchased by the assessee group in the name of various individuals and other entities are given below in your required format:

Annexure

Exhibit

Page No.

A-1 AS-1 1 to 53

A-1 AS-2 54 to 81

A-1 AS-3 82 to 98

A-1 AS-4 99 to 153

A-1 AS-5 154 to 188

A-1 AS-6 189 to 204

Therefore you are requested to consider the same and oblige.

Thanking You,

Date: 15.09.2021

Place: Jaipur

Yours faithfully,

xxxxxxx

Counsel for the assessee"

The Revenue respectfully submits that the assessee, Shri Sunil Kumar Agarwal, has himself voluntarily admitted and accepted complete responsibility for all discrepancies, undisclosed income, assets, and seized materials found during the search conducted on 29.06.2019. This is evidenced by the contemporaneous proceedings recorded in the note sheets dated 17.09.2021 and 24.09.2021, wherein the Authorised Representative (Sh. S. Poddar) categorically requested that any additions, whether arising out of accounting discrepancies or seized documents, be made only in the hands of Shri Sunil Kumar Agarwal, who is stated to be the owner of all such documents and the head of the group. This position was further affirmed by way of a duly sworn affidavit dated 18.09.2021, wherein Shri Sunil Kumar Agarwal solemnly declared under oath that the undisclosed income found during the course of search belonged to him, and that he had already offered the same to tax in his hands in the returns filed u/s 153A

and u/s 139(1) for AYs 2019-20 and 2020-21. Crucially, he also affirmed that he is solely responsible for the affairs of all group entities including companies, firms, HUF, and family members, and undertook not to contest additions made in his hands even if they pertain to others. Further, a letter dated 18.09.2021 submitted by his counsel reiterated the same request to tax all additions in his hands alone. In light of these express admissions, supported by documentary evidence and sworn affidavit, the Revenue humbly submits that the additions made in the hands of Shri Sunil Kumar Agarwal are fully justified in law and fact, and the assessee is now estopped from denying the same. The Hon'ble Tribunal may kindly uphold the assessment in his case view of the binding and voluntary nature of these declarations.

Prayer: In light of the submissions above, the Revenue reiterates that all grounds of appeal raised by the assessee lack merit. The addition of \*4,20,000 towards the benami purchase of land is legally and factually justified. We respectfully pray that the assessee's appeal be dismissed, the impugned addition be sustained, and the order of the assessing authority be upheld in this regard.

Respectfully Submitted on Behalf of the Revenue

Date: 05.08.2025

Place: Jaipur

(Anita Rinesh)

[Authorized Representative of the Revenue]

SR DR-I, ITAT Jaipur

39. We have heard the rival contentions and perused the material placed on record. The apple of discord in this case whether the addition based on the set of facts be made in the hands of the assessee for an amount of Rs. 4,20,000/- without considering the merits of the dispute that has been raised in a reference made to the ACIT, Benami Property Unit. The brief facts related to the dispute has already been reiterated therefore, coming straight to the issue is that whether the based on the following facts as observed by the Id. AO whether the addition be sustained in the hands of the assessee or not?

Observation of the Id. AO

*“ In view of the statements recorded u/s 132(4) of the Income Tax Act, 1961, it was clear that the agricultural land discussed above was a benami property of Shri Anshul Agarwal and he had purchased it in the name of Shri Nand Ram Meena. The entire consideration to the seller has paid in cash. Therefore, there was no evidence to establish that the investment was actually made by Shri Nanda Ram Meena. The original sale deed of the property was found from the premises of Shri Anshul Agarwal, i.e. Plot No.5, Ahinsa Marg, Mahaveer Nagar, Jaipur. Had it been the property of Shri Nand Ram Meena, why original papers relating to it would have been found from the custody of Shri Anshul Agarwal.”*

Be that it may the contention of the revenue or that of the assessee in the proceeding under the Prohibition of Benami Property Act whether based on the set of facts the addition made by the Id. AO and sustained by the Id. CIT(A) be sustained or not.

Record reveals that while making the addition Id. AO did not mention the section under which the addition was made in the hands of the assessee and while sustaining the addition we did not find the observation of the Id. CIT(A) as to under which section the addition can be made in the hands of the assessee. The facts on record reveals that since the assessee owned up all the transaction including that of the transaction done alleged to have been done by his Son Shri Anshul Agarwal was owned up by the assessee and thereby the alleged investment was considered in hands of the assessee have been made out of books and thereby the same was added.

Thus, when the Id. AO and that of the Id. CIT(A) considered that the investment made by the assessee out of books on account of denial of having purchased any property by Shri Nanda Ram Meena, revenue has to considered the fact that whether the assessee was having the sufficient cash on hand at time of making the investment as alleged to have been made out of books or not and whether such type of the transaction which has not incriminating nature transaction and that too when the relevant assessment was not abated. The relevant issue has already been decided by the co-ordinate bench of ITAT Delhi benches in the case of

7. It can be seen from the above reply that the details of vendors from whom the land was purchased during the F.Y. 2005-06 alongwith copies of land deed were furnished for verification. After considering all this, the Assessing Officer framed assessment.

8. The same sale deeds were found during the course of search operation and on the basis of the very same sale deeds, the Assessing Officer came to the conclusion that an amount of Rs. 1.05 crores has been paid to various persons in cash. In our considered opinion, the sale deeds, transactions when duly recorded in the regular books of account, cannot be considered as incriminating material found during the course of search operation. **It is not the case of the Revenue that if the search and seizure operation had not been conducted, the Revenue could never have come to know that the assessee has entered into various purchase transactions of land.**

9. The Id. DR vehemently stated that though the deeds were before the Assessing Officer, but he examined the deeds only to ascertain the circle rate vis a vis the transaction rate and never went into the cash transactions reflected in the land deed. This contention of the Id. DR is not acceptable. Once a document is filed before the Assessing Officer during the course of search proceedings it is assumed that he has gone through the contents of those documents and has verified the same. It may be that the assessment framed u/s 143(3) of the Act is silent on this aspect but as held by the Hon'ble Gujarat High Court in the case of Nirma Chemical Works 309 ITR 67 that if the assessment order were to incorporate reasons for upholding the claim made by an assessee, result would be an epitome and not an assessment order.

10. For the sake of conclusiveness, we have examined each and every sale deed which was filed by the Revenue in its paper book with details of transaction filed by the assessee during the course of scrutiny assessment proceedings. After due verification, we find that the copies of sale deed filed by the Revenue are the same which were considered by the Assessing Officer while framing assessment u/s 143(3) of the Act.

11. It would be pertinent to refer to the findings of the Hon'ble Delhi High Court in the case of *Kabul Chawla* [supra] which reads as under:

8 “The decision in *CIT Vs. Anil Kumar Bhatia* does not deal with a situation where, as in the present case, no incriminating material was found during the search conducted u/s 132. Nevertheless, it was interesting to note that in *CIT Vs. Chetan Das Lachman Das* the court underscored the need for department to have unearthed material during the search to justifying the assessment sought to be made. It was held that an assessment u/s 153A has to be made under this section only on the basis of seized material. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under: (i) Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place. (ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise. 9 (iii) The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the ‘total income’ of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs “in which both the disclosed and the undisclosed income would be brought to tax”. (iv) Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment “can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.” (v) In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word ‘assess’ in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word ‘reassess’ to completed assessment proceedings. (vi) 10 Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any

other material existing or brought on the record of the AO. (vii) Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.”

12. A similar view was taken by the Hon'ble jurisdictional High Court in the case of Meeta Gutgutia reported in 395 ITR 526.

13. Considering the facts of the case in totality in the light of the judicial decisions discussed hereinabove, we have no hesitation to hold that the assessment framed u/s 153A of the Act is bad in law and deserves to be quashed.

14. Since we have set aside the assessment itself, we do not find it necessary to dwell into the merits of the case.

Since the facts of the case of the assessee being similar on the merits of the addition we on being consistent and considering the rival submission that based on the set of facts without considering the merits of the case in Benami Property transaction we hold that the addition made in the case of the assessee is quashed based on the above judicial precedent which has been taken based on the decision of the High Court as referred therein and therefore, the ground no. 1 & 2 raised by the assessee are allowed. Ground no. 3 being general does not require our finding.

In the result the appeal of the assessee in ITA no. (SS) 03/JP/2025 for assessment year 2015-16 is allowed.

In the result all the bunch of appeal are treated as disposed off as summarized herein below.

SR NO.	ITA no.	Assessment year	Result
1	ITA no. 513/JP/2025	2016-17	Partly allowed
2	ITA no. 519/JP/2025	2018-19	Partly allowed
3	ITA no. 520/JP/2025	2019-20	Partly allowed
4	ITA no. 521/JP/2025	2020-21	Partly allowed
5.	ITA no. SS(3)/JP/2025	2015-16	Allowed

Order pronounced in the open court on 14/10/2025.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/10/2025

\*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sunil Kumar Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-02, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 513, 519 to 521/JP/2025 & ITSS No. 03/JP/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar