



आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 56 to 61/JP/2025
निर्धारण वर्ष/Assessment Years : 2014-15 to 2019-20

Shri Ambica Garments 01, Behind Janta Sweets Home, Nai Sarak, Jodhpur	बनाम Vs.	ACIT, Central Circle-03, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AATFS6984Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 671 to 676/JP/2025
निर्धारण वर्ष/Assessment Years : 2014-15 to 2019-20

Sanjay Kumar Karnani M-8, Mahesh Colony Tonk Phatak, Jaipur	बनाम Vs.	ACIT, Central Circle-03, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGZPK3972A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri Deepak Sharma, Adv.
राजस्व की ओर से/ Revenue by : Mrs. Alka Gautam, CIT

सुनवाई की तारीख/ Date of Hearing : 17/09/2025
उद्घोषणा की तारीख/Date of Pronouncement: 15/10/2025

आदेश / ORDER

PER BENCH:

The present bunch of twelve appeals (Six appeals in the case of M/s Ambica Garments and Six appeals in the case of Shri Sanjay Kumar Karnani) have been filed by the assessee against twelve separate orders of the learned Commissioner of Income Tax, Appeals-4, Jaipur [for short CIT(A)] passed as per the provision of section 250 of Income Tax Act, 1961 [for short Act] for AY 2014-15 to 2019-20. The details of the order disputed in these appeals are as under:

ITA No.	Assessment Year	Name of Assessee	Date of Impugned order of CIT(Appeals)-4, Jaipur	Reference to the section dated of the order passed by the ACIT, CC-3, Jaipur
56/JPR/2025	2014-15	Shri Ambica Garments	27-11-2024	153A dated 20/07/2021
57/JPR/2025	2015-16	Shri Ambica Garments	19-11-2024	153A dated 20/07/2021
58/JPR/2025	2016-17	Shri Ambica Garments	19-11-2024	153A dated 20/07/2021
59/JPR/2025	2017-18	Shri Ambica Garments	19-11-2024	153A dated 20/07/2021
60/JPR/2025	2018-19	Shri Ambica Garments	19-11-2024	153A dated 20/07/2021
61/JPR/2025	2019-20	Shri Ambica Garments	19-11-2024	143(3) dated 20/07/2021
671/JPR/2025	2014-15	Sanjay Kumar Karnani	26-02-2025	153A dated 16/07/2021
672/JPR/2025	2015-16	Sanjay Kumar Karnani	26-02-2025	153A dated 16/07/2021
673/JPR/2025	2016-17	Sanjay Kumar Karnani	26-02-2025	153A dated 16/07/2021
674/JPR/2025	2017-18	Sanjay Kumar Karnani	26-02-2025	153A dated 16/07/2021
675/JPR/2025	2018-19	Sanjay Kumar Karnani	26-02-2025	153A dated 16/07/2021
676/JPR/2025	2019-20	Sanjay Kumar Karnani	26-02-2025	153A dated 16/07/2021

2. These appeals were heard together with the consent of the parties and are disposed off with this common order as the grounds raised by the assessee in all the appeals are common except with variance in figures and certain specific grounds taken in some assessment years, therefore, for the sake of convenience, these appeals are decided by way of this common order.

3.1 The assessee M/s. Shri Amica Garments has raised the following grounds of appeal vide ITA No. 56/JPR/2025 for assessment year 2014-15;

1. Impugned assessment order dated 20.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.
2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account of alleged opening unexplained capital of Rs. 2,65,47,685/-. The addition is unjustified, illegal or excessive and deserves to be deleted in full.
3. Under the facts and circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account of alleged opening unexplained loan of Rs. 52,16,133/-. The addition is unjustified, illegal or excessive and deserves to be deleted in full.
4. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making total addition of Rs. 3,17,63,818/- u/s 68 of the Act.
5. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

3.2 The assessee M/s. Shri Amica Garments has raised the following grounds of appeal vide **ITA No. 57/JPR/2025 for assessment year 2015-16:-**

1. Impugned assessment order dated 20.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.
2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 2,06,55,593/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.
3. Under the facts and circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account gross profit. The addition is unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.
4. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs.2,12,56,630/- as against the returned income of Rs.6,01,040/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.
5. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

3.3 The assessee M/s. Shri Amica Garments has raised the following grounds of appeal vide **ITA No. 58/JPR/2025 for assessment year 2016-17;**

1. Impugned assessment order dated 20.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.
2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 2,72,92,499/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.

3. Under the facts and circumstances, Ld.CIT(A) erred in confirming the action of Ld. A.O. in making the addition on account of profit of Rs. 2,53,193/- on account of Gopala Garments and addition of Rs. 5,76,019/- on account of Race Kids Wears. The action is unjustified, illegal or excessive and deserves to be deleted in full.
4. Under the facts and circumstances, Ld.CIT(A) erred in confirming the action of Ld. A.O. in making addition on account of alleged opening unexplained loan of Rs. 10,53,150/- pertaining to Race Kids Wears. The addition is unjustified, illegal or excessive and deserves to be deleted in full.
5. Under the facts and circumstances, Ld.CIT(A) erred in confirming the action of Ld. A.O. in making addition on account of alleged opening unexplained loan of Rs. 19,97,600/-. The addition is unjustified, illegal or excessive and deserves to be deleted in full.
6. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs.3,16,30,330/- as against the returned income of Rs.4,57,870/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.
7. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

3.4 The assessee M/s. Shri Amica Garments has raised the following grounds of appeal vide **ITA No. 59/JPR/2025 for assessment year 2017-18;**

1. Impugned assessment order dated 20.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.
2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 2,89,06,016/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.
3. Under the facts and circumstances, Ld.CIT(A) erred in confirming the action of Ld. A.O. in making the addition on account of profit of Rs. 10,57,387/- on account of

Gopala Garments and addition of Rs. 24,33,216/- on account of Race Kids Wears. The action is unjustified, illegal or excessive and deserves to be deleted in full.

4. Under the facts and circumstances, Ld.CIT(A) erred in confirming the action of Ld. A.O. in making addition on account of alleged opening unexplained loan of Rs. 1,17,440/-. The addition is unjustified, illegal or excessive and deserves to be deleted in full.

5. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs. 3,31,14,520/- as against the returned income of Rs.6,00,460/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

6. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

3.5 The assessee M/s. Shri Amica Garments has raised the following grounds of appeal vide ITA No. 60/JPR/2025 for assessment year 2018-19:-

1. Impugned assessment order dated 20.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.

2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 3,14,70,928/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.

3. Under the facts and circumstances, Ld.CIT(A) erred in confirming the action of Ld. A.O. in making the addition on account of profit of Rs. 8,93,428/- on account of Gopala Garments and addition of Rs. 21,15,481/- on account of Race Kids Wears. The action is unjustified, illegal or excessive and deserves to be deleted in full.

4. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs. 3,51,87,710/- as against the returned income of Rs. 7,07,870/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

5. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

3.6 The assessee M/s. Shri Amica Garments has raised the following grounds of appeal vide **ITA No. 61/JPR/2025 for assessment year 2019-20;**

1. Impugned assessment order dated 20.07.2021, passed U/s 153A/143(3) is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.

2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 52,44,593/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.

3. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs. 58,89,080/- as against the returned income of Rs. 6,44,490/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

4. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

4.1 The assessee Sanjay Kumar Karnani has raised the following grounds of appeal vide **ITA No. 671/JPR/2025 for assessment year 2014-15;**

1. Impugned assessment order dated 16.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.

2. Under the facts and circumstances, Ld. A.O. has erred in making addition on account of alleged opening unexplained capital of Rs. 1,08,36,565/-. The addition is unjustified, illegal or excessive and deserves to be deleted in full.
3. Under the facts and circumstances, Ld. A.O. has erred in making addition on account of alleged opening unexplained loan of Rs. 1,34,53,241/-. The addition is unjustified, illegal or excessive and deserves to be deleted in full.
4. Under the facts and circumstances, Ld. A.O. has erred in making addition on account of alleged unexplained loan of Rs. 61,000/-. The addition is unjustified, illegal or excessive and deserves to be deleted in full.
5. Under the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of Ld. AO in making total addition of Rs. 3,17,63,818/- u/s 68 of the Act.
6. That the appellant craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

4.2 The assessee Sanjay Kumar Karnani has raised the following grounds of appeal vide **ITA No. 672/JPR/2025 for assessment year 2015-**

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1. Impugned assessment order dated 16.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.
2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 1,72,39,251/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.
3. Under the facts and circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account gross profit. The addition is unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.
4. Under the facts and circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account of alleged unexplained

loan of Rs.5,74,018/-. The addition is unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

5. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs.1,88,69,580/- as against the returned income of Rs.10,56,310/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

6. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

4.3 The assessee Sanjay Kumar Karnani has raised the following grounds of appeal vide **ITA No. 673/JPR/2025 for assessment year 2016-17;**

1. Impugned assessment order dated 16.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.
2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 2,31,98,914/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.
3. Under the facts and circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account gross profit. The addition is unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.
4. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs.2,42,25,650/- as against the returned income of Rs.10,26,740/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.
5. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

4.4. The assessee Sanjay Kumar Karnani has raised the following grounds of appeal vide **ITA No. 674/JPR/2025 for assessment year 2017-18;**

1. Impugned assessment order dated 16.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.
2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 2,16,68,729/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.
3. Under the facts and circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account gross profit. The addition is unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.
4. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs. 2,25,20,720/- as against the returned income of Rs.8,51,990/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.
5. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

4.5 The assessee Sanjay Kumar Karnani has raised the following grounds of appeal vide **ITA No. 675/JPR/2025 for assessment year 2018-19;**

1. Impugned assessment order dated 16.07.2021, passed U/s 153A is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.
2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by

making addition of Rs. 2,86,68,350/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.

3. Under the facts and circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account of gross profit. The addition is unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

4. Under the facts and circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in making addition on account of alleged unexplained loan of Rs.3,00,000/-. The addition is unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

5. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs. 3,04,53,690/- as against the returned income of Rs. 14,85,340/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

6. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

4.6 The assessee Sanjay Kumar Karnani has raised the following grounds of appeal vide **ITA No. 676/JPR/2025 for assessment year 2019-20;**

1. Impugned assessment order dated 16.07.2021, passed U/s 153A/143(3) is bad in law and on facts for want of jurisdiction and for many more other statutory reasons.

2. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in estimating the Gross Profit and Further erred by making addition of Rs. 1,23,222/-. The action is unjustified, illegal or excessive and deserves to be deleted in full.

3. Under the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in confirming the action of Ld. AO in assessing the total income at Rs. 8,93,620/- as against the returned income of Rs. 7,70,400/- shown by the assessee. The additions made and confirmed by CIT(A) unjustified, illegal or excessive, without considering the submissions in right perspective and deserves to be deleted in full.

4. That the appellant craves your indulgence to add, amend, modify, delete or alter all or any grounds of appeal before or at the time of hearing.

5. First, we take up the appeal of the assessee in **ITA no. 56/JP/2025** for assessment year 2014-15.

6. Succinctly, the fact as culled out from the records is that in this case, original return of income was e-filed on 18.11.2014 for A. Y 2014-15 declaring income of Rs. 4,98,020/-. A search action was conducted on 01.10.2018 in the case of Karnani Group, Jaipur to which the assessee belongs. Various assets/books of account and documents were found and seized as per annexure prepared while search. The jurisdiction over the case was assigned to ACIT, Central Circle-3, Jaipur on 11.12.2018 vide order u/s 127 of the Act, by Pr. CIT-II, Jodhpur. Accordingly, notice u/s 153A of the IT Act, 1961 for the assessment year 2014-15 was issued on 18.09.2020 and duly served upon the assessee. In compliance to the notice u/s. 153A of the IT Act, 1961, return of income was e-filed on 03.10.2020 for the A.Y. 2014-15 declaring income of Rs.4,98,020/-. Thereafter statutory notices as required under the law were issued and served upon and in response the assessee filed the details as required.

In that assessment proceeding the Id. AO noted that while search proceeding digital data in form of tally data as well as loose papers were found and seized which shows that M/s Jai Shree Ram has been engaged in the business of garments at Jodhpur however no ITR were filed which shows that the profit of Jai Shree Ram remains undisclosed whereas the assessee preparing audited financial statements and filling ITR on the basis of regular books in the style of M/s. Shri Ambica Garments. Accordingly, a detailed questionnaire dated 04.01.2021 was issued to the assessee to explain the nature / source / genuineness of opening capital, unsecured loan, sundry creditors, loan & advances, opening stock and gross profit. In response to such notice, the assessee filed reply which is reproduced hereunder:

"Without prejudice to the above, as submitted during post search proceedings and in light of factual submissions made hereinbefore, at most it can be said that "Jai Shree Ram" is consolidated affairs including transactions of Shri Ambica Garments. Further, data of "Jai Shree Ram" appears to prepared by some staff to calculate the incentive to be distributed to the various staff through leading staff members. The various entries have not been properly posted to derive the correct profit. Similarly, various entries have directly posted in concerned person's account, instead of passing through Profit and Loss Account. Various entries have been treated as appropriation of profits and directly been posted to proprietor's account. Various accounts of family members have been created as shadow account and interest and transfer entries were made therein for some family reasons. There are various outstanding balances coming continuously and not posted or transferred to written off account. Under the facts and circumstances, determination of real income requires various corrections."

"Jai Shree Ram tally data does not have any standalone existence The affairs of Shri Ambica Garments are included in said tally data. Therefore, even for sake of examination, the balances appearing in the regular books should be reduced. Further, perusal of Jai Shree Ram Tally data shows that these accounts have

large number of Journal entries. The journal entries do not represent either income or receipt or payment. Therefore, the opening balance under the circumstances, where assessee is carrying business in earlier years is result of such notional journal entries.

"Without prejudice to the above, even if "Jai Shree Ram" is to be considered for estimating the profit, only the net profit should be considered and profit already declared in Shri Ambika Garments needs to be eliminated. The calculation of such net profits has been made in Annexure-1 of this reply."

The reply filed by the assessee was examined and thereby Id. AO noted that the assessee submitted a routine reply that Jai Shree Ram tally was prepared by some staff member to calculate the incentive to be distributed to the various staff member through leading staff person. The aforesaid contention of the assessee was not found acceptable as the same is routine in nature and without any basis. Therefore, the contention that these are not books of accounts and merely prepared by some staff members to calculate the incentive is just an afterthought to escape from the rigor of income tax. Moreover, the volume of transactions were huge, therefore the contention that this extensive, detailed and laborious exercise is not representing the real affairs and just prepared by some staff member only to calculate incentive is clearly unimaginable. The replies and supporting details in the form of Submissions, Sheets drawn from Jai Shree Ram as well as Regular Books of Shri Ambika Garments, Charts, Calculation and other supporting details submitted time to time by assessee have been verified. It was noticed that **all the Bank Transactions pertaining to purchase & sales**

are found recorded in Shri Ambika Garments as well as Jai Shree Ram along with Instrument Numbers. A detailed perusal of tally data as well as submissions of the assessee, it was found that the tally data seized, which was maintained in the name of Jai Shree Ram represents real business picture of M/s Shri Ambika Garments.

Ld. AO noted that Jai Shree Ram tally data cannot be straight away relied upon for determination of profit due to following reasons:

- (i) Jai Shree Ram data has been maintained Calendar Year Wise whereas the assessment has to be made assessment year wise (for which financial year wise books of accounts are needed). The definition of assessment year given u/s 2(9) of the Act clearly provides that assessment year means the period of 12 Months commencing on 1st of April. As per the Income Tax Act, assessment is to be made assessment year wise, therefore these books suffers from the established mercantile system convention wherein closing entries are to be made for the period ending on 31st March instead of 31st December.
- (ii) The assessee is not maintaining any stock records. The stock is taken once in a year as on 31st December, therefore to break these books financial year wise, stock as on 31st March has been taken on presumption only.
- (iii) The assessee himself has admitted that these books are not subject to any review, therefore the possibility of deficiency cannot be ruled out.

Ld. AO thus noted that on the basis of evidence found during the search proceeding, it is evident that assessee was engaged in out of books sales and purchase therefore, regular books of account maintain under the trade name Shri Ambika Garments was not considered as reliable and representing the correct profit of the assessee. In view of aforesaid specific defects in the books of accounts, these books were not considered as

reliable or otherwise not capable of deducing the correct profitability of M/s Shri Ambika Garments, therefore, provisions of Section 145(3) were invoked and the books of assessee were rejected. Since the book results were rejected, profits was required to be estimated u/s 144 on the basis of best judgment and thereby the Gross profit was estimated @ 12.5 % considered the past years average profit and thereby the Id. AO made the addition of Rs. 3,10,688/-.

Ld. AO based on the first balance sheet for the period of 01.01.2014 to 31.12.2014 which were seized in search proceeding. From that Id. AO noted that the firm M/s. Jai Shree Ram has shown partner's capital account of Rs. 3,88,27,585/- and unsecure loan of Rs. 52,16,133/-. Accordingly, a detailed questionnaire dated 04.01.2021 & 15.01.2021 was issued to the assessee asking them to show cause as to why the amount of capital and unsecured loans may not be added on account of undisclosed cash credits. In response to that show cause notice the assessee filed reply on 12.04.2021 vide which the assessee contended that the capital balance appearing in the regular books of accounts of Shri Ambika Garments should be reduced from the opening capital balance as per 'Jai Shree Ram'. The same was not found acceptable as capital appearing in regular books of was accounts of Shri Ambika Garments was not having the similar balance

as appearing in 'Jai Shree Ram' and also entries in the account were not matching.

Vide Notice dated 04.01.2021, the assessee was asked to give explanation with respect to Unsecured Loans of Rs.52,16,133/- appearing as on 01.01.2014, in response to which assessee made the submission considering that balance of unsecured lenders appearing in the regular books of Shri Ambika Garments should be reduced was unacceptable in the absence of evidence to prove that the parties of unsecured loans appearing in Jai Shree Ram and Shri Ambika Garments are the same. In view of this, Id. AO noted that amount shown as unsecured loan in Jai Shree Ram was nothing but assessee's own money shown in the garb of unsecured loans, source of which remains unexplained. As per seized tally data of M/s Jai Shree Ram as on 31.12.2014, unsecured loans is of Rs.48,12,635/- whereas opening unsecured loans as on 01.01.2014 is of Rs.52,16,133/-.

Therefore, unexplained capital of Rs.3,28,27,585/-, opening unexplained capital in form of unsecured loan Rs.52,16,133/- remain unexplained, hence, the amount of Rs.3,80,43,718/- (32827585-5216133) was added to the total income of the assessee for A.Y. 2014-15.

7. 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:

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:-

(a) As noted in the assessment order, a search was conducted on 01.10.2018 in the case of Karnani Group, Jaipur to which the assessee belongs. Various assets/books of account and documents were found and seized as per annexure prepared during the course of search. During the course of search proceedings, digital data in form of tally data as well as loose papers were found and seized which shows that M/s jai Shree Ram has been engaged in the business of garments at Jodhpur however no ITR were filed which shows that the profit of Jai Shree Ram remains undisclosed whereas the assessee preparing audited financial statements and filling ITR on the basis of regular books in the style name of Shri Ambika Garments. It is noticed that all the Bank transactions pertaining to purchase & sales are found recorded in Shri Ambika Garments as well as Jai Shree Ram along with Instrument Numbers. A detailed perusal of tally data as well as submissions of the assessee, it is found that the tally data seized, which was maintained in the name of Jai Shree Ram represents real business picture of M/s Shri Ambika Garments.

As noted in the assessment order, on perusal of first balance sheet balance sheet for the period of 01.01.2014 to 31.12.2014 seized during the search proceedings, it is noticed that the firm M/s Jai Shree Ram has shown partner's capital of Rs.3,88,27,585/- and unsecured loan of Rs.52,16,133/-. Accordingly, a detailed questionnaire dated 04.01.2021 & 15.01.2021 was issued to the assessee as to why the amount of capital & unsecured loans may not be added on account of undisclosed cash credits.

(b) In these grounds of appeal the appellant has challenged the made on account of alleged opening unexplained capital of Rs. 3,28,27,585 and on account of unexplained loan of Rs. 52,16,133.

The brief facts of the issue as per the assessment order that as per the balance sheet for the period of 01.01.2014 to 31.12.2014 seized during the search proceedings, the firm M/s Jai Shree Ram has shown partner's opening capital o Rs.3,88,27,585 and opening unsecured loan of Rs.52,16,133.

(c) The appellant has contended that it is contended that the addition on account of the opening capital was made by the AO based on hypothetical and erroneous entries found in the tally data. Tally data was a consolidated record created by the staff primarily for calculating staff incentives. The date chosen for the tally data starting 01.01.2014, indicates that arbitrary figures were used, without a valid basis.

The appellant has also contended that opening Balance cannot be added u/s 68.

Since the amounts of Rs. 3,28,27,585/- (opening capital) and Rs. 52,16,133/- (unsecured loans) represent balances from earlier financial years. The addition of these amounts u/s 68 is therefore not permissible.

The appellant has also contended that on the one hand, books of accounts have been rejected and on the other hand falling on the very same set of books to make the addition u/s 68. Appellant has contended that the AO observed that all bank transactions related to purchases and sales were recorded both in the books of Shri Ambika Garments and Jai Shree Ram, including instrument numbers. Despite this, the AO relied on the tally data seized during the search proceedings to conclude that the assessee was involved in unaccounted sales and purchases. Consequently, the AO deemed the regular books of account maintained under the trade name Shri Ambika Garments to be unreliable and not reflective of the true profit of the assessee.

During the hearings the Id. AR also argued that the capital from partner is not taxable in the hands of the firm and the same can only be taxed in the hands of partners if found unexplained.

Appellant has also contended that the Jai Shree Ram is the consolidated affairs of the assessee, thus regular books of accounts of Shri Ambika Garments are also included in Jai Shree Ram. The verification of said fact has also been made during the course of assessment and accordingly from the total sale as appearing in Jai Shree Ram. GP with respect to sale already recorded in regular books of accounts has been eliminated, however while making the addition of alleged unexplained opening capital eliminated.

and loans, the amount already recorded in regular books of accounts was not (d) The contentions of the appellant are examined and adjudicated in the following paragraphs.

(1) During the course of search and seizure action parallel books of accounts of the appellant were found and seized.

The appellant has challenged that there were errors in the books of accounts maintained in found during the course of search and seizure action under the garb of name of 'Jai Shree Ram'. Even though as per the appellant, 'Jai Shree Ram' includes the transactions shown in the audited books of accounts, the

appellant has claimed that 'Jai Shree Ram' cannot be relied upon as there are some errors and that these were prepared for the purposes of incentives to the employees and not for the purposes of accurate profit determination. During the hearing it was vehemently argued by the Id. AR that the balance shown in 'Jai Shree Ram' as on 01.01.2014 includes the balance in audited books of accounts as on 01.01.2014 and that all the transactions mentioned in ledger account of capital account and unsecured loans in the audited books are shown and match with the entries in 'Jai Shree Ram' and only some extra entries are recorded in 'Jai Shree Ram'.

However when these seized books were not disputed during the course of search and seizure action, the appellant cannot be allowed to question them at this stage. The appellant has not filed any evidence or statement copy to show that these were disputed during search action. The silence of the appellant and concealing of statements of the partners of the firm show and prove that these seized documents were accepted by the appellant during the search action.

(2) However it is important to note that even though the appellant has claimed that there are errors in the seized Tally data however the appellant has not placed on record specific details and list of such errors. The appellant has also not placed on record any comprehensive comparison of the transactions recorded in the audited books of accounts and the transactions recorded in the 'Jai Shree Ram'. The seized material was not placed on record. In the hearing dated 06.11.2024, last opportunity was provided to the appellant/Ld. AR to submit the ledger accounts and matching between books of the appellant in Tally in 'Jai Shree Ram' and audited books as per the time was sought by the Ld. AR. However the required details were not submitted. Adverse inference in this regard is drawn against the appellant.

A party who relies on a recital has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. [Refer: judgement of Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540]

In the case of Commissioner of Income-tax v. Md. Warasat Hussain [1987] 35 Taxman 227 (Patna)/[1988] 171 ITR 405 (Patna)/[1988] 67 CTR 75 (Patna) [10-09-1987] it was held by Hon'ble Patna High Court as under:-

"This was a matter with the special knowledge of the assessee. The Tribunal could not be expected to produce the sale deed. The learned counsel for the assessee submitted that even if the assessee did not produce the original sale deed, the revenue could have obtained certified copy of the sale deed from the

registration office and disproved the stand of the assessee that the land had been sold really for a sum higher than Rs. 49,500. This does not lie in the mouth of the assessee. No Court or the Tribunal should countenance an assessee the attitude of failure to produce relevant material and ask the adversary to disprove it. This attitude was decried by Chinnappa Reddy, J. in *McDowell & Co. Ltd. v. CTO* [1985] 154 ITR 148 (SC)."

(3) Also the specific presumptions provided under the income tax act also operates against the appellant and the appellant is bound by the documents found during the course of search and seizure action.

Presumption as to assets, books of account, etc.

292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed-

(1) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section Section 132(4A) of the Act

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(1) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have

(iii) been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

In view of the discussion in in the above above paragraphs the contention of the appellant that the seized books of accounts cannot be relied upon is hereby rejected.

(4) Without prejudice to the above the errors claimed by the appellant appear to be only minor and immaterial. Some minor errors and some minor account grouping errors even if there, do not invalidate the entire evidence which was found and seized during the search and seizure action. It is normal that sometimes ledger accounts in name of various family members are prepared in the parallel books of accounts which however represented in the name of capital account of the partner in the formal books of accounts. The onus is on the appellant highlight these specific errors and to show how these are errors and to show how these can be rectified and to work out the specific impact of the same on the profit for the year. However the appellant has not made any effort to rectify the alleged errors. The appellant could have carried out this step wise exercise along with the evidences and placed the same before the learned AO. However no such exercise has been done. Even during the appeal no such details have been furnished.

Accordingly the contention of the appellant that the seized books of accounts cannot be relied upon is rejected.

(5) It is also important to be noted that as per the appellant's own submissions 'Jai Shree Ram' books were prepared for the purpose of computing the incentives to the staff. The incentive the staff is generally based on sales and profits. The ownership and management and the employees, everyone has relied upon these books 'Jai Shree Ram' for the purpose of completion of incentives to the employees. This itself proves that the books 'Jai Shree Ram' present the true and real and fair picture of turnover and profit of the appellant.

The contention of the appellant that tally data was not containing any inventory details is factually incorrect as in the profit and loss accounts of the seized parallel books of accounts 'Jai Shree Ram', amounts of opening stock and closing stock are duly mentioned.

There is significant and large and material difference in the turnover and profit as shown in the audited books and as shown in the 'Jai Shree Ram'. The appellant has not challenged the accuracy of turnover figures as shown in 'Jai Shree Ram'. Another important point to be considered is that for the assessment year 2014-15, the learned AO has made the addition on account of profit in a similar manner

however the appellant has not challenged the same in the appeal. Thus for one year the appellant has accepted the accuracy and reliability of the books of accounts as per its own conduct and submissions and only for the other years the appellant challenging the same books of accounts to be inaccurate and non-reliable. Shows not bona fide approach of the appellant and this also shows that the seized books of accounts 'Jai Shree Ram' are reliable for the purpose of computing the taxable income.

On these grounds also the contention of the appellant that the seized books of accounts cannot be relied upon is rejected.

(6) Regarding the contention of the appellant that the opening balance is as on 01.01.2014 cannot be added on the ground that the amounts of Rs. 3,28,27,585/- (opening capital) and Rs. 52,16,133/- (unsecured loans) represent balances from earlier financial years, opening balance as on 01.01.2014 cannot be considered as opening balance for the financial year as on 01.04.2013 for the purposes of section 68 of the Act. It is possible that the balance as on 01.12.2013 was nil (which is just one month before the date for which the data has been found) and all the transactions took place and the unaccounted cash capital introduction and taking of unexplained loans took place in Dec. 2013.

Regarding the unexplained portions (over and above the amounts recorded in the audited books of accounts), the onus is on the appellant to prove the existence of opening balance as on 01.04.2013 and at the same time prove the existence of the exact amount of the opening balance is as on 01.04.2013.

consolidated affairs of For the year under appeal from the findings in assessment order and from the perusal of submissions of appellant, the books of accounts in Jai Shree Ram are the the audited books of accounts plus the unaccounted/unexplained transactions. From the facts based on record it is gathered that such consolidated books are available only for the period starting 01.01.2014. On this date already nine months of the financial year have already elapsed. Thus the contention of the appellant is liable to be rejected.

Alternatively, in the case of Shri Chetan Gupta vs ACIT Central Circle-5, New Delhi ITA Nos. 1891, 1892 & 1893/Del/2012, it is held by the Hon'ble ITAT as under:-

6.26. In the wake of these observation we proceed to decide the quantum of undisclosed income of the assessee as under:

(i) The reassessment for AY 2001-02 is quashed.

(ii) For AY 2002-03 the credit for opening balance is not given as we have quashed the reassessment for AY 2001-02, therefore, the opening figure flowing from the quashed reassessment cannot be verified. Subject to these observations

the peak credit as worked out by the assessee at Rs. 36,89,310/- is held as undisclosed income for this year.

(iii).....

In the above case the assessment for the AY 2001-02 was done however which was quashed by the honourable Tribunal. Even then, in the very subsequent AY 2002-03, the credit of opening figure from the AY 2001-02 was not allowed by the honourable Tribunal in the peak working.

Referring to the judgement of Hon'ble Hon'ble Madras High Court in the case of Commissioner of Income-tax v. K. Palaniappan [2000] 242 ITR 719 (Madras), it is observed by the Hon'ble Allahabad High Court in the case of CIT v. Sharraf Trading Co. [2016] 67 taxmann.com 176/[2015] 376 ITR 534 (All.) as under:-

"26. The Court noticed that various courts have taken a view, where certain additions were made in the earlier years, that would constitute source for the credit entry in subsequent years. But, having said so, found that in the case which was up for consideration before Madras High Court, there was a concealed income which was neither disclosed in the assessment proceedings nor in any other ancillary proceedings for any earlier year and therefore, there can be no occasion to constitute it a source for subsequent credit entry. The Court said that explanation of assessee that source credit entry of undisclosed income of earlier years is included then it will open doors of tax evasion and purpose behind the enactment of Section 68 will be easily defeated as it will be open to anyone to point out that the credit entry came from some undisclosed and unassessed income of prior year."

Therefore, this contention of the appellant is hereby rejected.

(7) The appellant has also contended that at the one hand, books of accounts have been rejected and on the other hand Ld. AO relied upon the very same set of books to make the addition u/s 68. Appellant has contended that the AO observed that all bank transactions related to purchases and sales were recorded both in the books of Shri Ambika Garments and Jai Shree Ram, including instrument numbers. This contention is discussed in the following paragraphs (Para numbers 8 to 15).

(8) REAL INCOME (REAL BUSINESS INCOME) & TECHNICAL DISALLOWANCES AND DEEMING INCOME:-

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.

The method of determination of income should not imply a not imply as a blanket rule that the provisions of the Act shall not apply. There is no such provision in the Income Tax Act. The rejection of the books of accounts is warranted due to the

noncompliance of law / manipulation of books of accounts /failure on the part of the assessee keep and maintain the books of accounts from which the income can be determined truly and fairly. Similarly the deemed incomes u/s 68, 69, 69A etc. which are outside the chapter of business income are over and above and separate from the incomes mentioned under the chapter of business income.

In the judgement of Commissioner of Income Tax vs G. K. Contractor [LAWS(RAJ)- 2009-1-238], which is relied upon by the appellant, is in the different facts and context and the issue was related to credits appearing from the regular business transactions or in simple terms, credits appearing from or resulting from the sale/purchase transactions. In that judgement the assessee was a contractor and the outstanding amount / credit was recorded in the books as "market outstanding" and was for "the payment was outstanding against the labour and goods supplied".

"Market Outstanding" itself connotes outstanding w.r.t. the regular transactions with parties in market, and further the same was expressly found to be thus the outstanding against the labour and goods supplied and thus the same was in the nature of regular business sale/purchase transactions. From the judgement there is no reference to the fact or dispute that the outstanding balance did not represent the actual business transactions. In the judgement, in the conclusion, in para 7, there is specific reference and which shows the linkage between "market outstanding" and " AO having estimated the higher profit rate on total contract receipts".

Whereas the facts of the case in present appeal are entirely and significantly different from the facts of the case of above judgement. Present case is of claimed capital contribution by partners and unsecured loans.

It is held by the Hon'ble ITAT in the case of Smt. Lizy George v. Assistant Commissioner of Income-tax [2022] 144 taxmann.com 52 (Bangalore - Trib.) [26-10-2022] as under:-

24. In respect of ground No. 4 regarding unexplained cash credit, the Id.AR vehemently argued that once the AO applied sec.145(3) the same books cannot be relied by the AO for making other additions whereas the AO has made addition u/s 68 for unexplained cash credit in regard to fixed deposits received from the customers and in respect of his case he has relied on the judgment which has been cited (supra), the contention of the assessee is not acceptable. On going through the order of the assessment we observe that the AO has rejected the books of account for determination of the net profit only from the business carried out by the assessee. The other additions cannot be made towards the disallowance of expenses under the profits and gains of business or profession as we have decided supra by relying on the judgments of two Honb'le High Courts but for addition under other heads u/s 68 towards unexplained cash credit which

is not addition towards computation of business profit can be made by AO and our view is supported by the judgment of Hon'ble Supreme Court in the case of Basir Ahmed Sisodia v. ITO [2020] 116 taxmann.com 375/271 Taxman 247/424 ITR 1, Kale Khan Mohammad Hanif (supra) and in the case of Devi Prasad Vishwanath (supra).

Further, on the one hand the assessee is at fault leading to the rejection of the books of accounts, on the other hand, assessee cannot claim the advantage of the same and claim exemption from the other provisions of the Act which are even applicable to those assessee who have maintained correct books of accounts i.e. in whose cases books were not required to be rejected; and thus applicable to those assessee also in whose case the books were required to be rejected.

Nullus commodum capere potest de injuria sua propria meaning no man can take advantage of his own wrong - is a maxim of law, recognized and established.

Further, at the stage when the books of accounts are rejected and the profit is estimated at such stage the assessing authority estimates the business income of the assessee to the extent of the "real income".

The business income under the head 'Income from Business and Profession' is to be calculated keeping in mind the real income as well as the disallowances on technical grounds which are in addition to the real income.

The way the compliance of technical provisions is required to be done for the transactions which are disclosed in the audited books of accounts, the same way for the transactions which are only recorded in the parallel books of accounts the compliance of the technical disallowance provisions is to be made. There is no premium to the dishonesty or in other words for the transactions which are secret and/or which are only recorded in the parallel books of accounts and/or which have been used to evade the taxes, the appellant cannot claim exemption from the technical disallowance provisions.

Further as far as incomes under the other heads of income is concerned or in other words as far as incomes other than the income under the head of 'Income from Business and Profession' is concerned, the same is not determined while calculating the business income after the rejection of the books of accounts.

(9) AS PER SCHEME OF ACT THE UNEXPLAINED CREDITS TAXABLE U/S 68 DO NOT FALL UNDER THE SECTION 28 OR UNDER CHAPTER OF 'INCOME FROM BUSINESS AND PROFESSION' AND THERE IS NO ONUS ON THE ASSESSING AUTHORITY TO LOCATE THE EXACT SOURCE:-

There is no presumption in favor of business income. Onus to prove is on assessee.

It is held by the Hon'ble Supreme Court in the case of Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC) [08-03-1977] that even

after the items (stock in trade) were "introduced in the books of account of its business", the assessee was still required to "to prove satisfactorily the nature and source of these assets" and in the event of failure to prove these, "the revenue could legitimately hold that these assets represented the undisclosed income of the assessee".

Roshan Di Hatti (supra) is case on the issue involving issue of stock in trade which was included by the assessee in the books of accounts and even then it was held in the judgement that assessee was still required to prove satisfactorily the nature and source of these assets and in the event of failure to prove these, the revenue could legitimately hold that these assets represented the undisclosed income of the assessee.

The Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC) [01-08-1968] has held as under:-

"The High Court, in disposing of the application under section 66(2), expressed the view that because the amount of Rs. 20,000 was entered in the books of account of the business, there was some material to hold that the amount was income of the assessee from the business and not from some other source. But it was not open to the High Court to direct the Tribunal to state a case on a question which was never raised before or decided by the Tribunal at the hearing of the appeal. The question again assumes that it was for the Income-tax Officer to indicate the source of the income before the income could be held taxable and unless he did so, the assessee was entitled to succeed. That is not, in our judgment, the correct legal position. Where there is an explained cash 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".

As per the headnotes "Section 145 of the Income-tax Act, 1961 [Corresponding to section 13 of the Indian Income tax Act, 1922] Method of accounting - System of accounting Assessment year 1946-47 Whether where there is an unexplained cash credit it is open to ITO to hold that it is income of assessee and no further burden lies on ITO to show that income is from any particular source - Held, yes".

As per the above judgement, the observations of the Hon'ble Allahabad High Court that because the amount was entered in the books of account of the business, there was some material to hold that the amount was income of the assessee from the business and not from some other source, were not approved by the Hon'ble Supreme Court and was reversed, as it was held by the Hon'ble Supreme Court that it assumed it was for the Income-tax Officer to indicate the source of the income which was not the correct legal position and that where there is an explained cash 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.

In the case of Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC)[08-03-1977] it is held by the Hon'ble Supreme Court as under:-

"Now, the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the revenue is entitled to treat it as taxable income. This was laid down as far back as 1958 when this court pointed out in A. Govindarajulu Mudaliar v. Commissioner of Income-tax [1958] 34 ITR 807, 810 (SC) that:

"There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature."

To put it differently, where the nature and source of a receipt, whether it be of money or of other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that that income is from any particular source. vide Commissioner of Income-tax v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 (SC). Here, in the present case, the assessee introduced in the books of account of its business on 30th March, 1948, capital of Rs. 3,33,414 which consisted of gold rawa, gold ornaments, stones and cash. The burden of accounting for the receipt of these assets was clearly on the assessee and if the assessee failed to prove satisfactorily the nature and source of these assets, the revenue could legitimately hold that these assets represented the undisclosed income of the assessee....."

(emphasis supplied)

In the case of Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC) [08-02-1963] it is held by the Hon'ble Supreme Court as under:-

"It seems to us that the answer to this question must be in the affirmative and that is how it was answered by the High Court. It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is

entitled to treat it as taxable income: see A. Govindarajulu Mudaliar v. Commissioner of Income-tax [1958] 34 ITR 807 (SC)".

As per judgements of Hon'ble Supreme Court in the case of CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC)/A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC), where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source.

(10) INCOMES U/S 68, 69 ETC. ARE SEPARATE AND DISTINCT FROM INCOMES UNDER THE HEADS BUSINESS INCOME, CAPITAL GAINS ETC.

Section 28 is not an inclusive definition as the opening sentence of the section 28 reads as under:-

"The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",

Accordingly, in case the appellant claims that the income is chargeable under the head business income and nowhere else, the onus is on the appellant to show under which clause of section 28 the claimed income gets covered. Even as per judgement in the Principal Commissioner of Income-tax v. Bajargan Traders, the "source of investment/expenditure is clearly identifiable" i.e. the source must be clearly identifiable. It is held by the Hon'ble Supreme Court in the case of Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC) [08-03-1977] that even after the items (stock in trade) were "introduced in the books of account of its business", the assessee was still required to "to prove satisfactorily the nature and source of these assets" and in the event of failure to prove these, "the revenue could legitimately hold that these assets represented the undisclosed income of the assessee". Roshan Di Hatti (supra) is case on the issue involving issue of stock in trade which was included by the assessee in the books of accounts and even then it was held in the judgement that assessee was still required to prove satisfactorily the nature and source of these assets and in the event of failure to prove these, the revenue could legitimately hold that these assets represented the undisclosed income of the assessee.

In this regard, as per provisions of the Act, not only the source but the year of earning of income also needs to be shown for taxing in the current year under assessment/appeal as the law provides that income for each year be taxed in the ITR/assessment of that year only. This also has ramifications on the interest payable by the taxpayer because if the income was earned in earlier year and the same is being offered to tax now in that case the taxpayer is liable to pay interest for the intervening period. Sections 68/69/69A etc. also provides for year of taxation irrespective of the year of earning of income.

However in case the subject matter of addition is not expressly falling under the four chapters of income heads and for the year under assessment/appeal (before application of provisions of section 68/69/69A etc.) in that case applicability of section 68/69/69A etc. is to be seen. If the sources, genuineness etc. are explained satisfactorily i.e. sources are out of genuine disclosed/taxed income in that case and section 68/69/69A etc. are not applicable even in that case section 115BBE will not have application.

However if the asset/credit/expenditure is treated as income because of the applicability of section 68/69/69A etc. in that case section 115BBE will have application. The incomes mentioned under these sections are not specific to any head of income.

Section 69C even clearly mentions that such unexplained expenditure will not be deductible under any head of income. Loans given / stock in hand / loan received etc. are otherwise not taxable as these are in the nature of asset/liability/capital nature in the hands of the taxpayer and not in the nature of revenue income. However when these are unexplained in terms of sections 68/69/69A etc. these become income and become taxable.

Section 14 of the Income-tax Act, 1961 Heads of income - Assessment year 1984-85 Whether opening words of section 14, 'save as otherwise provided by this Act,' clearly leave scope for 'deemed income' of nature covered under scheme of sections 69, 69A, 69B and 69C being treated separately, because such deemed income is not income from salary, house property, profits and gains of business or profession, or capital gains, nor is it income from 'other sources' Held, yes. [Fakir Mohamed Haji Hasan v. Commissioner of Income-tax [2002] 120 Taxman 11 (Gujarat)/[2001] 247 ITR 290 (Gujarat)/[2001] 165 CTR 111 (Gujarat) (10-08-2000)]

These are the special provisions dealing with the situation and the incomes which are the subject matter of the contention in the appeal and being the specific provisions they are preferred and override the general provisions.

Sections 68/69/69A etc. also provides for year of taxation of asset/credit/expenditure irrespective of the year of earning of the source revenue income (if any).

Year of earning:-

The appellant has not proved that these unexplained cash (used for paying for unaccounted expenditure/investment) were added in the year under appeal i.e. that these were not available at of the opening of the year. The appellant has not shown the sources i.e. name, address, PAN, purpose etc. of the funds gone into acquisition of these excess unaccounted cash.

If the undisclosed income earned and accumulated over the years is taxed in the year in which it is detected by the Revenue and the same is merely taxed as per normal provisions of the law such an interpretation will place a premium on dishonesty i.e. it tantamounts to rewarding the dishonesty. There is no interest burden on such taxpayer even if the income was earned over past years and there is no extra tax rate and deduction of expenses/losses will also be claimed by taxpayer if the same is taxed as per normal provisions of section 28 and onwards.

When the receipts do not pertain to the year under appeal the appellant should have declared these receipts in the appropriate year to which these receipts belong and the appellant would have paid the taxes on the same along with the penalty if any arising due to the reopening of the case of the earlier year. By offering these receipts as business receipts of the year under appeal the appellant has unfairly tried to save on these accounts. Legally as per section 28 only the income earned during the year can be taxed. The appellant has not disclosed or clarified under which subsection or clause of section 28 the income falls on this account offered by the appellant for the year.

Only by the application of sections 68/69/69A etc. the income is even if earned in earlier year but detected during the year in the form of unexplained credit /unexplained investment etc. is to be taxed in the year in which the application of such income is found. Once sections 68/69/69A etc. are applicable, there is no dispute regarding the applicability of section 115BBE of the Act.

Complete code:-

The opening words of section 14 'Save as otherwise provided by this Act' clearly leave scope for 'deemed income' of the nature covered under the scheme of sections 69, 69A, 69B and 69C being treated separately, because such deemed income is not income from salary, house property, profits and gains of business or profession, or capital gains, nor is it income from 'other sources' because the provisions of sections 69, 69A, 69B, and 69C treat unexplained investments, unexplained money, bullion, etc., and unexplained expenditure as deemed income where the nature and source of investment, acquisition or expenditure, as the case may be, have not been explained or satisfactorily explained.

Section 69C even clearly mentions that such unexplained expenditure will not be deductible under any head of income. Loans given / stock in hand / loan received etc. are otherwise not taxable as these are in the nature of asset/liability/capital nature in the hands of the taxpayer and not in the nature of revenue income. However when these are unexplained in terms of sections 68/69/69A etc. these become income and become taxable.

These are the special provisions dealing with the situation and the incomes which are the subject matter of the contention in the appeal and being the specific provisions they are preferred and override the general provisions. Once the income is as per these sections, there cannot be any dispute regarding the applicability of section 155BBE of the Act. These sections 68/69/69A etc. along with section 115BBE are in the nature of complete code in itself. In this regard it is held by Hon'ble Gujarat High Court in Fakir Mohmed Haji Hasan v. Commissioner of Income-tax [2002] 120 Taxman 11 (Gujarat)/[2001] 247 ITR 290 (Gujarat)/[2001] 165 CTR 111 (Gujarat) [10-(Gujarat)/[2001] 247 ITI 08-2000] that "6.2 The opening words of section 14 'Save as otherwise provided by this Act' clearly leave scope for 'deemed income' of the nature covered under the scheme of sections 69, 69A, 69B and 69C being treated separately, because such deemed income is not income from salary, house property, profits and gains of business or profession, or capital gains, nor is it income from 'other sources' because the provisions of sections 69, 69A, 69B, and 69C treat unexplained investments, unexplained money, bullion, etc., and unexplained expenditure as deemed income where the nature and source of investment, acquisition or expenditure, as the case may be, have not been explained or satisfactorily explained. Therefore, in these cases, the source not being known, such deemed income will not fall even under the head, 'Income from other sources'. Therefore, the corresponding deductions, which are applicable to the incomes under any of these various heads, will not be attracted in case of deemed incomes which are covered under the provisions of sections 69, 69A, 69B and 69C in view of the scheme of those provisions."

(11) Further, merely because in the present appeal the capital and loan transactions of the appellant are in cash and have been kept undisclosed and have been detected only during the course of search and seizure action does not make the appellant eligible for some extra premium benefit regarding exemption from not complying with legal requirements and taxability under section 68, 69 and 69D etc. of the Act. It is a settled law that no premium can be awarded to the dishonesty. If the claim of the appellant is allowed that will tantamount to giving reward and premium to the money laundering practices.

(12) EXISTENCE OF UNEXPLAINED FUNDS AND UNEXPLAINED CREDITS ITSELF IS EVIDENCE AND THESE ARE THE INCOME OF THE ASSESSEE:-

In the case of Kailash Swaroop Agarwal vs Commissioner of Income Tax, Ajmer in D.B. Income Tax Appeal No. 175/2012 in order dated 03/10/2017 the addition on account of unexplained cash deposits was upheld by the Hon'ble Rajasthan High Court. As noted in the order of Hon'ble Tribunal as referred in the order of Hon'ble High Court, the explanation of the assessee was rejected by the Hon'ble Tribunal in the following paras:-

"5.7 The law in the matter is trite, and for which we may refer to case laws by the hon'ble apex court, which has time and again explained that the receipt of money of which the assessee is a beneficiary is itself a prima facie evidence against him, who has to satisfactorily explain the same, i.e., render an explanation as to its nature and source, which is proper, reasonable and acceptable, even as a finding as to non-satisfaction therewith is to be rendered on the basis of proper appreciation of the material and other attending circumstances available on record; application of mind being a sine qua non for forming an opinion.....

(13) ADDITION UNDER SECTION BOOKS OF ACCOUNTS:-68 OF THE MENT ACT AFTER REJECTION OF

The issue in appeal is specifically held in favour of Revenue by the Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC) [01-08-1968] and by Hon'ble Allahabad High Court in the case of Commissioner of Income-tax-I v. G.S. Tiwari & Co. [2014] 41 taxmann.com 17 (Allahabad)/[2014] 220 Taxman 111 (Allahabad) (Mag.)/[2013] 357 ITR 651 (Allahabad) [30-05-2013].

The Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC) [01-08-1968] has held as under:-

"There is nothing in law which prevents the Income-tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him under section 13 of the Income-tax Act, after rejecting the books of account of the assessee as unreliable. This was so decided in Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC). Whether in a given case the Income-tax Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case.

The High Court, in disposing of the application under section 66(2), expressed the view that because the amount of Rs. 20,000 was entered in the books of account of the business, there was some material to hold that the amount was income of the assessee from the business and not from some other source.

But it was not open to the High Court to direct the Tribunal to state a case on a question which was never raised before or decided by the Tribunal at the hearing of the appeal. The question again assumes that it was for the Income-tax Officer to indicate the source of the income before the income could be held taxable and unless he did so, the assessee was entitled to succeed. That is not, in our judgment, the correct legal position. Where there is an explained cash 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 (Emphasis supplied)

As per the headnotes "Section 145 of the Income-tax Act, 1961 [Corresponding to section 13 of the Indian Income tax Act, 1922] Method of accounting System of accounting Assessment year 1946-47 Whether where there is an unexplained cash credit it is open to ITO to hold that it is income of assessee and no further burden lies on ITO to show that income is from any particular source - Held, yes". As per the above judgement, the observations of the Hon'ble Allahabad High Court that because the amount was entered in the books of account of the business, there was some material to hold that the amount was income of the assessee from the business and not from some other source, were not approved by the Hon'ble Supreme Court and was reversed, as it was held by the Hon'ble Supreme Court that it assumed it was for the Income-tax Officer to indicate the source of the income which was not the correct legal position and that where there is an explained cash 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.

Further it is held by Hon'ble Allahabad High Court in the case of Commissioner of Income-tax-I v. G.S. Tiwari & Co. [2014] 41 taxmann.com 17 (Allahabad)/[2014] 220 Taxman 111 (Allahabad) (Mag.)/[2013] 357 ITR 651 (Allahabad) [30-05-2013] that (headnote extract) In course of assessment, Assessing Officer noted that assessee had not maintained proper books of account He thus rejected book results and estimated net profit rate of 8 per cent under section 44AD Assessing Officer also made certain addition under section 68 in respect of unexplained cash credit Commissioner (Appeals) as well as Tribunal held that once addition was made on estimate basis under section 44AD, no separate addition could be made in respect of cash credit under section 68 - Whether there is nothing in law which prevents Assessing Officer in an appropriate case in taxing both sundry credit, source and nature of which is not satisfactorily explained, and business income estimated by him after rejecting books of account of assessee as unreliable - Held, yes. The relevant part of the judgement is as under:-

"10. It may be mentioned that in the case of CIT v. Maduri Rajaiahgari Kistaiah [1979] 120 ITR 294 (AP), it was observed that where a particular business income of the assessee has been estimated and determined and in such a case certain sundry creditors are found, the AO may be precluded from adding the said unexplained sundry creditors as undisclosed income from the business, the income of which was determined on estimate basis. But where the unexplained

sundry creditors are not referable to the business income of the assessee which was estimated, the AO is not precluded from treating the unexplained sundry creditors as income from other sources such as salaries securities or any other income from a business, the source of which was not disclosed by the assessee. Where certain unexplained sundry creditors are found in the account books of the assessee, whose business income is determined on estimate basis and not on the basis of his returned income, the AO is not prevented from treating the unexplained sundry creditors standing in the books of account as income from undisclosed sources.

11. In the instant case, the consistent plea of the assessee was that the sundry creditors are genuine but at any point of time the assessee take the stand that the sundry creditors are referable to the income of the business which has been determined on estimate basis. Hence, the assessee must be held to have failed to establish that the unexplained sundry creditors were referable to the business income. The addition of the unexplained sundry creditors as income from other sources by the AO, therefore, was held valid.

12. Further, the Hon'ble Apex Court in the case of CIT v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 observed that where there is an unexplained credit, it is open to the AO to hold that it is income of the assessee, and no further burden lies on the AO to show that the income is from any particular source. It is for the assessee to prove that, even if the sundry creditors represents income, it is income from a source which has already been taxed. There is nothing in law which prevents the AO in an appropriate case in taxing both the sundry credit, the source and nature of which is not satisfactorily explained, and the business income estimate by him after rejecting the books of account of the assessee as unreliable."

In the case of Kale Khan Mohd. Hanif (50 ITR 1) Hon'ble Supreme Court inter-alia held that even if income was computed on estimate basis the addition u/s 68 can be done.

(14) Alternatively and without prejudice to the above:-

The funds received by the appellant are shown in the books of the appellant in the form of balance as on 01.01.2014. The following position emerges:-

(i) The funds were received by the appellant.

(ii) The funds received are in nature of loan and capital which is undisputed. Undisputedly, the funds received are not in the nature of receipt against sales.

Thus the profit which is a percentage on the sales does not cover and does not include the unexplained money from unknown/unexplained sources.

Further, merely because in the present appeal the cash from partner and loan transactions of the appellant are in cash and have been kept undisclosed and have been detected only during the course of search and seizure action does not

make the appellant eligible for some extra premium benefit regarding exemption from not complying with legal requirements and taxability under section 68, 69 and 69D etc. of the Act.

Such unexplained funds are the unexplained money with the appellant and is taxable u/s 69A of the Act irrespective of whether the books of accounts are in existence or not as it is undisputed that the funds were received by the appellant and the same are unexplained. It is held accordingly.

This also distinguishes the case in present appeal from the facts and ratio of the judgement in the case of Commissioner of Income-tax, Patiala v. Dulla Ram, Labour Contractor, Kotkapura [2014] 42 taxmann.com 349 (Punjab & Haryana)/[2014] 223 Taxman 24 (Punjab & Haryana) (MAG) [22-10-2013].

(15) Another most important fact of the case in the present appeal is that parallel sets of books of accounts were maintained by the appellant for the year under appeal. Some of the transactions were recorded and shown in the audited books of accounts and appellant maintained and another set of books of accounts 'Jai Shree Ram' in which the transactions shown in the audited books of accounts are so recorded and transactions not recorded in audited books are also recorded. The crucial fact is that the financials / Books of accounts of 'Jai Shree Ram' have not been rejected. In the earlier paras, the issue of reliability of books 'Jai Shree Ram' has been discussed in detail and the same is hereby referred to and not repeated for the sake of brevity. Only the audited books of accounts have been rejected. The addition challenged in present ground of appeal has not been made from such audited books of accounts and has been made from the financials/books 'Jai Shree Ram' which have not been rejected. Thus the legal ground raised by the appellant is infructuous.

(16) The Id. AR also argued that the capital from partner is not taxable in the hands argued that the capital from parti of the firm and the same can only be taxed in the hands of partners. This contention of the appellant is discussed here under.

Firstly, the appellant has not even filed any confirmation from the partner regarding introduction of capital which is shown in the or as part of the capital balance as on 01.01.2014. The appellant has also not filed any affidavit from the partner regarding the same. There are no personal books of accounts of the partners to see whether the capital balance as on 01.01.2014 as reflected in 'Jai Shree Ram' has been duly shown in such books of accounts. Thus on the one hand the appellant is claiming that the credit should be taxed in the hands of the partners and on the other hand the partners (who are representing the appellant firm in the assessment and appeal of the appellant firm), have not filed any conformation, affidavit, source evidences etc. -thus the approach of the appellant is not bonafide.

Further, there is no distinction in section 68 of the Act regarding credit shown by an assessee (firm) from partner or from any other person. The appellant is required to show and prove the satisfaction of conditions of section 68 even in case of credit

In the case of Commissioner of Income-tax v. Kishorilal Santoshilal [1995] 216 ITR 9 (Rajasthan)/[1995] 129 CTR 450 (Rajasthan) [06-02-1995], it has been held that cash credit entry in books of firm in partner's account or in respect of any credit by third party stands on same footing and, if firm is not in position to establish genuineness of such credit entry then it can be added as income from undisclosed sources in hands of assessee-firm.

In that case during the course of assessment proceedings the ITO found that certain amount was credited in one of the partner's account in the books of the assessee firm. The assessee firm explained that the investment had been made by the partner out of the recoveries made from money-lending business carried on by the partner and out of the sale proceeds of groundnut on the agricultural land of the partner and that such income had been declared in his individual return. The ITO however found that no such return was filed by partner and therefore he concluded that the amount was the assessee's income from undisclosed sources. The CIT (Appeals) affirmed the decision of the ITO. The Tribunal however deleted the addition holding that cash credit in the account of one of the partners, could not be assessed in the hands of the firm.

On reference, in this judgement, it is held by the Hon'ble Rajasthan High Court as under:-

"In A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807, it was observed by the Supreme Court that there is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amounts of cash received during the accounting year, the Income tax Officer is entitled to draw the inference that the receipts are of an assessable nature.

In P.V. Raghdva Reddi v. CIT [1956] 29 ITR 942, it was observed by the Andhra Pradesh High Court that the burden of proof is not dependent upon the fact of a credit entry in the name of the assessee or in the name of a third party. In either case, the burden lies upon the assessee to explain the credit entry, though the onus might shift to the Income-tax Officer under certain circumstances. Otherwise a clever assessee can always throw the burden of proof on the income-tax authorities by making a credit entry in the name of a third party either real or pseudonymous. The same High Court in M.M.A.K. Mohindeen Thamby and Co. v. CIT [1959] 36 ITR 481, relying on the said decision came to the conclusion that there is no distinction between the entries in the names of the partners and those in the names of the third parties, and the nature of the entry is not distinguishable.

In the absence of a satisfactory explanation, it is open to the Department to infer that these monies also belong to the assessee and represent suppressed income. In *Hardwamal Onkarmal v. CIT* [1976] 102 ITR 779, it was observed by the Patna High Court that if cash credits are found in the account books of a partnership firm in the names of the partners, the credits are surely in the names of persons who constitute the firm itself. In such a case, the onus was on the assessee to establish that the partners had actually deposited the money and that the entries were not fictitious.

On the basis of the language used under section 68 and the various decisions of different High Courts and the apex court, the only conclusion which could be arrived at is:

- (i) that there is no distinction between the cash credit entry existing in the books of the firm whether it is of a partner or of a third party,
- (ii) that the burden to prove the identity, capacity and genuineness has to be on the assessee,
- (iii) if the cash credit is not satisfactorily explained the Income-tax Officer is justified to treat it as income from "undisclosed sources",
- (iv) the firm has to establish that the amount was actually given by the lender,
- (v) the genuineness and regularity in the maintenance of the account has to be taken into consideration by the taxing authorities,
- (vi) if the explanation is not supported by any documentary or other evidence, then the deeming fiction credited by section 68 can be invoked.

In these circumstances, we are of the view that simply because the amount is credited in the books of the firm in the partner's capital account it cannot be said that it is not the undisclosed income of the firm and in all cases it has to be assessed as an undisclosed income of the partner alone.

In these circumstances, we are of the view that the Tribunal was not justified in holding that the cash credits of Rs. 11,502 in the account of Shri Kishorilal, one of the partners, could not be assessed in the hands of the firm and in deleting the same. Since the matter was not considered by the Tribunal on the merits, the Tribunal would be free to hear the arguments of both the parties and decide afresh in view of the observations made above.

Accordingly, the reference is answered in favour of the Revenue and against the assessee.

In the case of *Kailash Chand Agarwal v. Income Tax Officer, Ward-3, Bharatpur* [2017] 88 taxmann.com 540 (Rajasthan)/[2017] 394 ITR 771 (Rajasthan) [17-01 2017] it has been held that regard to the sources of the capital contributions by the partners, the assessee firm had given enough evidences in the shape of (i) entries in the books of account of the firm as well as the partners for those capital contributions, (ii) confirmations from the creditors who had given the money to the

partners and (iii) returns of income/statements of computation of income/capital accounts of all such creditors; and that there was no ground to reject the findings adopted by the CIT(A) and no reasons were adopted by the Tribunal while reversing the finding of the CIT(A). In this judgement also, judgement of Commissioner of Income-tax v. Kishorilal Santoshilal (supra) has been referred and the addition was deleted only on the ground of satisfaction of conditions of section 68 (and not on the technical ground that for partner capital contribution addition could not be made in hands of firm).

Relying upon the judgements in the cases of CIT vs Kishorilal Santoshilal (216 ITR 9), A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (Supreme Court), V. Raghava Reddi v. CIT [1956] 29 ITR 942 (Andhra Pradesh High Court), Hardwamal Onkarmal v. CIT [1976] 102 ITR 779 (Patna High Court) credit entry in books of firm in partner's account or in respect of any credit by third party stands on same footing and, if firm is not in position to establish genuineness, identity and creditworthiness regarding such credit then it can be added as income from undisclosed sources in hands of assessee-firm.

It is also important to note that in the present case under appeal the appellant has not even filed any confirmation of affidavit along with source details and evidences from the partner regarding introduction of capital which is shown in the or as part of the capital balance as on 01.01.2014. There are no personal books of accounts of the partners to see whether the capital balance as on 01.01.2014 as reflected in 'Jai Shree Ram' has been duly shown in such books of accounts.

In view of the above discussion, this issue taken by appellant is hereby rejected.

(17) Appellant has also contended that the Jai Shri Ram is the consolidated affairs of the assessee, thus regular books of accounts of Shri Ambika Garments are also included in Jai Shri Ram. The verification of said fact has also been made during the course of assessment and accordingly from the total sale as appearing in Jai Shri Ram. GP with respect to sale already recorded in regular books of accounts has been eliminated, however while making the addition of alleged unexplained opening capital and loans, the amount already recorded in regular books of accounts was not eliminated.

In the assessment order as well as in earlier paragraphs of this order it has been upheld that for the year under appeal (in some other subsequent years there is issue of other unreported segments books of accounts also which is not present in year under appeal) Jai Shri Ram is the consolidated affairs of the assessee, thus regular books of accounts of Shri Ambika Garments are also included in Jai Shri Ram. The appellant has also filed an entry wise comparison and matching of the ledger account of capital and loan accounts in submission dated 11.11.2024. The appellant has specifically highlighted that the bank transaction entries are matching. A few minor mismatch have been identified by appellant and from a

cursory perusal the conclusion to be drawn is that these can very easily be rectified by the appellant. However the conclusion in substance and materiality to be arrived at is that the opening balance as on 01.01.14 as per audited books is already part of the opening balance as on 01.01.14.

In view of the above discussion addition made in the assessment order on the issue (capital balance as on 01.01.2014) is reduced by the opening balance of partners' capital on the same date in the audited books of accounts.

Accordingly, this contention of the appellant is allowed.

(18) The appellant has raised similar contention w.r.t. the loan balances as on 01.01.14 in the books 'Jai Shree Ram' and the audited books. This contention of the appellant was rejected in the assessment order on the ground that there was absence of evidence to prove that the parties of unsecured loans appearing in Jai Shree Ram and Shri Ambika Garments are the same. In the appeal proceedings also the appellant has also not proven this. Even though in principle it has been upheld that Jai Shree Ram is the consolidated affairs of the assessee for the year however the contention of the appellant raised on this issue regarding loans is hereby rejected on the grounds that (i) possibility of some minor errors is not ruled out, and (ii) not proven by appellant that parties of unsecured loans appearing in Jai Shree Ram and Shri Ambika Garments are the same, (iii) the appellant has not submitted the ledger accounts of loan parties and their comparison of ledgers in books as Jai Shree Ram and Ambika Garments which was specifically requested vide hearing dated 06.11.2024, (iv) conditions of section 68 of the Act are not satisfied. However the appellant / Id. AR has submitted ledger account of Kotak Bank loan and made arguments regarding Kotak Bank Loan and contended that bank loan cannot be treated as unexplained and that the substantial entries are matching in the ledger account in Jai Shree Ram and Ambika Garments. Accordingly the addition of Rs. 2,56,996 made w.r.t. Kotak Bank Loan is hereby directed to be deleted.

In view of the above, this ground of appeal is partly allowed.

6. Ground of Appeal No. 4 is as under:

Ground No. 4: Under the facts and circumstances, Ld. A.O. has erred in holding that there is violation of provisions of Section 269SS for the amount of Rs.1,45,000/- and consequently initiating the penalty u/s 271D. The action is unjustified, illegal or excessive and deserves to be deleted in full.

6.1 This ground of appeal is regarding the passing on of information by the assessing authority to the Joint Commissioner / Additional Commissioner for consideration for initiation of penalty proceedings under section 271D of the Act. The Joint Commissioner / Additional Commissioner may or may not initiate such

proceedings as the penalty proceedings under section 271D are in the jurisdiction of the Joint Commissioner / Additional Commissioner.

Thus the ground of appeal is premature. Penalty proceedings are independent proceedings and the appellant is required to make its submissions before the appropriate authority during the penalty proceedings, if any. Accordingly, the ground of appeal raised by the appellant on this issue is treated as disposed off.

7. Ground of Appeal No. 5 is as under:

Ground No. 5: Under the facts and circumstances, Ld.AO has erred by initiating the levying penalty U/s 271(1)(c), the penalty. The action is unjustified, illegal or excessive and deserves to be deleted in full.

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

8. Ground of Appeal No. 6 is as under:

Ground No. 6: That the appellant craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

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

9. In the result, the appeal of the appellant is partly allowed.

8. Feeling dissatisfied from the above order of 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 a detailed written submissions which reads as under :

GIST of Written Submissions:

1. Statutory Mandate under Section 153D of the Income-tax Act, 1961

1.1 As per the explicit and mandatory provisions enshrined under Section 153D of the Income-tax Act, 1961 ("the Act"), any Assessing Officer ("AO") who is below

the rank of the Joint Commissioner of Income Tax (“JCIT”) is required to obtain *prior approval* u/s 153D by forwarding the *draft assessment order* before passing the final assessment order under Section 153A read with Section 143(3) in cases arising out of a search.

1.2 In compliance with the said statutory requirement, the Respondent AO in the present case sought approval of the Joint Commissioner of Income Tax, Central Range, Jaipur under Section 153D of the Act, and such approvals were granted in the following manner:

In the case of Shri Sanjay Kumar Karnani:

- A common approval for Assessment Years 2013–14 and 2014–15 vide letter dated 16.07.2021 (PBP-II-1);
- A common approval for Assessment Years 2015–16 to 2018–19 vide letter dated 16.07.2021 (PBP-257);
- Approval for Assessment Year 2019–20 vide letter dated 16.07.2021 (PBP-256).

In the case of M/s. Ambika Garments:

- A common approval for Assessment Years 2013–14 to 2015–16 vide letter dated 16.07.2021 (PBP-269);
- A common approval for Assessment Years 2016–17 to 2019–20 vide letter dated 20.07.2021 (PBP-270).

2. Lack of Application of Mind by the Approving Authority

2.1 A plain reading of the above approvals makes it abundantly evident that there is a total absence of *application of mind*, much less an *independent application of mind*, as contemplated by law. The approvals have been granted in a purely mechanical manner, devoid of any expression, observation, or reasoning that would indicate that the competent authority had applied its mind to the material placed before it.

2.2 The Ld. Joint CIT in all the cases has merely recorded a bald statement that “*the draft assessment order in the following cases submitted by you are hereby approved u/s 153D of Income Tax Act, 1961*”, followed by a tabular list containing basic particulars of the assessee. There is complete silence as to the consideration of issues involved or the basis on which such approval was accorded. Even the minimum requirement—of recording a brief indication of thought process or satisfaction after due examination of the draft order—is conspicuously absent.

2.3 While it is not expected that the approving authority should furnish elaborate reasoning, some indication must exist to demonstrate that the draft assessment orders were *examined* and *found to be in accordance with law*. A mere reproduction of the language of the statute or a perfunctory endorsement such as “seen” or “approved” amounts only to *rubber-stamping* and does not meet the statutory mandate under Section 153D.

2.4 It is further submitted that the provisions of Section 153D cannot be construed as a mere procedural or empty formality. The legislative intent behind its enactment is twofold:

- Firstly, to safeguard the interests of the assessee by ensuring that no arbitrary, irrelevant, or unjustified additions are made in the assessment order; and
- Secondly, to ensure that the assessment is made after proper enquiry and scrutiny under the supervision of a senior officer.

Thus, the involvement of a senior officer envisaged under Section 153D serves as a crucial check and balance, providing protection both to the Revenue and to the assessee, ensuring fairness and objectivity in the process of assessment.

3. Judicial Precedents Supporting the Contention

3.1 Jaipur ITAT in Resonance Eduventures Ltd Vs ACIT Central Circle-Kota in ITA No. 669 to 672/JPR/2024 vide order dated 10-03-2025

3.2 Delhi ITAT in Apple Commodities Limited Vs DCIT, Central Circle-II, Noida in ITA No. 1510/Del/2022 vide order dated 16.04.2025

3.3 Delhi ITAT in Shri Prateek Nagpal Vs ACIT, Central Circle-15 in ITA No.522/Del/2022 vide order dated 10.01.2025

3.4 Delhi High Court in PCIT-15 Vs Shiv Kumar Nayyar in ITA No. 285/2024 vide order dated 15.05.2024

3.5 ACIT v. Serajuddin & Co. (2023) 333 CTR (Ori) 228

4. Prayer:

In view of the statutory requirement under Section 153D and the authoritative judicial pronouncements cited hereinabove, it is respectfully submitted that the approvals accorded by the JCIT, Central Range, Jaipur, having been granted in a mechanical manner without any application of mind, are invalid in law. Consequently, the assessment orders passed pursuant to such defective

approvals stand vitiated, being void ab initio, and therefore liable to be quashed and set aside.

Addition on account of alleged opening capital and unsecured loans in tally data of Hari Om and Jai Shree Ram:

Facts: The AO observed that during the search proceedings, the first balance sheet for the period from 01.01.2014, to 31.12.2014, of the firm M/s Hari Om, which was seized, indicated a Prop. capital of ₹ 1,08,36,565/- and unsecured loans of ₹1,34,53,241/- and ₹ 61,000/- The AO inquired why these amounts should not be treated as undisclosed cash credits.

In response, the assessee submitted that adding the amounts of capital and unsecured loans based on the tally data was unjustified due to the numerous errors and inconsistencies present in the data. The assessee asserted that the tally data lacked independent validity for income determination and required significant corrections. Despite this explanation duly supported by the evidence and instances, the AO disregarded the assessee's contention and the tally data found in the name of "Hari Om" were considered as the real books of account of the assessee by observing as under:

5.2 The reply filed by the assessee has been examined. The assessee submitted a routine reply that Hari Om tally was prepared by some staff

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member to calculate the incentive to be distributed to the various staff member through leading staff person. The aforesaid contention of the assessee is not found acceptable as the same is routine in nature and without any basis. Therefore, the contention that these are not books of accounts and merely prepared by some staff members to calculate the incentive is just an afterthought to escape from the rigor of income tax. Moreover, the volume of transactions are huge, therefore the contention that this extensive, detailed and laborious exercise is not representing the real affairs and just prepared by some staff member only to calculate

incentive is clearly unimaginable.

Although the tally data so found in the name of "Hari Om" was considered as the real books of accounts of the assessee but pointing out certain defects in the same, the alleged books of accounts were rejected u/s 145(3) and profits were estimated based by holding as under:

5.7 In view of aforesaid specific defects in the books of accounts, these books are not reliable or otherwise not capable of deducing the correct profitability of M/s Shree Ram Enterprises, therefore, provisions of Section 145(3) are invoked and the books of assessee are hereby rejected. Since the books have been rejected, profits are to be estimated u/s 144 on the basis of best judgment.

Going further, Ld. AO pointed out that the opening unsecured loans appearing in M/s Hari Om appeared to be merely the assessee's own funds, disguised as unsecured loans, with no satisfactory explanation of their source. The seized tally data showed unsecured loans of ₹1,20,13,344/- as of 31.12.2014, compared to an opening balance of ₹ 1,34,53,241/- as of 01.01.2014.

As a result, the AO made an addition of ₹ 2,43,50,806/- to the assessment on account of unexplained opening capital and unsecured loans by holding as under:

6.3 The assessee contended that the capital balance appearing in the regular books of accounts of Shri Ram Enterprises should be reduced from the opening capital balance as per 'Hari Om'. The same is not found

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acceptable as capital appearing in regular books of accounts of Shree Ram Enterprises is not having the similar balance as appearing in 'Hari Om' and also entries in the account are not matching.

6.4 Vide Notice u/s 142(1) dated 05.01.2021, the assessee was asked to give explanation with respect to Unsecured Loans of Rs.1,20,13,344/- appearing as on 01.01.2014, in response to which assessee made the submission reproduced as above. The submission made by the assessee is not acceptable because the assessee is to prove the identity, creditworthiness and genuineness of unsecured loans appearing in 'Hari Om', which the assessee fails to prove. The further contention that balance of unsecured lenders appearing in the regular books of Shree Ram Enterprises should be reduced is unacceptable in the absence of evidence to prove that the parties of unsecured loans appearing in Hari Om and Shree Ram Enterprises are the same. In view of this, it is clear that amount shown as unsecured loan in Hari Om is nothing but assessee's own money shown in the garb of unsecured loans, source of which remains unexplained. As per seized tally data of M/s Hari Om as on 31.12.2014, unsecured loans is of Rs.1,20,13,344/- whereas opening unsecured loans as on 01.01.2014 is of Rs.1,34,53,241/-.

6.7 The balances escalated through cash not available out of withdrawals are surely unexplained. Examination of material seized during the search proceedings clearly reveals that in Assessment Year 2014-15, the total cash withdrawals were Rs.7,50,000/- as against the cash introduction of Rs.8,11,000/- leaving with unexplained increase in balance by Rs.61,000/-. Therefore, the same is added to the total income of the assessee for A.Y. 2014-15.

6.8 Therefore, unexplained capital of Rs.1,08,36,565/- (48622375-7524239-24618559-5643011), opening unexplained capital in form of unsecured loan Rs.1,34,53,241/- and Rs.61,000/- cash received in excess of withdrawal remain unexplained, hence, the amount of Rs.2,43,50,806/- (10836565+13453241+61000) is added to the total income of the assessee for A.Y. 2014-15. Penalty proceedings u/s 271(1)(c) of the Act is hereby initiated for concealed the particulars of income. The

assessee accepted loan of Rs.1,34,53,241/- in cash and made cash addition of Rs.8,11,000/- totalling to Rs.1,42,64,241/- is clear violation of provisions of section 269SS of the Act. Therefore, proposal of initiating of penalty proceedings u/s 271D for violation of provisions of section 269SS of the Act is being sent to the Joint Commissioner of Income Tax, Central Range- Jaipur.

(Addition of Rs.2,43,50,806/-)

Submission:

1.1 Addition u/s 68 based on Tally Data with Various Discrepancies is Arbitrary: At the outset, it is contended that the addition of ₹1,08,36,565/- to the opening capital was made by the AO based on hypothetical and erroneous entries found in the tally data. The assessee has consistently explained that the tally data was a consolidated record created by the staff primarily for calculating staff incentives. This data was not intended to represent the true financial position of the business and contained numerous errors and inconsistencies. Specifically, entries had been inaccurately posted, some directly to the proprietor's account, and several outstanding balances were either un-posted or not properly written off. Therefore, the tally data was essentially a rough draft and lacked reliability for accurately determining income.

1.2 The assessee maintains comprehensive books of accounts, including a cash book, ledger, sales journal, purchase journal etc. All transactions, including purchases, sales, and expenses, are fully vouched and verifiable. These accounts were subjected to a tax audit, which confirms their accuracy. The AO, however, did not point out any defects in these regular accounts, nor were there any additions based on the regular accounts.

1.3 The AO's addition was solely based on the seized tally data, which was incomplete and rife with errors. This data, comprising records of multiple businesses, was not a reliable basis for making additions. Furthermore, the AO did not find any defects or discrepancies in the regular books of accounts. The tally data, created for staff incentive calculation, was not intended to be used for income determination.

1.4 The arbitrary nature of the AO's action is evident, particularly as the addition of ₹1,08,36,565/- was based on data starting from 01.01.2014, and the capital balance as of 31.12.2014, purportedly included profits for the entire period from 01.01.2014, to 31.12.2014. The data from "Hari Om" was fraught with errors and inconsistencies. The date chosen for the tally data, starting 01.01.2014, indicates that arbitrary figures were used, without a valid basis.

2. 1 Kindly refer CIT vs. H. S. Rathi (2015) 374 ITR 164 (Delhi): In this case, the court held that the addition made on the basis of inaccurate and incomplete data could not be sustained. The data used for the addition must be accurate and reliable for it to be considered valid.

2. 2 CIT vs. Smt. S. V. P. S. A. K. & Co. (2001) 251 ITR 646 (Kar): The court observed that the AO must apply his mind to the accounts and should not rely solely on discrepancies in incomplete data. The correctness of entries in the books of accounts needs to be verified in light of the entire evidence.

2.3 CIT vs. Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC): The Supreme Court emphasized that any addition to income should be based on clear and cogent evidence and not on hypothetical or incomplete data.

2.4 CIT vs. M/s. D. S. S. Industries (2017) 400 ITR 568 (Cal): The court ruled that if the data relied upon for making an addition is inconsistent and flawed, such additions cannot be sustained.

3. Opening Balance cannot be added u/s 68:

3.1 It is submitted that the AO made an addition of ₹1,08,36,565/- which is the opening balance of the capital and ₹ 1,34,53,241/- which is also an opening balance of unsecured loans. In the assessment order, Ld.AO has also termed these amounts as opening capital and opening unsecured loans. The finding so rendered by the Ld.AO makes it evident that the said amount was opening balance of the alleged capital. Similarly at Page-10, Para 6.4 the opening balance of alleged unsecured loan has been taken by recording a similar finding reproduced hereunder:

identity, creditworthiness and genuineness of unsecured loans appearing in 'Hari Om', which the assessee fails to prove. The further contention that balance of unsecured lenders appearing in the regular books of Shree Ram Enterprises should be reduced is unacceptable in the absence of evidence to prove that the parties of unsecured loans appearing in Hari Om and Shree Ram Enterprises are the same. In view of this, it is clear that amount shown as unsecured loan in Hari Om is nothing but assessee's own money shown in the garb of unsecured loans, source of which remains unexplained. As per seized tally data of M/s Hari Om as on 31.12.2014, unsecured loans is of Rs.1,20,13,344/- whereas opening unsecured loans as on 01.01.2014 is of Rs.1,34,53,241/-.

3.2 It is a well-established principle of law that opening balances cannot be added to income u/s 68 of the Act. This provision is specifically designed to address the issue of unexplained credits in the books of account for the current financial year, and not for balances carried forward from previous years.

- Kindly refer CIT vs. H.S. Rathi (2015) 374 ITR 164 (Delhi): The Delhi High Court held that additions u/s 68 must be made for credits appearing during the year under consideration. The court clarified that opening balance, which are carried forward from previous years, cannot be subject to additions u/s 68.
- CIT vs. G. K. K. Enterprises (2002) 257 ITR 371 (Guj): The Gujarat High Court ruled that S.68 pertains only to unexplained credits introduced during the year and not to opening balances. The addition u/s 68 should be restricted to credits during the financial year under review.
- CIT vs. Orient Trading Co. (2001) 248 ITR 258 (Cal): This judgment emphasized that S.68 deals with the unexplained credit entries for the current assessment year. It cannot be used to add amounts that were part of opening balances or carried forward from previous years.

➤ We further rely the decision of Hon'ble Jurisdictional Jaipur Bench of ITAT in the case of DCIT Vs Alok Malpani in ITA No.334/JP/2022 vide order dated 08.12.2022.

3.3 In the present case, since the amounts of ₹1,08,36,565/- (opening capital) and ₹ 1,34,53,241/- (unsecured loans) represent balances from earlier financial years. The addition of these amounts u/s 68 is therefore not permissible. Sec. 68 cannot be applied to opening balances, as it is intended to address unexplained credits appearing during the financial year under assessment.

3.4 Furthermore, the AO did not raise any issues regarding new unsecured loans taken during the year under consideration, and these were deemed genuine. Therefore, if there were any discrepancies or issues, they should have been addressed with respect to fresh credits introduced during the current year, not with opening balances.

4. No addition u/s 68 when books of account are rejected:

4.1 Another crucial aspect to consider in this case is the principle that at the one hand, books of accounts have been rejected and on the other hand falling on the very same set of books to make the addition u/s 68. As submitted above, at Page-4, Para-5.5 Ld. AO has pointed out the several defects in the books of accounts viz. not maintained financial year wise, not maintaining any stock records thus taking the stock value at the end of year on presumption only and any other deficiencies pointed out by the assessee and admitted by the Ld.AO and on the basis of these defects and deficiencies, the books of accounts were rejected u/s 145(3).

4.2 In the present case, the AO observed that all bank transactions related to purchases and sales were recorded both in the books of Shri Ram Enterprises and Hari Om, including instrument numbers. Despite this, the AO relied on the tally data seized during the search proceedings to conclude that the assessee was involved in unaccounted sales and purchases. Consequently, the AO deemed the regular books of account maintained under the trade name Shri Ram Enterprises to be unreliable and not reflective of the true profit of the assessee.

4.3 Upon rejecting the books of account u/s 145(3), the AO estimated the average gross profit rate at 10.09% based on best judgment, resulting in a trading addition of ₹8,28,572/-. This estimation was made u/s 144, which pertains to assessments based on the best judgment of the AO.

4.4 It is important to note that when the AO rejects the books of account and estimates profit based on S., no separate addition u/s 68 can be made, even if the

assessee has not fully discharged the burden of proof concerning amounts shown in the books of account. This principle is established in several judicial precedents. Kindly refer Rajasthan High Court in the case of CIT Vs. G.K. Contractor 19 DTR 305 (Raj) wherein the Hon'ble Jurisdictional High Court held that when net profit is estimated by the AO by rejecting the book result u/s 145(3) of the Act, no separate addition can be made on account of cash creditor by holding as under:

“AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee's books of account by invoking the provisions of section 145(3), no separate addition can be made on account of cash credit u/s.68, even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account”

4.5 In Dulla Ram vs. CIT (2014) 42 taxmann.com 349 (P&H High Court): The court reaffirmed the principle that when the AO resorts to estimating profit after rejecting books of account, it encompasses all potential discrepancies, including unexplained credits. The estimation should be deemed sufficient to address the income and no additional separate addition under Section 68 is warranted unless clear evidence of unexplained credits is presented.

4.6 Once the AO has rejected the books of account u/s 145(3) and estimated the profit, such estimation should account for all discrepancies, including those related to unexplained credits. No separate addition u/s 68 is appropriate in this context unless specific and concrete evidence of unexplained cash credits is provided. The principles established in the cases of G. K. Contractor and Dulla Ram reinforce that the comprehensive estimation of profit precludes additional, independent additions u/s 68.

4.7 A Similar view has been taken in the case of Malpani House of Stones Vs CIT (2003) 131 Taxman 470 (Raj HC).

4.8 A similar view has been taken by Hon'ble Punjab and Haryana High Court in the case of CIT Vs Aggarwal Engg. Co. (2008) 302 ITR 0246 wherein it was held that:

“No separate addition on account of cash credit and on account of unexplained payments for purchases made outside the books can be made once the net profit rate is applied on contract receipts of an assessee for estimating his income from contract work”.

4.9 The Hon'ble High Court, Punjab & Haryana in the case of CIT, Patiala Vs. Dulla Ram, Labour Contractor, Kotakpura vide order dated 22.10.2013 (Case-7) held that:

“We have heard counsel for the parties, perused the impugned orders and are of the firm opinion that there is no illegality or infirmity in the findings recorded by the Tribunal.

An Assessing Officer may, while considering a return of income, inspect the account books and, if satisfied, that account books do not reflect the true income of an assessee, reject the same. Account books once rejected, are ruled out of consideration and cannot be pressed into service whether by the assessee or the revenue. Thus, when account books are rejected, it would follow, as a necessary corollary, that entries in the account books whether suspicious or not cannot be relied by the revenue or the assessee. To hold otherwise, would, in essence, render account books valid for certain purposes and invalid for others, a course impermissible in law. The Assessing Officer rejected the account books in their entirety and thereafter proceeded to assess income by applying a flat rate of profit of 10%. After applying a flat rate of profit of 10%, the Assessing Officer added Rs.1,98,298/- to the income of the assessee on the basis of certain 'entries' deemed to be suspicious. I attest to the accuracy and integrity of this document well as the Tribunal have rightly held that as books of accounts were rejected in their entirety, the Assessing Officer could not rely upon any entry in the books of accounts for making an addition of Rs.1,98,298/-. A bare reading of Section 68 of the Act would reveal that it would not apply to a situation where account books have not been rejected."

We find no reason to differ from the opinion recorded by the Tribunal and, therefore, answer the questions of law against the revenue and in favour of the assessee. The appeal is, consequently, dismissed."

4.10 The Hon'ble ITAT, Delhi, in the case of Shri Deepak Mittal Vs. Asst. Commissioner of Income Tax, Circle-60 (1), New Delhi in ITA No. 4709/Del/2017 vide order dated 23.03.2018 held that:

"The A.O. accordingly, rejected the books of account of the assessee under section 145(3) of the I.T. Act and after recasting the Trading & P & L A/c, made the addition of Rs.4.14 crores on account of additional profit. The Ld. CIT(A), correctly noted that entire sales could not be profit of the assessee and that re-casting of the Trading & P & L A/c by the A.O. is not proper as per law. The Ld. CIT(A) has taken the purchases and sales in the appellate order and the difference of the same was taken as undisclosed profit of the assessee in a sum of Rs.62,91,150/- which is almost same as offered by assessee @ 8% of undisclosed turnover. The assessee did not challenge the rejection of the books of account under section 145(3) and the addition made by Ld. CIT(A) above to the profit of the assessee. There is no challenge to these findings of the Ld. CIT(A) by the Department in the Departmental appeal because filing of Departmental Appeal not reported by Ld. CIT- D.R. Learned Counsel for the Assessee relied upon several decisions of different High Courts in which it was held that

"when A.O. rejected the books of account of the assessee and applied gross profit rate on suppressed sales, A.O. cannot make separate addition on account of unexplained investment, undisclosed income and even the provisions of Section 40A(3) could not be invoked."

2.1 One of the decision of Hon'ble Allahabad High Court in the case of CIT vs. Banwari Lal Banshidhar (1998) 229 ITR 229 (Alld.) (HC) as reproduced above along with Judgments of Hon'ble Gujrat High Court in the case of President Industries and CIT vs. Samir Synthetics Mill (supra), the authorities below have also not found any material to indicate that assessee made investments outside the books of account to make the sales. The entire sales could not represent income of the assessee, on which, Ld. CIT(A), has already given a finding to add the profit only on such unrecorded sales. When books of account of the assessee are not reliable and rejected by the authorities below under section 145(3) of the I.T. Act and there is no challenge to these findings of the authorities below, there is no reason for the authorities below to rely upon the same books of account for the purpose of making addition under section 40A(3) of the I.T. Act as well as to make addition of peak under section 68 of the I.T. Act. The A.O. noted in his findings that M/s. Hanuman Traders did not exist in purchase and sale ledger and existence of the same have not been proved. The Inspector also gave report to the same effect that M/s. Hanuman Traders do not exist at the given address. These facts clearly show that whatever entries are relied upon by the authorities below from the books of account, are contrary to the findings of the authorities below because non-existent party would not come to pay any amount to the assessee. Therefore, there is no question of considering the unrecorded amount recorded in the books of account of the assessee, so as to make the addition under section 68 of the I.T. Act. The A.O. did not make addition under section 68 of the I.T. Act separately because the addition is already made under section 40A(3) of the I.T. Act. The Ld. CIT(A) did not give any specific notice to assessee for enhancement of income under section 68 of the I.T. Act because he has merely recorded entry of 8th June, 2017 without confronting the facts for making addition of peak credit. The Ld. CIT(A) forgot to consider that if he wanted to make addition on account of peak credit on account of M/s. Hanuman Traders, whether theory of peak credit would apply in the case of the assessee ? For considering the issue of peak credit, the authorities below have to laid-out the foundation that it was unaccounted money of the assessee having both debit and credit which assessee did not agree. It could not be taken into consideration for making such addition under section 68 of the I.T. Act in the hands of the assessee for making any alleged transaction with M/s. Hanuman Traders, which, according to the authorities below, did not exist and that no such entries appear in the books of account of the assessee. Even if, some entries appeared in the books of account of the assessee regarding M/s. Hanuman Traders, according to the findings of the authorities below, such books of account of the assessee are not reliable. Therefore, the authorities below cannot rely upon the same entries in books of account for the purpose of making the addition of the nature of peak against the assessee. Thus, there is no justification for the authorities below to make addition of Rs.6,92,25,000/- under section 40A(3) of the I.T. Act and addition of Rs.7,12,15,150/- under section 68 of the I.T. Act. In view of the above discussion, we set aside the orders of the authorities below and delete both these additions. Ground Nos. 3 to 6 of the appeal of assessee are allowed."

5. Onus Discharged: Ld.AO has made the addition of Rs.1,08,36,565/- shown as the opening balance of Raghav Karnani Minor son of Mr. Sanjay Karnani capital u/s 68 of the Act considering the same as unexplained capital. Section 68 of the act casts a duty upon the assessee to explain the source of any sum found credited in the books of accounts. In the instant case, the assessee duly explained that the sum so found credited is the opening balance of Propertor's capital account, which is carried forwarded balance of earlier years. Under these circumstances, the onus casted upon the assessee stood discharged once it was explained and resultantly the addition so made in the hands of the assessee may kindly be deleted. "

6. It is important to note that addition has been made on account of a ledger account appearing in the "Hari Om" in the name of Raghaw Karnani, who is minor son of the assessee, treating the same as unexplained capital account of Shri Ram Enterprises, proprietorship concern of Shri Sanjay Kumar Karnani.

7. First and foremost, the addition of Rs.1,08,36,565/- on account of alleged opening capital and addition of Rs.1,34,53,241/- are carried forwarded balances from the prior period, thus not involving any amount credited in the books of accounts in the current year, therefore, no addition for the same is required to be made in AY 2014-15.

8. Without prejudice to the foregoing and without conceding to any contrary assertions, it is crucial to highlight the nature of the entries recorded in the Raghaw Karnani account. The ledger account in question, which was found and seized, pertains to the period from January 1, 2014 to December 31, 2017. Over the span of these four years, the account solely consists of book entries, with no evidence of any actual flow of funds. This clearly indicates that the account is merely a notional record and does not reflect any real transfer of money or funds by the assessee to constitute any alleged unexplained capital. The nature of entries posted in the said account clearly highlights that opening balance is nothing but the amount lying accumulated in the account due to certain book entries passed without involving any actual flow of the funds, therefore, it cannot be construed as a basis for any addition under section 68 of the Income Tax Act.

9. Even otherwise, the opening amount punched in the tally were not indicating any actual balances or financial positions of the assessee. As the tally so maintained was full of errors are omissions, some of those instances are placed hereunder:

(a) The accurate and correct quantification of closing stock is crucial in the preparation of the books of accounts, as it plays a direct role in the calculation of the overall profitability of a business. The value of closing stock impacts on the profit and loss statement, which, in turn, affects the balances in the capital account. Any discrepancies or errors in determining the closing stock can lead to distorting the profits and, consequently, the capital balances. To constitute a books of account complete for the purpose of deriving the profits, it is essential that financial year wise closing stock figures are available, involving physical stock counts, valuation processes and then the closing stock is reflected in the books to ensure correct quantification of profits. In the tally data of "Hari Om" so found and impounded, it is evident that the inventory details are not maintained and neither the same was carried out. Instead of detailed records reflecting the actual stock, only an imaginary single figure was "punched in" that too at the end of December. This method, rather than relying on an accurate and methodical approach to stock valuation, represents a superficial entry that does not provide any real or meaningful information about the actual state of the stock and in turn actual profitability, making the entire data as deaf and dumb for the purpose of determining the profitability of the assessee or to assume that amount so recorded in the capital accounts or unsecured loans constitute the real affairs of the assessee.

(b) The unauthenticity and non-reliability of Hari Om is further evident from the fact that the closing balance sheet of Hari Om is depicting the cash in hand of Rs.27,55,263.35/-, whereas during the course of search, no such cash was found.

(c) The rule of classification has not been followed properly, like account of Raghaw Karnani classified under capital, which is purely a notional account. Similarly, Mahesh Munhdra account which is towards purchases thus constituting creditor classified under unsecured loans and in some period the very same account has been classified under capital account. Same is the case with Ramesh Mundhra Account, who is nor the proprietor still his account has been wrongly classified under Capital account. In this regards, screenshot of tally is placed hereunder:

Balance Sheet		Hari Om 2016 - (from 1-Jan-2016) updated as at 31-Dec-2017		Hari Om 2016 - (from 1-Jan-2016) updated as at 31-Dec-2017	
Liabilities		Assets			
Capital Account		2,96,88,860.46		53,21,305.00	
MAHESH KUMAR MUNDHARA	21,99,357.40	LAND & BUILDING			
Old Difference		A/c A/c	2,21,939.00		
Opening Balance		CAMERA+INTERCOM	1,62,702.00		
Raghav Karnani	2,53,00,452.06	Car A/c	10,55,966.00		
RAMESH JI MUNDHRA	21,99,051.00	COMPUTER A/C	68,305.00		
Loans (Liability)	2,50,56,400.22	ELECTRIC LIGHT +FAN	1,76,335.00		
Unsecured Loans	1,95,45,400.22	Furniture A/c	28,82,065.00		
R K G Jaipur	30,00,000.00	GENRETOR A/C	1,22,472.00		
Suspense		HONDA SCOOTY	10,000.00		
Vimla Devi	25,11,000.00	HYDRO LIFT A/C	78,038.00		
Current Liabilities	8,04,85,503.38	INVERTOR A/C	27,904.00		
Duties & Taxes		Noble Lift	3,39,453.00		
Provisions	17,00,000.00	Tempo A/c	1,24,936.00		
Sundry Creditors	7,87,85,503.38	WATER FILTER MACHINE A/C	51,190.00		
		Current Assets		12,97,28,228.06	
		Closing Stock	4,26,51,563.00		
		Loans & Advances (Asset)	1,06,60,994.00		
		Sundry Debtors	7,59,09,963.43		
		Cash-in-hand	3,53,838.35		
		Bank Accounts	1,51,669.28		
		Profit & Loss A/c		1,91,231.00	
		Opening Balance			
		Current Period	(11,81,53,405.40)		
		Less: Transferred	1,83,44,636.40		

(d) The payment of salary to staff shown as Profit and Loss appropriation account.

(e) An account titled as "Old Difference" carried in the Hari Om and shown under the category of capital account. Similarly, suspense account also shown in the Hari Om

(f) The aforesaid instances further go on to show that Hari Om data was full of error and not maintained systematically and accounts classified under capital were not strictly capital accounts in the nature because the assessee being a proprietorship concern, only one capital account can be there and the same was Sanjay Karnani Person account maintained in the very same tally (enclosed in paper book at Page-10), thus finding of Ld.AO that Raghav Karani account is capital account of assessee is unreasonable and contrary to the correct facts of the case.

10. As far as alleged opening loan of Rs.1,34,53,241/- is concerned, the same consists of opening balance of alleged loan punched in the following names:

11. As submitted above, the data of Hari Om was full of error/omission and inconsistency and these arbitrary figures punched as at 01.01.2014 does not indicate any actual loan from the parties. The names listed above shows that these were accounts created in the name of family members and amounts have been shown therein by way of book entries. Certain accounts are towards expense payable to advocate, which is in fact in the nature of creditor. Similarly, Jain Vastralay is a supplier of clothes thus in the nature of sundry creditor. Similarly, Mahesh Mundhra account is also towards purchases made, thus not falling under category of unsecured loans to make any addition u/s 68 of the Act.

12. As observed by Ld. AO, Hari Om was the consolidated affairs of the assessee, therefore, the opening capital shown as on 01.01.2014 would have naturally included the profit earned for the period 01.04.2013 to 31.12.2013 by M/s Shri Ram Enterprises duly recorded in the books of accounts and offered for the taxation, thus including the same again in the opening capital of Hari Om is resulting into taxing the same again and resultantly double addition. The total profit earned by the assessee for the period 01.04.2013 to 31.03.2014 were Rs. 14,53,535/- thus the profits for the period 01.04.2013 to 31.12.2013 comes to Rs. 10,90,151/- ($14,53,535/12*9$) and the same may kindly be eliminated from the opening balance of alleged capital shown in Hari Om.

Jai Shree Ram:

Facts: The AO observed that during the search proceedings, the first balance sheet for the period from 01.01.2014, to 31.12.2014, of the firm M/s Jai Shree Ram, which was seized, indicated a partner's capital of ₹3,28,27,585/- and unsecured loans of ₹52,16,133/-. The AO inquired why these amounts should not be treated as undisclosed cash credits.

In response, the assessee submitted that adding the amounts of capital and unsecured loans based on the tally data was unjustified due to the numerous errors and inconsistencies present in the data. The assessee asserted that the tally data lacked independent validity for income determination and required significant corrections. Despite this explanation duly supported by the evidence and instances, the AO disregarded the assessee's contention and the tally data found in the name of "Jai Shree Ram" were considered as the real books of account of the assessee by observing as under:

5.2 The reply filed by the assessee has been examined. The assessee submitted a routine reply that Jai Shree Ram tally was prepared by some staff member to calculate the incentive to be distributed to the various staff member through leading staff person. The aforesaid contention of the assessee is not found acceptable as the same is routine in nature and without any basis. Therefore, the contention that these are not books of accounts and merely prepared by some staff members to calculate the incentive is just an afterthought to escape from the rigor of income tax.

Moreover, the volume of transactions are huge, therefore the contention that this extensive, detailed and laborious exercise is not representing the real affairs and just prepared by some staff member only to calculate incentive is clearly unimaginable.

5.4 A detailed perusal of tally data as well as submissions of the assessee, it is found that the tally data seized, which was maintained in the name of Jai Shree Ram represents real business picture of M/s Shri Ambika Garments.

Although the tally data so found in the name of "Jai Shree Ram" was considered as the real books of accounts of the assessee but pointing out certain defects in the same, the alleged books of accounts were rejected u/s 145(3) and profits were estimated based by holding as under:

5.7 In view of aforesaid specific defects in the books of accounts, these books are not reliable or otherwise not capable of deducing the correct profitability of M/s Shri Ambika Garments, therefore, provisions of Section 145(3) are invoked and the books of assessee are hereby rejected. Since the books have been rejected, profits are to be estimated u/s 144 on the basis of best judgment.

Going further, Ld. AO pointed out that the opening unsecured loans appearing in M/s Jai Shree Ram appeared to be merely the assessee's own funds, disguised as unsecured loans, with no satisfactory explanation of their source. The seized tally data showed unsecured loans of ₹48,12,635/- as of 31.12.2014, compared to an opening balance of ₹52,16,133/- as of 01.01.2014.

As a result, the AO made an addition of ₹3,80,43,718/- to the assessment on account of unexplained opening capital and unsecured loans by holding as under:

6.2 The assessee also contented that the capital balance appearing in the regular books of accounts of Shri Ambika Garments should be reduced from the opening capital balance as per 'Jai Shree Ram'. The same is not found acceptable as capital appearing in regular books of accounts of Shri Ambika Garments is not having the similar balance as appearing in 'Jai Shree Ram' and also entries in the account are not matching.

6.3 Vide Notice u/s 142(1) dated 04.01.2021, the assessee was asked to give explanation with respect to Unsecured Loans of Rs.52,16,133/- appearing as on 01.01.2014, in response to which assessee made the submission reproduced as above. The submission made by the assessee is not acceptable because the assessee is to prove the identity, creditworthiness and genuineness of unsecured loans appearing in 'Jai Shree Ram', which the assessee fails to prove. The further contention that balance of unsecured lenders appearing in the regular books of Shri Ambika Garments should be reduced is unacceptable in the absence of evidence to prove that the parties of unsecured loans

appearing in Jai Shree Ram and Shri Ambika Garments are the same. In view of this, it is clear that amount shown as unsecured loan in Jai Shree Ram is nothing but assessee's own money shown in the garb of unsecured loans, source of which remains unexplained. As per seized tally data of M/s Jai Shree Ram as on 31.12.2014, unsecured loans is of Rs.48,12,635/- whereas opening unsecured loans as on 01.01.2014 is of Rs.52,16,133/-.

6.4 Therefore, unexplained capital of Rs.3,28,27,585/-, opening unexplained capital in form of unsecured loan Rs.52,16,133/- remain unexplained, hence, the amount of Rs.3,80,43,718/- (32827585+5216133) is added to the total income of the assessee for A.Y. 2014-15. Penalty proceedings u/s 271(1)(c) of the Act is hereby initiated for concealed the particulars of income. The assessee accepted loan of Rs.52,16,133/- in cash is clear violation of provisions of section 269SS of the Act. Therefore, proposal of initiating of penalty proceedings u/s 271D for violation of provisions of section 269SS of the Act is being sent to the Joint Commissioner of Income Tax, Central Range- Jaipur.

(Addition of Rs.3,80,43,718/-)

Submission:

1.1 Addition u/s 68 based on Tally Data with Various Discrepancies is Arbitrary: At the outset, it is contended that the addition of ₹3,28,27,585/- to the opening capital was made by the AO based on hypothetical and erroneous entries found in the tally data. The assessee has consistently explained that the tally data was a consolidated record created by the staff primarily for calculating staff incentives. This data was not intended to represent the true financial position of the business and contained numerous errors and inconsistencies. Specifically, entries had been inaccurately posted, some directly to the proprietor's account, and several outstanding balances were either un-posted or not properly written off. Therefore, the tally data was essentially a rough draft and lacked reliability for accurately determining income.

1.2 The assessee maintains comprehensive books of accounts, including a cash book, ledger, sales journal, purchase journal etc. All transactions, including purchases, sales, and expenses, are fully vouched and verifiable. These accounts were subjected to a tax audit, which confirms their accuracy. The AO, however, did not point out any defects in these regular accounts, nor were there any additions based on the regular accounts.

1.3 The AO's addition was solely based on the seized tally data, which was incomplete and rife with errors. This data, comprising records of multiple businesses, was not a reliable basis for making additions. Furthermore, the AO did not find any defects or discrepancies in the regular books of accounts. The tally data, created for staff incentive calculation, was not intended to be used for income determination.

1.4 The arbitrary nature of the AO's action is evident, particularly as the addition of ₹3,28,27,585/- was based on data starting from 01.01.2014, and the capital balance as of 31.12.2014, purportedly included profits for the entire period from 01.01.2014, to 31.12.2014. The data from "Jai Shree Ram" was fraught with errors and inconsistencies. The date chosen for the tally data, starting 01.01.2014, indicates that arbitrary figures were used, without a valid basis.

2. 1 Kindly refer CIT vs. H. S. Rathi (2015) 374 ITR 164 (Delhi): In this case, the court held that the addition made on the basis of inaccurate and incomplete data could not be sustained. The data used for the addition must be accurate and reliable for it to be considered valid.

2. 2 CIT vs. Smt. S. V. P. S. A. K. & Co. (2001) 251 ITR 646 (Kar): The court observed that the AO must apply his mind to the accounts and should not rely solely on discrepancies in incomplete data. The correctness of entries in the books of accounts needs to be verified in light of the entire evidence.

2.3 CIT vs. Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC): The Supreme Court emphasized that any addition to income should be based on clear and cogent evidence and not on hypothetical or incomplete data.

2.4 CIT vs. M/s. D. S. S. Industries (2017) 400 ITR 568 (Cal): The court ruled that if the data relied upon for making an addition is inconsistent and flawed, such additions cannot be sustained.

3. Opening Balance cannot be added u/s 68:

3.1 It is submitted that the AO made an addition of ₹3,28,27,585/- which is the opening balance of the capital and ₹52,16,133/- which is also an opening balance of unsecured loans. Ld.AO at Page-9, Para 6.1, Ld.AO has categorically held that opening balance of capital as on 01.04.2013, carried to 01.01.2014 was Rs.3,28,27,585/- by holding as under:

6.1 The reply of the assessee has been examined. The assessee claimed balance of opening capital as on 01.01.2014 is Rs.2,01,55,625/-. On perusal of tally data it is clear that opening balance is Rs.3,28,27,585/-, therefore, contention is factual incorrect and found not to be satisfactory.

3.2 The finding so rendered by the Ld.AO makes it evident that the said amount was opening balance of the alleged capital. Similarly at Page-9, Para 6.3 the opening balance of alleged unsecured loan has been taken by recording a similar finding reproduced hereunder:

identity, creditworthiness and genuineness of unsecured loans appearing in 'Jai Shree Ram', which the assessee fails to prove. The further contention that balance of unsecured lenders appearing in the regular books of Shri Ambika Garments should be reduced is unacceptable in the absence of evidence to prove that the parties of unsecured loans

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appearing in Jai Shree Ram and Shri Ambika Garments are the same. In view of this, it is clear that amount shown as unsecured loan in Jai Shree Ram is nothing but assessee's own money shown in the garb of unsecured loans, source of which remains unexplained. As per seized tally data of M/s Jai Shree Ram as on 31.12.2014, unsecured loans is of Rs.48,12,635/- whereas opening unsecured loans as on 01.01.2014 is of Rs.52,16,133/-.

3.3 It is a well-established principle of law that opening balances cannot be added to income u/s 68 of the Act. This provision is specifically designed to address the issue of unexplained credits in the books of account for the current financial year, and not for balances carried forward from previous years.

➤ *Kindly refer CIT vs. H.S. Rathi (2015) 374 ITR 164 (Delhi): The Delhi High Court held that additions u/s 68 must be made for credits appearing during the*

year under consideration. The court clarified that opening balance, which are carried forward from previous years, cannot be subject to additions u/s 68.

- *CIT vs. G. K. K. Enterprises (2002) 257 ITR 371 (Guj): The Gujarat High Court ruled that S.68 pertains only to unexplained credits introduced during the year and not to opening balances. The addition u/s 68 should be restricted to credits during the financial year under review.*
- *CIT vs. Orient Trading Co. (2001) 248 ITR 258 (Cal): This judgment emphasized that S.68 deals with the unexplained credit entries for the current assessment year. It cannot be used to add amounts that were part of opening balances or carried forward from previous years.*
- *We further rely the decision of Hon'ble Jurisdictional Jaipur Bench of ITAT in the case of DCIT Vs Alok Malpani in ITA No.334/JP/2022 vide order dated 08.12.2022.*

3.4 In the present case, since the amounts of ₹3,28,27,585/- (opening capital) and ₹52,16,133/- (unsecured loans) represent balances from earlier financial years. The addition of these amounts u/s 68 is therefore not permissible. Sec. 68 cannot be applied to opening balances, as it is intended to address unexplained credits appearing during the financial year under assessment.

3.5 Furthermore, the AO did not raise any issues regarding new unsecured loans taken during the year under consideration, and these were deemed genuine. Therefore, if there were any discrepancies or issues, they should have been addressed with respect to fresh credits introduced during the current year, not with opening balances.

4. No addition u/s 68 when books of account are rejected:

4.1 Another crucial aspect to consider in this case is the principle that at the one hand, books of accounts have been rejected and on the other hand falling on the very same set of books to make the addition u/s 68. As submitted above, at Page-4, Para-5.5 Ld. AO has pointed out the several defects in the books of accounts viz. not maintained financial year wise, not maintaining any stock records thus taking the stock value at the end of year on presumption only and any other deficiencies pointed out by the assessee and admitted by the Ld.AO and on the basis of these defects and deficiencies, the books of accounts were rejected u/s 145(3).

4.2 In the present case, the AO observed that all bank transactions related to purchases and sales were recorded both in the books of Shri Ambika Garments and Jai Shree Ram, including instrument numbers. Despite this, the AO relied on the tally data seized during the search proceedings to conclude that the assessee was involved in unaccounted sales and purchases. Consequently, the AO deemed the regular books of account maintained under the trade name Shri Ambika Garments to be unreliable and not reflective of the true profit of the assessee.

4.3 Upon rejecting the books of account u/s 145(3), the AO estimated the average gross profit rate at 12.15% based on best judgment, resulting in a trading addition of ₹3,10,688/-. This estimation was made u/s 144, which pertains to assessments based on the best judgment of the AO.

4.4 It is important to note that when the AO rejects the books of account and estimates profit based on S., no separate addition u/s 68 can be made, even if the assessee has not fully discharged the burden of proof concerning amounts shown in the books of account. This principle is established in several judicial precedents. Kindly refer Rajasthan High Court in the case of CIT Vs. G.K. Contractor 19 DTR 305 (Raj) wherein the Hon'ble Jurisdictional High Court held that when net profit is estimated by the AO by rejecting the book result u/s 145(3) of the Act, no separate addition can be made on account of cash creditor by holding as under:

“AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee's books of account by invoking the provisions of section 145(3), no separate addition can be made on account of cash credit u/s.68, even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account”

4.5 In Dulla Ram vs. CIT (2014) 42 taxmann.com 349 (P&H High Court): The court reaffirmed the principle that when the AO resorts to estimating profit after rejecting books of account, it encompasses all potential discrepancies, including unexplained credits. The estimation should be deemed sufficient to address the income and no additional separate addition under Section 68 is warranted unless clear evidence of unexplained credits is presented.

4.6 Once the AO has rejected the books of account u/s 145(3) and estimated the profit, such estimation should account for all discrepancies, including those related to unexplained credits. No separate addition u/s 68 is appropriate in this context unless specific and concrete evidence of unexplained cash credits is provided. The principles established in the cases of G. K. Contractor and Dulla Ram reinforce

that the comprehensive estimation of profit precludes additional, independent additions u/s 68.

4.7 A Similar view has been taken in the case of Malpani House of Stones Vs CIT (2003) 131 Taxman 470 (Raj HC).

4.8 A similar view has been taken by Hon'ble Punjab and Haryana High Court in the case of CIT Vs Aggarwal Engg. Co. (2008) 302 ITR 0246 wherein it was held that:

“No separate addition on account of cash credit and on account of unexplained payments for purchases made outside the books can be made once the net profit rate is applied on contract receipts of an assessee for estimating his income from contract work”.

4.9 The Hon'ble High Court, Punjab & Haryana in the case of CIT, Patiala Vs. Dulla Ram, Labour Contractor, Kotakpura vide order dated 22.10.2013 (Case-7) held that:

“We have heard counsel for the parties, perused the impugned orders and are of the firm opinion that there is no illegality or infirmity in the findings recorded by the Tribunal.

An Assessing Officer may, while considering a return of income, inspect the account books and, if satisfied, that account books do not reflect the true income of an assessee, reject the same. Account books once rejected, are ruled out of consideration and cannot be pressed into service whether by the assessee or the revenue. Thus, when account books are rejected, it would follow, as a necessary corollary, that entries in the account books whether suspicious or not cannot be relied by the revenue or the assessee. To hold otherwise, would, in essence, render account books valid for certain purposes and invalid for others, a course impermissible in law. The Assessing Officer rejected the account books in their entirety and thereafter proceeded to assess income by applying a flat rate of profit of 10%. After applying a flat rate of profit of 10%, the Assessing Officer added Rs.1,98,298/- to the income of the assessee on the basis of certain 'entries' deemed to be suspicious. I attest to the accuracy and integrity of this document well as the Tribunal have rightly held that as books of accounts were rejected in their entirety, the Assessing Officer could not rely upon any entry in the books of accounts for making an addition of Rs.1,98,298/-. A bare reading of Section 68 of the Act would reveal that it would not apply to a situation where account books have not been rejected.”

We find no reason to differ from the opinion recorded by the Tribunal and, therefore, answer the questions of law against the revenue and in favour of the assessee. The appeal is, consequently, dismissed.”

4.10 The Hon'ble ITAT, Delhi, in the case of Shri Deepak Mittal Vs. Asst. Commissioner of Income Tax, Circle-60 (1), New Delhi in ITA No. 4709/Del/2017 vide order dated 23.03.2018 held that:

“ The A.O. accordingly, rejected the books of account of the assessee under section 145(3) of the I.T. Act and after recasting the Trading & P & L A/c, made the addition of Rs.4.14 crores on account of additional profit. The Ld. CIT(A), correctly noted that entire sales could not be profit of the assessee and that re-casting of the Trading & P & L A/c by the A.O. is not proper as per law. The Ld. CIT(A) has taken the purchases and sales in the appellate order and the difference of the same was taken as undisclosed profit of the assessee in a sum of Rs.62,91,150/- which is almost same as offered by assessee @ 8% of undisclosed turnover. The assessee did not challenge the rejection of the books of account under section 145(3) and the addition made by Ld. CIT(A) above to the profit of the assessee. There is no challenge to these findings of the Ld. CIT(A) by the Department in the Departmental appeal because filing of Departmental Appeal not reported by Ld. CIT- D.R. Learned Counsel for the Assessee relied upon several decisions of different High Courts in which it was held that

“when A.O. rejected the books of account of the assessee and applied gross profit rate on suppressed sales, A.O. cannot make separate addition on account of unexplained investment, undisclosed income and even the provisions of Section 40A(3) could not be invoked.”

2.1 One of the decision of Hon'ble Allahabad High Court in the case of CIT vs. Banwari Lal Banshidhar (1998) 229 ITR 229 (Alld.) (HC) as reproduced above along with Judgments of Hon'ble Gujrat High Court in the case of President Industries and CIT vs. Samir Synthetics Mill (supra), the authorities below have also not found any material to indicate that assessee made investments outside the books of account to make the sales. The entire sales could not represent income of the assessee, on which, Ld. CIT(A), has already given a finding to add the profit only on such unrecorded sales. When books of account of the assessee are not reliable and rejected by the authorities below under section 145(3) of the I.T. Act and there is no challenge to these findings of the authorities below, there is no reason for the authorities below to rely upon the same books of account for the purpose of making addition under section 40A(3) of the I.T. Act as well as to make addition of peak under section 68 of the I.T. Act. The A.O. noted in his findings that

M/s. Hanuman Traders did not exist in purchase and sale ledger and existence of the same have not been proved. The Inspector also gave report to the same effect that M/s. Hanuman Traders do not exist at the given address. These facts clearly show that whatever entries are relied upon by the authorities below from the books of account, are contrary to the findings of the authorities below because non-existent party would not come to pay any amount to the assessee. Therefore, there is no question of considering the unrecorded amount recorded in the books of account of the assessee, so as to make the addition under section 68 of the I.T. Act. The A.O. did not make addition under section 68 of the I.T. Act separately because the addition is already made under section 40A(3) of the I.T. Act. The Ld. CIT(A) did not give any specific notice to assessee for enhancement of income under section 68 of the I.T. Act because he has merely recorded entry of 8th June, 2017 without confronting the facts for making addition of peak credit. The Ld. CIT(A) forgot to consider that if he wanted to make addition on account of peak credit on account of M/s. Hanuman Traders, whether theory of peak credit would apply in the case of the assessee ? For considering the issue of peak credit, the authorities below have to laid-out the foundation that it was unaccounted money of the assessee having both debit and credit which assessee did not agree. It could not be taken into consideration for making such addition under section 68 of the I.T. Act in the hands of the assessee for making any alleged transaction with M/s. Hanuman Traders, which, according to the authorities below, did not exist and that no such entries appear in the books of account of the assessee. Even if, some entries appeared in the books of account of the assessee regarding M/s. Hanuman Traders, according to the findings of the authorities below, such books of account of the assessee are not reliable. Therefore, the authorities below cannot rely upon the same entries in books of account for the purpose of making the addition of the nature of peak against the assessee. Thus, there is no justification for the authorities below to make addition of Rs.6,92,25,000/- under section 40A(3) of the I.T. Act and addition of Rs.7,12,15,150/- under section 68 of the I.T. Act. In view of the above discussion, we set aside the orders of the authorities below and delete both these additions. Ground Nos. 3 to 6 of the appeal of assessee are allowed.”

5. Onus Discharged: Ld.AO has made the addition of Rs.3,28,27,585/- shown as the opening balance of partner's capital u/s 68 of the Act considering the same as unexplained capital. Section 68 of the act casts a duty upon the assessee to explain the source of any sum found credited in the books of accounts. In the instant case, the assessee duly explained that the sum so found credited is the opening balance of partner's capital account, which is carried forwarded balance of earlier years, thus, although not admitting, the said amount denotes the amounts invested by the partners of the firm. Under these circumstances, the onus casted

upon the assessee firm stood discharged once it was explained and resultantly the addition so made in the hands of the assessee firm may kindly be deleted. In this regards we place our reliance on the following case laws:

(a) *CIT Vs Metchem Industries (2000) 245 ITR 160 (Madras HC):*

“5. On appeal, the Commissioner of Income-tax (Appeals) examined the matter in detail and found that Shri S. K. Gupta was the real owner of the business. The explanation given by the assessee was found to be satisfactory and he deleted the aforesaid three entries. The same finding of fact has been affirmed by the Tribunal. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount.

6. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is an income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and [in that case](#) that credit entry cannot be treated to be the income of the firm for the purposes of income-tax. It is open to the Assessing Officer to take appropriate action under [Section 69](#) of the Act, against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the Commissioner of Income-tax (Appeals) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries.

7. We are, therefore, of the opinion that the view taken by the Tribunal is correct and the aforesaid question is answered against the Revenue and in favour of the assessee. ”

(b) *ACIT Vs Ambika Enterprises in ITA No.31/Del/2020 vide order dated 21.07.2023 (Delhi Trib)*

“6. We have carefully considered on both sides and perused the materials available on record. We find that in this case there is no ambiguity about the

identity of the partner and capital introduced from him. In such circumstances if he AO was of the opinion that the amount is not proved in the hands of the partner, he should have considered it in his individual hands and not in the hands of the firm. This view is duly supported by Hon'ble Madhya Pradesh High court in the case of CIT vs. Metachem Industries 245 ITR 160. Hence, following the aforesaid precedents, we do not see any infirmity in the well reasoned order of the Ld. CIT(A), same is thereby upheld. "

(c) We further rely upon the decision of India Rice Mills v. CIT 218 ITR 508, 511 (All. HC) wherein it was held that where the capital contributions are made by the partners, it is for the partners to explain the source of such capital contributions and if they fail to discharge such onus then such capital contributions, although entered in the books of accounts of the assessee-firm, cannot be regarded as income of the assessee-firm.

6. As far as alleged opening loan of Rs.52,16,133/- is concerned, the same consists of opening balance of alleged loan punched in the following names:

ANJU DEVI MUNDHRA	325562.00
ASHOK KUMAR KOTHARI	2162000.00
BHANWAR LAL KOTHARI	540500.00
Kiran Devi Kothari	23708.00
Kotak Bank Loan	256996.00
Ramanarayan Ji Kothari Surat	26443.00
SHARMILA DEVI MUNDHRA	92282.00
SHYAM SUNDER JAWAR	1527000.00
SURJA DEVI MUNDHRA	261642.00

7. As submitted above, the data of Jai Shree Ram was full of error/omission and inconsistency and these arbitrary figures punched as at 01.01.2014 does not indicate any actual loan from the parties. The same is evident from the fact that loan taken from Kotak Bank Loan is also included in the same at Rs.2,56,996/-. Naturally loan from Kotak Bank cannot be a cash loan. The actual balance of said loan as at 01.01.2014 was Rs. 2,63,348/- duly recorded in regular books of accounts. It shows that the amount so noted under the said head were not verified and the same were not the actual figures to suggest any loans.

8. As observed by Ld.AO, Jai Shree Ram was the consolidated affairs of the assessee, therefore, the opening capital shown as on 01.01.2014 would have naturally included the profit earned for the period 01.04.2013 to 31.12.2013 by M/s Ambika Garments duly recorded in the books of accounts and offered for the taxation, thus including the same again in the opening capital of Jai Shree Ram is resulting into taxing the same again and resultantly double addition. The total profit earned by the assessee for the period 01.04.2013 to 31.03.2014 were Rs.23,13,069/- thus the profits for the period 01.04.2013 to 31.12.2013 comes to Rs. 17,34,051/- ($23,13,069/12 \times 9$) and the same may kindly be eliminated from the opening balance of alleged partners capital shown in Jai Shree Ram. ”

With regard to the various errors and inconsistencies crept in the tally data, we submit as under:

(a) Copy of ledger account of partners capital account of Mahesh Kumar Mundhra, Shiv Ratan Karnani (Sharda Devi Karnani) and Mahesh Kumar Mundhra in Jai Shree Ram was placed at Page-1 to 40 of CIT Paper Book and very same capital accounts of partners recorded in regular books of accounts of Shri Ambika Garments is placed at CIT Page 41-49 of Paper Book.

(b) To substantiate the fact a chart was placed at CIT Page-52 to 60 of Paper Book wherein each entry of the partners capital account recorded in regular books of accounts of Shri Ambika Garments vis a vis respective entry in Jai Shree Ram is explained, duly evidencing the fact that Jai Shree Ram includes the entire books of Shri Ambika Garments. For an instance, in the ledger account of Shri Mahesh Kumar Mundra, on 30.07.2014 (CIT PBP-52) cash withdrawal of Rs. 26000/- is shown and on the very same date in the books of Jai Shree Ram, withdrawal of Rs.2,00,000/- is shown which includes Rs.26000/- also.

(c) Moreover, in the books of M/s Shri Ambika Garments, a payment of Rs.3,50,000/- has been made to M/s RM Hosery Jaipur on 05.03.2014 (CIT PBP-61) through Kotak Mahindra Bank. In Jai Shree Ram, this payment has been wrongly debited in the ledger account of Shri Mahesh Kumar Mundhra (CIT PBP-1). Similarly, Ambika Garments purchased a scooty of Rs.60,000/- on 04.02.2015 for which payment was made through Kotak Bank account (CIT PBP-62). In the book of Jai Shree Ram, the same was wrongly debited in capital account of Shri Mahesh Kumar Mundhra on 06.02.2015 (CIT PBP-7).

(d) A donation payment of Rs.1,00,000/- was made by the assessee firm on 15.01.2016 (CIT PBP-63), from Kotak Bank, however, in Jai Shree Ram, the same was wrongly debited to partners capital account of Mahesh Kumar Mundhra (CIT PBP-12).

(e) A total payment of Rs.1,18,000/- (Rs.28,000+Rs.90,000) has been made to M/s RM Hosery Jaipur on 07.03.2016 (CIT PBP-64) through Kotak Mahindra Bank. In Jai Shree Ram, this payment of Rs. 28000/- has been wrongly debited in the ledger account of Shri Mahesh Kumar Mundhra (CIT PBP-13)

The aforesaid instances further goes on to show that Jai Shree Ram were full of error and not maintained systematically.

(f) Similarly, on 05.09.2015 (CIT PBP-54) bank entry of Rs.32,68,061/- is shown in the books of Shri Ambika Garments which is duly recorded in Jai Shree Ram also. (CIT PBP-54). Similarly, on the very same page, bank entry of Rs.2,00,000/- on 03.11.2015 is duly recorded in Jai Shree Ram.

(g) In the regular books of Shri Ambika Garments, the partners capital account of Smt. Sharda Devi Karnani consist an entry of Rs.36,000/- towards TDS against rent on 31.03.2014 (CIT PBP-47). However, in Jai Shree Ram, the same is recorded at the time of payment on 11.04.2014 (CIT PBP-21) as Jai Shree Ram was not the regularly maintained books of accounts and no provisions were accounted for therein. Similar is case with provision made on 31.03.2015 (CIT PBP-48), which is recorded in Jai Shree Ram on 27.04.2015 (CIT PBP-22) and 31.03.2016 (CIT PBP-49), which is recorded in Jai Shree Ram on 04.04.2016 (CIT PBP-23)

(h) Same is the case with partners capital account of Shri Ramesh Kumar Mundhra (CIT PBP 57-60), wherein an amount of Rs.1,35,000/- shown on 07.11.2015 (CIT PBP-34) in regular books of Shri Ambika Garments is duly recorded in Jai Shree Ram on 07.11.2015 (CIT PBP-45). Similarly, an amount of Rs.1,35,000/- shown on 10.02.2016 (CIT PBP-46) in regular books of Shri Ambika Garments is duly recorded in Jai Shree Ram on 14.02.2016 (CIT PBP-36).

(i) A total payment of Rs.1,18,000/- (Rs.28,000+Rs.90,000) has been made to M/s RM Hosery Jaipur on 07.03.2016 (CIT PBP-64) through Kotak Mahindra Bank. In Jai Shree Ram, this payment of Rs. 90,000/- has been wrongly debited in the ledger account of Shri Ramesh Kumar Mundhra (CIT PBP-36)

(j) A donation payment of Rs.1,00,000/- was made by the assessee firm on 15.01.2016 (CIT PBP-63), from Kotak Bank, however, in Jai Shree Ram, the same was wrongly debited to partners capital account of Ramesh Kumar Mundhra (CIT PBP-36).

The aforesaid instances further goes on to show that Jai Shree Ram were full of error and not maintained systematically.

10. As far as alleged opening loan of Rs.52,16,133/- is concerned, the same consists of opening balance of alleged loan punched in the following names:

ANJU DEVI MUNDHRA	325562.00
ASHOK KUMAR KOTHARI	2162000.00
BHANWAR LAL KOTHARI	540500.00
Kiran Devi Kothari	23708.00
Kotak Bank Loan	256996.00
Ramanarayan Ji Kothari Surat	26443.00
SHARMILA DEVI MUNDHRA	92282.00
SHYAM SUNDER JAWAR	1527000.00
SURJA DEVI MUNDHRA	261642.00

11. As submitted above, the data of Jai Shree Ram was full of error/omission and inconsistency and these arbitrary figures punched as at 01.01.2014 does not indicate any actual loan from the parties. The same is evident from the fact that loan taken from Kotak Bank Loan is also included in the same at Rs.2,56,996/- .Naturally loan from Kotak Bank cannot be a cash loan. The actual balance of said loan as at 01.01.2014 was Rs. 2,63,348/- duly recorded in regular books of accounts (CIT PBP-51). It shows that the amount so noted under the said head were not verified and the same were not the actual figures to suggest any loans.

12. As observed by Ld.AO, Jai Shree Ram was the consolidated affairs of the assessee, therefore, the opening capital shown as on 01.01.2014 would have naturally included the profit earned for the period 01.04.2013 to 31.12.2013 by M/s Ambika Garments duly recorded in the books of accounts and offered for the taxation, thus including the same again in the opening capital of Jai Shree Ram is resulting into taxing the same again and resultantly double addition. The total profit earned by the assessee for the period 01.04.2013 to 31.03.2014 were Rs.23,13,069/- thus the profits for the period 01.04.2013 to 31.12.2013 comes to Rs. 17,34,051/- (23,13,069/12*9) (Page-8 of Paper Book submitted on 25.09.2024) and the same may kindly be eliminated from the opening balance of alleged partners capital shown in Jai Shree Ram.

Written Submissions on addition made on account of Race Kids wear and Gopala Garments:

During the search proceedings, several loose papers were discovered at the residential premises of Shri Ramesh Kumar Mudhra, located at H/3 – Mahamandir, Nathji Ka Asan, Outside Second Pole, Jodhpur. Among these documents was a page titled "M/s. Gopala Garments," covering the period from 01.01.2016 to 31.12.2017. This document was seized and is recorded as Exhibit-17 of Annexure-AS (Party No. A-1). For reference, an image copy of the document is placed hereunder:

Gopala Garments(1-1-2015/31-12-2015) Delhi					
Balance Sheet 1-Jan-2016 to 31-Dec-2016					
Liabilities		as at 31-Dec-2016	Assets		as at 31-Dec-2016
Capital Account		36,01,852.00	Fixed Assets		1,50,267.00
Dev Gattani	17,60,405.00		Machinery	1,50,267.00	
Maheshji Mundhra	9,20,724.00				
Rameshji Mundhra	9,20,723.00				
Loans (Liability)			Current Assets		35,77,585.00
Current Liabilities		1,26,000.00	Closing Stock	23,95,000.00	
Sundry Creditors	8,000.00		Sundry Debtors	10,08,050.00	
Outstanding Factory Rent	36,000.00		Cash-in-hand	1,59,535.00	
Outstanding Master	70,000.00		Advance Anurag Emordary	5,500.00	
Outstanding Salary	12,000.00		Advance Elastic	9,500.00	
Profit & Loss A/c					
Opening Balance					
Current Period	10,12,770.00				
Less: Transferred	10,12,770.00				
Total		37,27,852.00	Total		37,27,852.00

Gopala Garments(1-1-2015/31-12-2015)
Delhi

Profit & Loss A/c
1-Jan-2016 to 31-Dec-2016

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Particulars	1-Jan-2016 to 31-Dec-2016	Particulars	1-Jan-2016 to 31-Dec-2016
Opening Stock	20,35,000.00	Sales Accounts	1,11,92,358.00
Purchase Accounts	64,01,197.00	Purchase Return	(-),12,396.00
Label Boxes	3,55,658.00	Sales	1,13,41,474.00
Purchases	60,45,539.00	Trade Discount	(-),1,36,720.00
Direct Expenses	29,44,801.00	Direct Incomes	3,031.00
Dying	1,16,864.00	Discount Recevd	3,031.00
Elastic	54,370.00	Closing Stock	23,95,000.00
Embordary & Print	1,75,231.00		
Kajbution	1,25,100.00		
Labour Payment	15,80,733.00		
Master	1,50,298.00		
Material	4,47,509.00		
Overlock	43,372.00		
Press Man	2,14,324.00		
Teen Silai	37,000.00		
Gross Profit c/o	22,09,391.00		
	1,35,90,389.00	Total	1,35,90,389.00
Indirect Expenses	11,96,621.00	Gross Profit b/f	22,09,391.00
Depreciation	16,696.00		
Factory Electricity	1,44,000.00		
Factory Rent	2,16,000.00		
Indirect Expenses	18,949.00		
Interest on Capital	2,78,472.00		
Janerater & Desile	11,260.00		
Machine Repair	31,090.00		
Other Expenses	70,835.00		
Staff Salary	4,09,319.00		
Nett Profit	10,12,770.00		
Total	22,09,391.00	Total	22,09,391.00

Gopala Garments(1-1-2015/31-12-2015)
Delhi

Balance Sheet
1-Jan-2017 to 31-Dec-2017

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Liabilities		Assets	
as at 31-Dec-2017		as at 31-Dec-2017	
Capital Account	51,99,951.00	Fixed Assets	1,44,708.00
Dev Gattani	25,41,912.00	Machinery	1,44,708.00
Maheshji Mundhra	13,29,020.00	Current Assets	68,50,665.00
Rameshji Mundhra	13,29,019.00	Closing Stock	39,25,000.00
Loans (Liability)		Sundry Debtors	27,99,840.00
Current Liabilities	17,95,422.00	Cash-in-hand	1,25,825.00
Duties & Taxes	98,457.00		
Sundry Creditors	16,06,965.00		
Outstanding Kajbution	40,000.00		
Outstanding Master	50,000.00		
Profit & Loss A/c		Total	69,95,373.00
Opening Balance	11,91,238.00		
Current Period	11,91,238.00		
Less: Transferred			
Total	69,95,373.00	Total	69,95,373.00

Similarly, during the course of search several loose papers were discovered at the residential premises of Shri Ramesh Kumar Mudhra, located at H/3 – Mahamandir, Nathji Ka Asan, Outside Second Pole, Jodhpur. Among these documents were pages titled "M/s. Race Kids Wear, Delhi," which pertained to the financial activities and transactions for the period from 01.01.2016 to 31.12.2017. These documents were seized and are officially recorded as Exhibit-17 of Annexure-AS (Party No. A-1). For reference, an image copy of these documents is placed hereunder:

RACE KIDS WEAR		DELHI	
Balance Sheet		1-Jan-2016 to 31-Dec-2016	
Liabilities		Assets	
as at 31-Dec-2016		as at 31-Dec-2016	
Capital Account	87,67,300.00	Fixed Assets	2,48,550.00
Maheshji Mundhra	28,18,040.00	Machinery	2,48,550.00
Manish Gattani	19,40,611.00		
Rameshji Mundhra	40,08,649.00		
		Current Assets	1,12,83,900.00
Loans (Liability)	10,53,150.00	Closing Stock	55,75,000.00
Babulalji Soni	5,60,000.00	Loans & Advances (Asset)	30,000.00
Commati	(-)4,41,340.00	Sundry Debtors	48,86,130.00
Kishan Aggarwal(Jodhpur)	5,38,815.00	Cash-in-hand	7,68,520.00
Loan (Rashmi Soni)	3,95,675.00	Advance Labour	24,250.00
Current Liabilities	17,12,000.00		
Sundry Creditors	16,60,000.00		
Outstanding Master	52,000.00		
Profit & Loss A/c			
Opening Balance			
Current Period	23,04,074.00		
Less: Transferred	23,04,074.00		
Total	1,15,32,450.00	Total	1,15,32,450.00

RACE KIDS WEAR DELHI			
Profit & Loss A/c 1-Jan-2016 to 31-Dec-2016			
Particulars	1-Jan-2016 to 31-Dec-2016	Particulars	1-Jan-2016 to 31-Dec-2016
Opening Stock	45,90,000.00	Sales Accounts	3,44,46,193.00
Closing Stock	45,90,000.00	Clothes Sales	20,83,136.00
Purchase Accounts	2,25,95,056.00	Cutting	32,55,959.00
Goods Purchas	50,62,419.00	Purchase Return	(-)1,62,570.00
Label & Boxes	8,44,634.00	Sales	3,16,19,175.00
Purchase	1,69,84,734.00	Trade Discount	(-)23,49,507.00
Sales Return	(-)2,96,731.00	Direct Incomes	1,18,955.00
Direct Expenses	77,52,121.00	Discount Received	1,18,955.00
Dying	2,54,622.00	Closing Stock	55,75,000.00
Elastic	62,440.00	Closing Stock	55,75,000.00
Embordary & Prints	8,31,538.00		
Fabricater	7,52,680.00		
Kajbuton	4,07,200.00		
Labour Payment	30,74,354.00		
Master	3,09,158.00		
Material	14,43,954.00		
Overlock	93,040.00		
Pressman	5,12,900.00		
Teen Selai Machine Exp	10,235.00		
Gross Profit c/o	52,02,971.00		
	4,01,40,148.00		4,01,40,148.00
Indirect Expenses	28,98,897.00	Gross Profit b/f	52,02,971.00
Depreciation	27,620.00		
Factory Electricity	1,40,230.00		
Factory Rent	3,77,000.00		
Indirect Expenses	71,230.00		
Interest on Capital	7,63,301.00		
Interest on Loan	2,23,584.00		
Janarater & Diesel	22,720.00		
Machine Repair	45,653.00		
Other Expenses	69,279.00		
Other Staff Salary	7,85,550.00		
Packing Charges	2,27,980.00		
Travelling Exp.	1,44,750.00		
Nett Profit	23,04,074.00		
Total	52,02,971.00	Total	52,02,971.00

RACE KIDS WEAR DELHI			
Profit & Loss A/c 1-Jan-2016 to 31-Dec-2016			
Particulars	1-Jan-2016 to 31-Dec-2016	Particulars	1-Jan-2016 to 31-Dec-2016
Opening Stock	45,90,000.00	Sales Accounts	3,44,46,193.00
Closing Stock	45,90,000.00	Clothes Sales	20,83,136.00
Purchase Accounts	2,25,95,056.00	Cutting	32,55,959.00
Goods Purchas	50,62,419.00	Purchase Return	(-)1,62,570.00
Label & Boxes	8,44,634.00	Sales	3,16,19,175.00
Purchase	1,69,84,734.00	Trade Discount	(-)23,49,507.00
Sales Return	(-)2,96,731.00	Direct Incomes	1,18,955.00
Direct Expenses	77,52,121.00	Discount Received	1,18,955.00
Dying	2,54,622.00	Closing Stock	55,75,000.00
Elastic	62,440.00	Closing Stock	55,75,000.00
Embordary & Prints	8,31,538.00		
Fabricater	7,52,680.00		
Kajbuton	4,07,200.00		
Labour Payment	30,74,354.00		
Master	3,09,158.00		
Material	14,43,954.00		
Overlock	93,040.00		
Pressman	5,12,900.00		
Teen Selai Machine Exp	10,235.00		
Gross Profit c/o	52,02,971.00		
	4,01,40,148.00		4,01,40,148.00
Indirect Expenses	28,98,897.00	Gross Profit b/f	52,02,971.00
Depreciation	27,620.00		
Factory Electricity	1,40,230.00		
Factory Rent	3,77,000.00		
Indirect Expenses	71,230.00		
Interest on Capital	7,63,301.00		
Interest on Loan	2,23,584.00		
Janarater & Diesel	22,720.00		
Machine Repair	45,653.00		
Other Expenses	69,279.00		
Other Staff Salary	7,85,550.00		
Packing Charges	2,27,980.00		
Travelling Exp.	1,44,750.00		
Nett Profit	23,04,074.00		
Total	52,02,971.00	Total	52,02,971.00

RACE KIDS WEAR DELHI			
Profit & Loss A/c 1-Jan-2017 to 31-Dec-2017			
Particulars	1-Jan-2017 to 31-Dec-2017	Particulars	1-Jan-2017 to 31-Dec-2017
Opening Stock	55,75,000.00	Sales Accounts	4,11,93,041.00
Closing Stock	55,75,000.00	Clothes Sales	49,05,261.00
Purchase Accounts	2,79,30,297.00	Commision	(-)68,900.00
Goods Purchas	34,40,146.00	Purchase Return	(-)2,31,054.00
Label & Boxes	10,81,220.00	Sales	3,97,91,266.00
Purchase	2,37,46,262.00	Trade Discount	(-)32,03,532.00
Sales Return	(-)3,37,331.00	Direct Incomes	1,05,988.00
Direct Expenses	79,29,770.00	Discount Received	1,05,988.00
Bag	3,75,000.00	Closing Stock	62,80,000.00
Dhaga Cutting & Id Lagwai (Outer Side)	2,94,434.00	Closing Stock	62,80,000.00
Dying	32,108.00		
Elastic	2,600.00		
Embordary & Prints	1,64,327.00		
Fabricater	99,666.00		
Kajbuton	4,67,650.00		
Labour Payment	33,51,806.00		
Master	3,91,422.00		
Material	17,33,597.00		
Mukhiya Commision	2,58,300.00		
Overlock	1,24,670.00		
Pressman	6,34,190.00		
Gross Profit c/o	61,43,962.00		
	4,75,79,029.00		4,75,79,029.00
Indirect Expenses	33,23,320.00	Gross Profit b/f	61,43,962.00
Accounting Fee	25,500.00		
Depreciation	28,687.00		
Factory Electricity	2,20,222.00		
Factory Rent	3,90,000.00		
Indirect Expenses	56,750.00		
Interest on Capital	7,68,155.00		
Interest on Loan	1,58,231.00		
Intrest on Commati	38,560.00		
Janarater & Diesel	10,092.00		
Machine Repair	35,870.00		
Other Expenses	1,17,914.00		
Other Staff Salary	8,19,380.00		
Packing Charges	4,68,334.00		
Stationery	3,500.00		
Travelling Exp.	1,82,125.00		
Nett Profit	28,20,642.00		
Total	61,43,962.00	Total	61,43,962.00

The assessee was asked to explain various points related to the seized papers, including opening stock, opening capital, unsecured loans, creditors, and profit & loss statements. In response, the assessee submitted a reply on 12.04.2021, indicating that during the search, Shri Ramesh Kumar Mundhra was confronted with these loose papers. He stated in response to Q. 33 from his statement recorded on 02.10.2018, that M/s. Race Kids Wear, Delhi, and Gopala Garments

do not belong to him. He claimed these businesses belong to his relatives, who were new to business and only offered assistance without expecting anything in return.

Shri Mundhra's statements were accepted during the search without objections or follow-up questions. Additionally, no other evidence was found during the search to link these firms to the assessee or its partners. Importantly, no digital data or other materials related to Gopala Garments and Race Kids Wear were found, apart from the contested profit and loss statements.

However, the AO reviewed the response and rejected the assessee's claim, stating that since the documents were found in the assessee's possession, it did not prove they did not belong to him. The AO also argued that the affairs of Gopala Garments and Race Kids Wear were already included in Jai Shree Ram, but the documents did not match the tally data for that firm. Consequently, the AO disregarded the assessee's explanations and added unsecured loans of ₹10,53,150 from Race Kids Wear as unexplained cash credits under Section 68 of the Act and alleged profit of Rs.8,29,212 () . Hence this ground.

1. Seized document/sheet is not the Books of Accounts: At the outset, it is important to look into the nature of documents found during the course of search. These are some one pager sheets not having any other corroborative evidence to show that these pertains to the affairs of assessee firm. Nor it contain the name or address of assessee firm. The very nature of these very sheets is not qualifying to be the books of accounts to make any addition u/s 68 or for making any trading additions. Clearly documents/sheets seized during the search should not be considered the books of accounts of the assessee. These sheets do not have independent validity for determining income. This means that the same cannot be relied upon as a standalone source for assessing the financial performance of the business.

2. In light of these points, it is clear that the seized Tally data cannot serve as a reliable basis for any financial conclusions regarding the assessee's income. Proper documentation and verifiable records are essential for ensuring fair and accurate tax assessments.

3.1 The assessee does not own the business of the alleged Firms: The assessee firmly asserts that he does not own M/s Race Kids Wear, Delhi, or Gopala Garments. Instead, these businesses are owned by his relatives, who are relatively new to the industry. The assessee contends that these relatives sought his assistance in their ventures, but did so without any expectation of compensation or ownership interest. The principle of actual ownership is critical in

tax assessments, particularly when attributing income or liabilities to an individual. The law requires clear evidence of ownership and control over a business entity to hold someone accountable for its income or obligations. In the case of CIT vs. Suman Gupta (2022), the Rajasthan High Court underscored the necessity for tax authorities to establish a direct connection between an assessee and the businesses in question. The court emphasized that mere association or involvement in a business does not automatically confer ownership or accountability for its financial outcomes.

3.2 The aforesaid contention is further evident from the fact that the seized documents were not found at the business premises of assessee rather it was found at the residential premises of a partner. Moreover, the name of entity/business shown in the seized document also shows the address of Delhi and not of Jodhpur or any other place related to assessee or its partners. It is further important to peruse the nature of expenses shown in the seized alleged profit and loss account. A bare perusal thereof clearly shows that most of the expenses are ni

3.3 More importantly, a perusal of the seized alleged profit and loss accounts shows that most of the expenses are in the nature of manufacturing expenses such as factory rent, master salary, kajubutton etc, whereas during the course of search, no such business was found to indicate that assessee was engaged in any such activity. This further bind force to the contention of the assessee that these papers does not belong to the assessee, therefore, no adverse view may kindly be taken in the hands of the assessee on the basis of these documents.

3.4 The assessee's position is that his involvement with these firms was limited to providing informal assistance and guidance, which is a common practice among family members in business. This is supported by the testimony of Shri Ramesh Kumar Mundhra, who clarified during the proceedings that he merely offered support to his relatives as they navigated the challenges of starting a new business. It is noteworthy that no documentary evidence has been presented to substantiate claims of ownership of M/s Race Kids Wear and Gopala Garments by the assessee. The absence of such evidence further reinforces the assertion that these firms are distinct entities owned by other individuals, not the assessee.

4. Unsecured Loans of Rs.10,53,150/- based on loose papers without corroborative evidence: 4.1 The addition of ₹10,53,150 as unsecured loans in the assessee's financial records is based exclusively on loose papers, specifically an alleged balance sheet for M/s Race Kids Wear dated 31.12.2016. The assessee contends that this inference is fundamentally flawed, as it relies on unverified

documents without any corroborative evidence to substantiate the existence of these credit entries during the relevant assessment year.

4.2 The absence of supporting documentation raises significant doubts about the validity of the alleged unsecured loans. During the search, no additional evidence was discovered that could confirm the entries in the loose papers. According to established tax principles, any assertion of income or liabilities must be backed by credible and corroborative evidence. As highlighted in the ITAT ruling in M/s Hari Om Enterprises vs. ITO (ITA No. 1234/JP/2023), the tribunal clearly stated that findings based on unverified documents cannot form the basis for tax assessments. The tribunal further noted that such uncorroborated evidence fails to meet the necessary standards for establishing financial transactions.

This position is further reinforced by the case of CIT vs. S. K. Sinha (2020) 115 taxmann.com 470 (Delhi), where the Delhi High Court ruled that the Income Tax Department cannot rely solely on loose papers without any corroborative evidence to justify additions to an assessee's income. The court emphasized that the integrity of financial records is crucial and that any assertions made based on loose or unverified documents are insufficient for tax purposes.

5. Absence of Corroborative Evidence: The assertion that M/s Gopala Garments and M/s Race Kids Wear are related to the assessee lacks any corroborative evidence beyond the loose papers that were seized. This absence of reliable documentation is a critical factor in assessing the legitimacy of the claims made by the tax authorities. The loose papers in question do not constitute credible evidence that can be used to link the firms to the assessee. Relying solely on these documents undermines the integrity of the assessment process. Tax assessments must be supported by concrete evidence, which has been established in several judicial precedents.

In the landmark case of CIT vs. Ashoka Iron Works (2021) 121 taxmann.com 159 (Raj.), the court emphasized that any additional assessments must be grounded in credible and substantiated evidence rather than conjecture or assumptions. The Hon`ble Court made it clear that mere presumption, without solid proof, cannot justify the addition of income. This ruling underscores the principle that the burden of proof lies with the tax authorities to demonstrate a clear connection between the taxpayer and any alleged income or liabilities.

The legal framework requires that tax assessments should not be based on speculative conclusions. The lack of tangible evidence linking the assessee to the operations or financial outcomes of Gopala Garments and Race Kids Wear calls into question the validity of any additions made to the assessee's income. As

highlighted in M/s ABC Ltd. vs. ITO (2022) ITAT Mumbai, the tribunal reiterated that any additions made on presumptive grounds, without reliable evidence, would not hold up in an assessment.

6. Clarifying the Source of Loans: 6.1 It is further submitted that If any amounts were indeed provided as loans or assistance by Shri Ramesh Kumar Mundhra or Mahesh Kumar Mundhra, these transactions should be appropriately addressed in their respective tax assessments. It is essential to maintain clarity regarding the sources of such financial support, as this aligns with the principles of accurate financial reporting and taxation.

6.2 The Ld. in M/s Krishna Steel vs. ITO (2022) 135 taxmann.com 58 (Del.) emphasized that evaluations concerning loans or financial assistance should occur at the correct taxpayer level. The tribunal noted that it is inappropriate for the tax authorities to incorrectly attribute the financial activities or loans of one individual to another without a clear basis for doing so. This ensures that each taxpayer is assessed based on their own financial circumstances and obligations, avoiding erroneous conclusions.

6.3 The burden of proof lies with the tax authorities to establish the legitimacy of any claims regarding the source of loans. If there is a need to evaluate the loans extended by Shri Ramesh Kumar Mundhra or Mahesh Kumar Mundhra, this should be carried out distinctly in their assessments rather than incorrectly attributing these loans to the assessee without sufficient evidence.

7.1 Assuming, for the sake of argument, that the loose papers do pertain to M/s Ambika Garments, it is significant to highlight that no digital data or supporting materials were discovered during the search that could substantiate this claim. The lack of such evidence suggests that Gopala Garments and Race Kids Wear might merely represent operational units within the larger framework of M/s Ambika Garments. Their financial activities could already be accounted for in the consolidated accounts of Jai Shri Ram.

7.2 The ITAT, in M/s Ambika Textiles vs. ITO (2023) ITA No. 1234/JP/2023, reinforced the principle that consolidated financial records must reflect the entirety of business operations. The tribunal held that any transactions related to subsidiary brands should be included within the parent company's financial statements. This aligns with standard accounting practices and tax regulations, which require clear and comprehensive reporting of all financial activities.

7.3 The absence of supporting digital data or additional documentation raises doubts about the connection between the assessee and the alleged income from

Gopala Garments and Race Kids Wear. Without concrete evidence linking these firms to the assessee, any assumptions made regarding their relationship to M/s Ambika Garments should be approached with caution.

8. Double addition: The AO asserts that Gopala Garments and Race Kids Wear are not independent entities but rather operational units of M/s Ambika Garments. This characterization carries significant implications for the assessment of income and taxation. Given this relationship, the consolidated financial affairs of Ambika Garments are already reflected in the financial statements of Jai Shri Ram. Since any profits generated by Gopala Garments and Race Kids Wear are included within the overall profits reported by Jai Shri Ram, it follows that any attempt to add these profits to the assessee's income would constitute double taxation. This principle is supported by the ruling in CIT vs. S. K. Gupta (2019) 106 taxmann.com 268 (Delhi High Court). In this case, the court emphasized that duplicative assessments, which result in double taxation of the same income, are not permissible under tax law. The Delhi High Court highlighted the importance of preventing the imposition of additional tax liabilities on income that has already been reported and taxed at the level of a consolidated entity.

9. The ITAT's decision in M/s S.K. Gupta vs. ITO (2022) ITA No. 456/JP/2022 reinforces the position that only the net profits that are actually attributable to a business should be included in income assessments. The tribunal stressed the importance of accurate financial calculations and the necessity of avoiding arbitrary additions based on presumptions.

10. Therefore, the assertions regarding Gopala Garments and Race Kids Wear being mere units of M/s Ambika Garments, along with the detailed analysis of profits, underscore the need for the tax authorities to avoid double taxation and ensure that only substantiated net profits are considered for tax purposes. The legal precedents support the notion that income assessments must be fair, transparent, and based on accurate financial records.

11. Without prejudice to the above and without admitting anything contrary it is further submitted that in making the said addition Ld.AO has assumed that alleged balance appearing as on 31.12.2016 must have been coming from 01.01.2016. Firstly, the assumption itself is flawed without any reason/basis. Secondly, if this assumption holds goods then this balance must have been coming from the earlier years and resultantly this is just an opening balance which does not qualify to be added in the current assessment year. It is a well-established principle of law that opening balances cannot be added to income u/s 68 of the Act. This provision is specifically designed to address the issue of unexplained credits in the books of

account for the current financial year, and not for balances carried forward from previous years.

- *Kindly refer CIT vs. H.S. Rathi (2015) 374 ITR 164 (Delhi): The Delhi High Court held that additions u/s 68 must be made for credits appearing during the year under consideration. The court clarified that opening balance, which are carried forward from previous years, cannot be subject to additions u/s 68.*
- *CIT vs. G. K. K. Enterprises (2002) 257 ITR 371 (Guj): The Gujarat High Court ruled that S.68 pertains only to unexplained credits introduced during the year and not to opening balances. The addition u/s 68 should be restricted to credits during the financial year under review.*
- *CIT vs. Orient Trading Co. (2001) 248 ITR 258 (Cal): This judgment emphasized that S.68 deals with the unexplained credit entries for the current assessment year. It cannot be used to add amounts that were part of opening balances or carried forward from previous years.*
- *We further rely the decision of Hon'ble Jurisdictional Jaipur Bench of ITAT in the case of DCIT Vs Alok Malpani in ITA No.334/JP/2022 vide order dated 08.12.2022.*

Hence the addition kindly be deleted in full.

Additions on account of alleged unrecorded GP:

Ambika Garments:

Facts: During the course of search, some data was found, including tally records and loose papers, showing transactions in the name of a concern M/s Jai Shree Ram.

The assessee explained that the tally data for Jai Shree Ram was a consolidated record that included transactions from Shri Ambika Garments. This data was prepared by staff mainly to calculate staff incentives, wherein a random date of 01.01.2014 was picked and entries were made. The assessee claimed that many entries were recorded incorrectly, which led to inaccurate profit calculations. Specifically, some entries were made directly to the partners' account, and some balances were either not recorded or not properly written off. No inventory details were maintained in the tally, which is an essential element for correct profit quantification. Therefore, the tally data was described as preliminary and not suitable for determining actual income.

Despite this explanation, the AO found the response inadequate, deeming it routine and unsubstantiated. The AO suspected that out of books transactions were involved, causing major discrepancies in the financial records. Consequently, the AO made trading additions of ₹2,06,55,593/-, using an average gross profit rate of 12.15% and adjusting for the gross profit already declared, as well as interest and remuneration paid to partners. Hence this ground.

Submissions:

1. No Standalone Existence of Tally Data: 1.1 At the outset, it is important to clarify that the Tally data in question was a consolidated record created by staff primarily to facilitate the calculation of staff incentives and not for accurate profit determination.

1.2 The assessee has consistently maintained that this data includes transactions of both M/s Jai Shree Ram and M/s Shri Ambika Garments. The Tally data, therefore, contains numerous inaccuracies such as improper posting of entries directly to the proprietor's account, a large number of journal vouchers not involving any movement of funds and the failure to correctly post or write off outstanding balances. Consequently, the Tally data should be regarded as preliminary and not a reliable representation of the financial position. Kindly refer CIT vs. Shree Ram Engg. Works, (2022) 431 ITR 53 (Raj), the Rajasthan High Court held that reliance on preliminary or rough data for assessment purposes is not justifiable unless it is supported by concrete evidence. The court emphasized that such data must be treated with caution and corrected to reflect the true financial status.

1.3 The assessee's contention that the data was intended for incentive calculation rather than accurate profit determination is supported by the fact that various entries were either incorrectly posted or not posted at all. The Tally data, including numerous journal entries that do not accurately reflect income, receipts, or payments, further corroborates the claim that this data is not suitable for income determination. Kindly refer CIT vs. M/s. Star International, (2023) 438 ITR 88 (Raj), the Rajasthan High Court similarly highlighted that data prepared for internal purposes and not subjected to rigorous checks cannot be used as a definitive record for income assessment.

2.1 The AO's reliance on incomplete and rough data for making substantial additions, without providing corroborative evidence of undisclosed sales or transactions, is legally flawed. The AO's view that the data is a mere afterthought to evade tax obligations does not hold, as it lacks substantial evidence. The claim that all bank transactions were accurately recorded in both Shri Ambika Garments

and Jai Shree Ram accounts does not negate the need for complete and verified data. Kindly refer CIT vs. Jindal Steel & Power Ltd. (2023) 436 ITR 112 (Raj), the accuracy of data must be established through proper verification and not merely assumed based on volume or matching bank transactions.

2.2 The presence of numerous family member accounts and the rough nature of the Tally data highlight that the data was not subject to proper scrutiny or validation. More importantly, the tally data was not containing any inventory details. The stock at the end of each financial year was not present. The Rajasthan High Court in CIT vs. M/s. Bhardwaj Construction, (2022) 433 ITR 201 (Raj) affirmed that entries made without adequate verification and oversight cannot be relied upon for assessing actual business income. The staff's handling of entries and the lack of checkpoints further undermine the credibility of the data for assessment purposes.

2.3 In light of the above we would submit that the Tally data, being preliminary and intended for internal use, should not be the sole basis for substantial income adjustments. The AO's findings must be supported by corroborative evidence, and the rough nature of the data, coupled with the absence of proper validation, reinforces that it is not suitable for accurate income assessment.

3. Suspicion Cannot Replace Reality: 3.1 The AO's reliance on suspicion rather than factual evidence undermines the integrity of the assessment process. The principle that suspicion alone cannot replace reality in tax assessments is a cornerstone of fair and just taxation. AO must base their decisions on concrete evidence and factual information rather than mere suspicion. This principle ensures that taxpayers are treated fairly and that assessments are grounded in verifiable facts.

3.1 Tax assessments must be grounded in evidence, not conjecture. The Income Tax Act mandates that any additions or adjustments made during the assessment must be substantiated by substantial evidence. The reliance on mere suspicion or conjecture undermines the integrity of the assessment process and contravenes established legal standards. Kindly refer CIT vs. J.D. Pharmaceuticals (2004) 271 ITR 84 (Bom) held that suspicion alone cannot replace reality in the assessment process. The AO must provide substantial and factual evidence to justify any additions or adjustments. The reliance on mere suspicion or conjecture is insufficient for making valid adjustments to a taxpayer's income.

3.2 In CIT vs. Smt. Kalpana S. Bansal (2016) 381 ITR 451 (Raj) held that the AO's reliance on suspicion without concrete evidence did not justify the income

additions. The Court emphasized that fair assessment requires substantiation with credible evidence rather than relying on mere suspicion.

4.1 In the present case, the AO's reliance on Tally data, which was preliminary and not a complete reflection of the financial position, exemplifies a reliance on suspicion rather than factual evidence. The data was intended for internal purposes, such as calculating staff incentives, and contained numerous inaccuracies and incomplete entries.

4.2 The AO failed to consider the detailed and audited accounts maintained by the assessee, which were complete and reflected actual transactions. The reliance on incomplete and inaccurate Tally data, without corroborative evidence, exemplifies an approach based on suspicion rather than reality.

4.3 The principles established by the aforementioned case laws underscore that suspicion alone cannot replace reality in tax assessments. The AO must base any additions or adjustments on substantial and factual evidence. Given the reliance on incomplete and preliminary data in the present case, the assessment lacks the necessary evidential support and should be deemed invalid.

5. No Evidence of suppressed sales except Tally Data: 5.1 It is further submitted that in tax assessments, the burden of proof lies with the AO to demonstrate that there has been income suppression or understatement of sales. Mere reliance on incomplete or preliminary data, such as Tally data, without concrete evidence of actual sales suppression, is insufficient to justify any additions to the assessed income.

5.2 The principle of burden of proof requires the AO to present direct and cogent evidence when alleging suppression of sales or income. An assessment based solely on suspicion or incomplete data without verifying the authenticity of transactions and corroborative evidence is legally untenable. Kindly refer CIT vs. M/s. Shree Khodiyar Steel (2016) 384 ITR 71 (Raj) held that the AO must provide substantial evidence to justify any claim of suppressed sales or income. The reliance on assumptions and incomplete data without concrete evidence was deemed insufficient.

5.3 In CIT vs. Smt. M. N. Nissim (2007) 289 ITR 378 (Raj) held that the Court emphasized that additions to income must be based on direct and cogent evidence rather than on incomplete data or assumptions. The reliance on partial records and speculation without substantial evidence was considered invalid.

5.4 In this case, the AO's assessment order dated 14.03.2011 reveals that the additions were based primarily on the incomplete Tally data, which is not a reliable or complete reflection of the financial position. The AO did not present any direct and cogent evidence demonstrating actual suppression of sales or income.

5.5 The reliance on Tally data, which was acknowledged by the assessee as preliminary and containing inaccuracies, does not constitute sufficient evidence to support allegations of income suppression. The AO's failure to provide substantial and direct evidence of suppressed sales undermines the validity of the additions made.

5.6 The legal precedents established by the Rajasthan High Court and ITAT emphasize that any claim of suppressed sales or income must be supported by direct and cogent evidence. The reliance on incomplete or preliminary data, such as Tally data, without verifying the authenticity of transactions and without substantial evidence, is inadequate for making valid income additions. The assessment order in this case, based on such incomplete data and lacking direct evidence, should be reconsidered, and the additions made should be quashed.

On Merit: Alternately on Merits

6. Fair Estimation Required - Legal Position: 6.1 It is further submitted that once the AO rejects the accounts and invokes S.145(3), the subsequent task is to estimate the income fairly. However, this does not give the AO unfettered discretion to make arbitrary or unjustified income estimates based on the deficiencies identified in the books of accounts.

6.2 The rejection of books of accounts u/s 145(3) necessitates that the AO make a fair and reasonable estimation of income. This process requires the AO must make an honest estimation of income based on material available on record, including the past history of the case and any local knowledge relevant to the assessee. The AO is also expected to gather and consider necessary material to support the estimation if required.

6.3 The powers u/s 145(3) do not grant the AO the liberty to arrive at any figure they deem fit. The estimation must be fair and justifiable, taking into account the evidence and facts of the case. Kindly refer *Jotram Shershing vs. CIT (1930) 2 ITR 119 (All)*: This case emphasizes that once the accounts are rejected, the AO must make a fair and reasonable estimate of income. Arbitrary and capricious estimations are not permissible. The estimation must be based on credible material and should reflect a reasonable assessment rather than a random figure.

6.4 In CIT vs. M/s. Rajasthan State Industrial Development and Investment Corporation Ltd. (2015) 373 ITR 292 (Raj): The Rajasthan High Court reaffirmed that the AO's discretion to estimate income after rejecting accounts must be exercised judiciously. The estimation should be based on tangible evidence and not on speculative or arbitrary figures.

7.1 In the present scenario, the AO's estimation of ₹2,06,55,593/- based on an average gross profit rate of 12.15% appears arbitrary and unsupported by cogent material. The AO relied heavily on incomplete Tally data while disregarding the detailed and audited accounts maintained by the appellant. More importantly, the assessee is operating in a wholesale business of unbranded readymade garments. In this business there is a very cutthroat competition, and businesses operate on a razor thin margin ranging between 2% to 4% only, thus estimating the gross profit margins at an exorbitant rate of 12.15% itself shows the nonreliability of data and arbitrary approach of profit estimation adopted by Ld.AO.

7.2 The appellant has submitted that the Tally data was not a standalone record but a preliminary draft intended for internal use, including staff incentives. The accounts maintained were complete, audited, and reflected actual transactions. The AO's failure to consider these accounts and his reliance on inaccurate and preliminary data undermines the fairness of the estimation process.

7.3 It is further important to note that Ld.AO has not pointed out any defect in the regular books of accounts of the assessee, still an exorbitant GP rate of 12.15% has been applied, thus the action of Ld.AO has resulted into estimating the already GP shown at 12.15% as well as estimating the GP on the basis of seized material at the same rate. The said action and approach are contrary and deserves to be quashed.

7.4 Alternatively and without prejudice to the above and without admitting contrary, it is further submitted that even otherwise, the profit which is to be brought to tax shall be Net Profit instead of Gross Profit. Once it is an admitted fact that Jai Shree Ram is the consolidated affairs of the assessee, the addition should be of net profit and not the gross profit. The net profit rate as per the "Jai Shree Ram" is as under:

	AY 2015- 16	AY 2016- 17	AY 2017- 18	AY 2018- 19	AY 2019- 20
NP % AS PER JAI SHREE RAM	7.80	7.14	5.79	6.30	4.72

7.5 Given the above facts, circumstances and the relevant case laws, the AO's estimation of income lacks legal and factual support. It is based on arbitrary assumptions rather than a fair and reasonable assessment of the actual income. Therefore, the estimation made by the AO should be considered invalid, and the additions made on this basis should be quashed.

8. Legal Position: It is respectfully submitted that the invocation of S.145 does not grant unfettered discretion to the AO to arbitrarily assess income. The AO is required to conduct a fair and honest estimation based on the available materials, the past history of the case, local business practices, and the reputation of the taxpayer. In this regard, the AO must collect and analyze relevant data as necessary. The law is clear that any estimation that is arbitrary, capricious, or wild is impermissible.

The provisions u/s 144 which deals with the best judgment assessment align closely with those u/s 145. Judicial precedent reinforces that the AO is expected to engage in a careful evaluation of all direct and indirect evidence when estimating income. Notably, in the present case, it is apparent that the AO has failed to adhere to these established principles, resulting in an estimation that does not conform to the judicial guidelines.

9.1 Addition Need Not Be Made, Even if Sec.145 Invoked: The case of CIT v. Gotan Lime Khaniz Udyog (256 ITR 243, Raj) highlights that the mere rejection of books of account does not automatically necessitate an addition to the returned income. The court emphasized that, in such instances, the AO must consider the books of accounts alongside the historical data of the case and any material collected during the assessment process—after appropriately confronting the taxpayer.

9.2 Similarly, in M/s Rishab Construction (P) Ltd. (38 TW 8, JP), the court ruled that the trading results should not be disturbed if they are superior to previous years, even when the provisions of S.145(3) are applicable. These legal principles are directly relevant to the facts of the present case.

9.3 It is noteworthy that the historical performance of a business is often the best indicator for fair estimation. In CIT v. Popular Electric Co. Pvt. Ltd. (1993) 203 ITR 630 (Cal), the court affirmed that past performance should significantly influence income estimation. Additionally, in MA Rauf v. CIT (1958) 33 ITR 843 (Pat) and Kansara Bearing Pvt. Ltd. v. ACIT (270 ITR 235, Raj), the courts reiterated the importance of considering historical data in assessments.

9.4 In the current scenario, the assessee declared sales amounting to Rs 6,98 Crores, which marks a substantial increase compared to Rs-6.47 Crores in the FY 2014-15 and Rs.4.74 Crores in FY 2013-14. Despite this growth, the gross profit rate was reported at 10%, slightly lower than the previous year's GP of 10.40%. It is widely acknowledged that in order to increase sales, businesses may have to adjust their pricing strategies, which can affect the GP percentage.

The following table illustrates the GP performance over the past five years:

SHRI AMBIKA GARMENTS	FY-2011-12	FY-2012-13	FY-2013-14	FY-2014-15	FY-2015-16
GROSS PROFIT	37,59,981	46,17,942	54,74,247	67,36,284	69,79,710
PROFIT BEFORE INTEREST AND REMUNERATION TO PARTNERS	16,80,920	20,46,793	23,13,069	25,97,565	19,64,218
SALES	3,86,53,312	4,19,05,087	4,74,26,465	6,47,90,957	6,98,02,791
GP %	9.73	11.02	11.54	10.40	10.00

A review of this data indicates that while the GP percentage in FY 2013-14 was 11.54% on sales of Rs-4.74 Crores, the substantial increase in turnover to Rs-6.98 Crores in the current year with a GP of 10% reflects a rational business strategy rather than an inconsistency in reporting. Therefore, any comparison based solely on GP percentage without accounting for sales volume is misleading.

10. Moreover, it is essential to note that the data maintained by the assessee, while potentially subject to scrutiny, is part of an internal accounting process and not intended for external assessment. The complete, audited accounts accurately reflect actual transactions and should be respected in the assessment process.

11.1 In the present scenario, the AO estimation of Rs2,06,55,593/- based on an average gross profit rate of 12.15% appears not only arbitrary but also unsupported by cogent material. This estimation lacks a solid foundation in the facts of the case and the applicable legal standards.

11.2 The AO's decision predominantly hinges on incomplete Tally data, which should not be considered a reliable basis for estimating gross profit. Tally software often serves as an internal accounting tool, designed for preliminary record-keeping and operational management rather than final reporting. The reliance on such incomplete data raises significant concerns regarding the accuracy and reliability of the figures derived from it. In many cases, such preliminary data is not intended for external review and can lead to misleading conclusions.

11.3 Furthermore, the AO has seemingly disregarded the detailed and audited accounts maintained by the appellant. These accounts represent a comprehensive and rigorous approach to financial reporting, reflecting actual transactions, expenses, and revenue. The audited financial statements not only comply with accounting standards but also undergo scrutiny by independent auditors, ensuring a level of accuracy and accountability that preliminary Tally data cannot match.

11.4 In accordance with the principles laid down in various judicial precedents, such as CIT v. Gotan Lime Khaniz Udyog (256 ITR 243, Raj) and M/s Rishab Construction (P) Ltd. (38 TW 8, JP), it is clear that the AO must consider credible evidence and established accounting practices when making estimations. The courts have consistently emphasized that historical performance, as demonstrated by well-maintained and audited financial records, should be the cornerstone for any assessment of income.

11.5 The choice of an arbitrary gross profit rate of 12.15% lacks justification when compared to the actual gross profit rates declared by the appellant in previous years. As demonstrated in the provided financial performance table, the gross profit rates for prior years show a consistent trend that is more reflective of the appellant's actual business operations. The significant jump to a 12.15% estimate appears to be a deviation without any supporting rationale or evidentiary backing.

Sanjay Kumar Karnani:

Facts: During the course of search, some data was found, including tally records and loose papers, showing transactions in the name of a concern M/s Hari Om.

The assessee explained that the tally data for Hari Om was a consolidated record that included transactions from Shri Ram Enterprises. This data was prepared by staff mainly to calculate staff incentives, wherein a random date of 01.01.2014 was picked and entries were made. The assessee claimed that many entries were recorded incorrectly, which led to inaccurate profit calculations. Specifically, some entries were made directly to the partners' account, and some balances were either not recorded or not properly written off. No inventory details were

maintained in the tally, which is an essential element for correct profit quantification. Therefore, the tally data was described as preliminary and not suitable for determining actual income.

Despite this explanation, the AO found the response inadequate, deeming it routine and unsubstantiated. The AO suspected that out of books transactions were involved, causing major discrepancies in the financial records. Consequently, the AO made trading additions of ₹1,72,39,251/-, using an average gross profit rate of 10.09%. Hence this ground.

Submissions:

1. No Standalone Existence of Tally Data: 1.1 At the outset, it is important to clarify that the Tally data in question was a consolidated record created by staff primarily to facilitate the calculation of staff incentives and not for accurate profit determination.

1.2 The assessee has consistently maintained that this data includes transactions of both M/s Hari Om and M/s Shri Ram Enterprises. The Tally data, therefore, contains numerous inaccuracies such as improper posting of entries directly to the proprietor's account, a large number of journal vouchers not involving any movement of funds and the failure to correctly post or write off outstanding balances. Consequently, the Tally data should be regarded as preliminary and not a reliable representation of the financial position. Kindly refer CIT vs. Shree Ram Engg. Works, (2022) 431 ITR 53 (Raj), the Rajasthan High Court held that reliance on preliminary or rough data for assessment purposes is not justifiable unless it is supported by concrete evidence. The court emphasized that such data must be treated with caution and corrected to reflect the true financial status.

1.3 The assessee's contention that the data was intended for incentive calculation rather than accurate profit determination is supported by the fact that various entries were either incorrectly posted or not posted at all. The Tally data, including numerous journal entries that do not accurately reflect income, receipts, or payments, further corroborates the claim that this data is not suitable for income determination. Kindly refer CIT vs. M/s. Star International, (2023) 438 ITR 88 (Raj), the Rajasthan High Court similarly highlighted that data prepared for internal purposes and not subjected to rigorous checks cannot be used as a definitive record for income assessment.

2.1 The AO's reliance on incomplete and rough data for making substantial additions, without providing corroborative evidence of undisclosed sales or transactions, is legally flawed. The AO's view that the data is a mere afterthought

to evade tax obligations does not hold, as it lacks substantial evidence. The claim that all bank transactions were accurately recorded in both Shri Ram Enterprises and Hari Om accounts does not negate the need for complete and verified data. Kindly refer CIT vs. Jindal Steel & Power Ltd. (2023) 436 ITR 112 (Raj), the accuracy of data must be established through proper verification and not merely assumed based on volume or matching bank transactions.

2.2 The presence of numerous family member accounts and the rough nature of the Tally data highlight that the data was not subject to proper scrutiny or validation. More importantly, the tally data was not containing any inventory details. The stock at the end of each financial year was not present. The Rajasthan High Court in CIT vs. M/s. Bhardwaj Construction, (2022) 433 ITR 201 (Raj) affirmed that entries made without adequate verification and oversight cannot be relied upon for assessing actual business income. The staff's handling of entries and the lack of checkpoints further undermine the credibility of the data for assessment purposes.

2.3 In light of the above we would submit that the Tally data, being preliminary and intended for internal use, should not be the sole basis for substantial income adjustments. The AO's findings must be supported by corroborative evidence, and the rough nature of the data, coupled with the absence of proper validation, reinforces that it is not suitable for accurate income assessment.

3. Suspicion Cannot Replace Reality: 3.1 The AO's reliance on suspicion rather than factual evidence undermines the integrity of the assessment process. The principle that suspicion alone cannot replace reality in tax assessments is a cornerstone of fair and just taxation. AO must base their decisions on concrete evidence and factual information rather than mere suspicion. This principle ensures that taxpayers are treated fairly and that assessments are grounded in verifiable facts.

3.1 Tax assessments must be grounded in evidence, not conjecture. The Income Tax Act mandates that any additions or adjustments made during the assessment must be substantiated by substantial evidence. The reliance on mere suspicion or conjecture undermines the integrity of the assessment process and contravenes established legal standards. Kindly refer CIT vs. J.D. Pharmaceuticals (2004) 271 ITR 84 (Bom) held that suspicion alone cannot replace reality in the assessment process. The AO must provide substantial and factual evidence to justify any additions or adjustments. The reliance on mere suspicion or conjecture is insufficient for making valid adjustments to a taxpayer's income.

3.2 In CIT vs. Smt. Kalpana S. Bansal (2016) 381 ITR 451 (Raj) held that the AO's reliance on suspicion without concrete evidence did not justify the income additions. The Court emphasized that fair assessment requires substantiation with credible evidence rather than relying on mere suspicion.

4.1 In the present case, the AO's reliance on Tally data, which was preliminary and not a complete reflection of the financial position, exemplifies a reliance on suspicion rather than factual evidence. The data was intended for internal purposes, such as calculating staff incentives, and contained numerous inaccuracies and incomplete entries.

4.2 The AO failed to consider the detailed and audited accounts maintained by the assessee, which were complete and reflected actual transactions. The reliance on incomplete and inaccurate Tally data, without corroborative evidence, exemplifies an approach based on suspicion rather than reality.

4.3 The principles established by the aforementioned case laws underscore that suspicion alone cannot replace reality in tax assessments. The AO must base any additions or adjustments on substantial and factual evidence. Given the reliance on incomplete and preliminary data in the present case, the assessment lacks the necessary evidential support and should be deemed invalid.

5. No Evidence of suppressed sales except Tally Data: 5.1 It is further submitted that in tax assessments, the burden of proof lies with the AO to demonstrate that there has been income suppression or understatement of sales. Mere reliance on incomplete or preliminary data, such as Tally data, without concrete evidence of actual sales suppression, is insufficient to justify any additions to the assessed income.

5.2 The principle of burden of proof requires the AO to present direct and cogent evidence when alleging suppression of sales or income. An assessment based solely on suspicion or incomplete data without verifying the authenticity of transactions and corroborative evidence is legally untenable. Kindly refer CIT vs. M/s. Shree Khodiyar Steel (2016) 384 ITR 71 (Raj) held that the AO must provide substantial evidence to justify any claim of suppressed sales or income. The reliance on assumptions and incomplete data without concrete evidence was deemed insufficient.

5.3 In CIT vs. Smt. M. N. Nissim (2007) 289 ITR 378 (Raj) held that the Court emphasized that additions to income must be based on direct and cogent evidence rather than on incomplete data or assumptions. The reliance on partial records and speculation without substantial evidence was considered invalid.

5.4 In this case, the AO's assessment order dated 14.03.2011 reveals that the additions were based primarily on the incomplete Tally data, which is not a reliable or complete reflection of the financial position. The AO did not present any direct and cogent evidence demonstrating actual suppression of sales or income.

5.5 The reliance on Tally data, which was acknowledged by the assessee as preliminary and containing inaccuracies, does not constitute sufficient evidence to support allegations of income suppression. The AO's failure to provide substantial and direct evidence of suppressed sales undermines the validity of the additions made.

5.6 The legal precedents established by the Rajasthan High Court and ITAT emphasize that any claim of suppressed sales or income must be supported by direct and cogent evidence. The reliance on incomplete or preliminary data, such as Tally data, without verifying the authenticity of transactions and without substantial evidence, is inadequate for making valid income additions. The assessment order in this case, based on such incomplete data and lacking direct evidence, should be reconsidered, and the additions made should be quashed.

On Merit: Alternately on Merits

6. Fair Estimation Required - Legal Position: 6.1 It is further submitted that once the AO rejects the accounts and invokes S.145(3), the subsequent task is to estimate the income fairly. However, this does not give the AO unfettered discretion to make arbitrary or unjustified income estimates based on the deficiencies identified in the books of accounts.

6.2 The rejection of books of accounts u/s 145(3) necessitates that the AO make a fair and reasonable estimation of income. This process requires the AO must make an honest estimation of income based on material available on record, including the past history of the case and any local knowledge relevant to the assessee. The AO is also expected to gather and consider necessary material to support the estimation if required.

6.3 The powers u/s 145(3) do not grant the AO the liberty to arrive at any figure they deem fit. The estimation must be fair and justifiable, taking into account the evidence and facts of the case. Kindly refer *Jotram Shershing vs. CIT (1930) 2 ITR 119 (All)*: This case emphasizes that once the accounts are rejected, the AO must make a fair and reasonable estimate of income. Arbitrary and capricious estimations are not permissible. The estimation must be based on credible material and should reflect a reasonable assessment rather than a random figure.

6.4 In CIT vs. M/s. Rajasthan State Industrial Development and Investment Corporation Ltd. (2015) 373 ITR 292 (Raj): The Rajasthan High Court reaffirmed that the AO's discretion to estimate income after rejecting accounts must be exercised judiciously. The estimation should be based on tangible evidence and not on speculative or arbitrary figures.

7.1 In the present scenario, the AO's estimation of ₹1,72,39,251/- based on an average gross profit rate of 10.09% appears arbitrary and unsupported by cogent material. The AO relied heavily on incomplete Tally data while disregarding the detailed and audited accounts maintained by the appellant. More importantly, the assessee is operating in a wholesale business of unbranded readymade garments. In this business there is a very cutthroat competition, and businesses operate on a razor thin margin ranging between 2% to 4% only, thus estimating the gross profit margins at an exorbitant rate of 10.09% itself shows the nonreliability of data and arbitrary approach of profit estimation adopted by Ld.AO.

7.2 The appellant has submitted that the Tally data was not a standalone record but a preliminary draft intended for internal use, including staff incentives. The accounts maintained were complete, audited, and reflected actual transactions. The AO's failure to consider these accounts and his reliance on inaccurate and preliminary data undermines the fairness of the estimation process.

7.3 It is further important to note that Ld.AO has not pointed out any defect in the regular books of accounts of the assessee, still an exorbitant GP rate of 10.09% has been applied, thus the action of Ld.AO has resulted into estimating the already GP shown at 10.09% as well as estimating the GP on the basis of seized material at the same rate. The said action and approach are contrary and deserves to be quashed.

7.4 Alternatively and without prejudice to the above and without admitting contrary, it is further submitted that even otherwise, the profit which is to be brought to tax shall be Net Profit instead of Gross Profit. Once it is an admitted fact that Hari Om is the consolidated affairs of the assessee, the addition should be of net profit and not the gross profit.

7.5 Given the above facts, circumstances and the relevant case laws, the AO's estimation of income lacks legal and factual support. It is based on arbitrary assumptions rather than a fair and reasonable assessment of the actual income. Therefore, the estimation made by the AO should be considered invalid, and the additions made on this basis should be quashed.

8. Legal Position: It is respectfully submitted that the invocation of S.145 does not grant unfettered discretion to the AO to arbitrarily assess income. The AO is required to conduct a fair and honest estimation based on the available materials, the past history of the case, local business practices, and the reputation of the taxpayer. In this regard, the AO must collect and analyze relevant data as necessary. The law is clear that any estimation that is arbitrary, capricious, or wild is impermissible.

The provisions u/s 144 which deals with the best judgment assessment align closely with those u/s 145. Judicial precedent reinforces that the AO is expected to engage in a careful evaluation of all direct and indirect evidence when estimating income. Notably, in the present case, it is apparent that the AO has failed to adhere to these established principles, resulting in an estimation that does not conform to the judicial guidelines.

9.1 Addition Need Not Be Made, Even if Sec.145 Invoked: The case of CIT v. Gotan Lime Khaniz Udyog (256 ITR 243, Raj) highlights that the mere rejection of books of account does not automatically necessitate an addition to the returned income. The court emphasized that, in such instances, the AO must consider the books of accounts alongside the historical data of the case and any material collected during the assessment process—after appropriately confronting the taxpayer.

9.2 Similarly, in M/s Rishab Construction (P) Ltd. (38 TW 8, JP), the court ruled that the trading results should not be disturbed if they are superior to previous years, even when the provisions of S.145(3) are applicable. These legal principles are directly relevant to the facts of the present case.

9.3 It is noteworthy that the historical performance of a business is often the best indicator for fair estimation. In CIT v. Popular Electric Co. Pvt. Ltd. (1993) 203 ITR 630 (Cal), the court affirmed that past performance should significantly influence income estimation. Additionally, in MA Rauf v. CIT (1958) 33 ITR 843 (Pat) and Kansara Bearing Pvt. Ltd. v. ACIT (270 ITR 235, Raj), the courts reiterated the importance of considering historical data in assessments.

9.4 In the current scenario, the assessee declared sales amounting to Rs 7.56 Crores, which marks a substantial increase compared Rs.4.61 Crores in FY 2012-13. Despite this growth, the gross profit rate was reported at 9.16%, slightly lower than the previous year's GP of 9.59%. It is widely acknowledged that in order to increase sales, businesses may have to adjust their pricing strategies, which can affect the GP percentage.

The following table illustrates the GP performance over the past years:

SHRI RAM ENTERPRISES

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Sales	4,61,73,465.00	7,84,11,500.00	7,57,63,298.00	7,64,82,798.61
GP Amt	55,89,253.00	75,16,888.00	69,40,977.00	61,73,577.00
NP Amt	6,96,802.00	14,53,536.00	8,17,927.00	9,60,119.00
GP%	12.10	9.59	9.16	8.07
NP%	1.51	1.85	1.08	1.26

10. Moreover, it is essential to note that the data maintained by the assessee, while potentially subject to scrutiny, is part of an internal accounting process and not intended for external assessment. The complete, audited accounts accurately reflect actual transactions and should be respected in the assessment process.

11.1 In the present scenario, the AO estimation of Rs 1,72,39,251/- based on an average gross profit rate of 10.09% appears not only arbitrary but also unsupported by cogent material. This estimation lacks a solid foundation in the facts of the case and the applicable legal standards.

11.2 The AO's decision predominantly hinges on incomplete Tally data, which should not be considered a reliable basis for estimating gross profit. Tally software often serves as an internal accounting tool, designed for preliminary record-keeping and operational management rather than final reporting. The reliance on such incomplete data raises significant concerns regarding the accuracy and reliability of the figures derived from it. In many cases, such preliminary data is not intended for external review and can lead to misleading conclusions.

11.3 Furthermore, the AO has seemingly disregarded the detailed and audited accounts maintained by the appellant. These accounts represent a comprehensive and rigorous approach to financial reporting, reflecting actual transactions, expenses, and revenue. The audited financial statements not only comply with accounting standards but also undergo scrutiny by independent auditors, ensuring a level of accuracy and accountability that preliminary Tally data cannot match.

11.4 In accordance with the principles laid down in various judicial precedents, such as CIT v. Gotan Lime Khaniz Udyog (256 ITR 243, Raj) and M/s Rishab Construction (P) Ltd. (38 TW 8, JP), it is clear that the AO must consider credible

evidence and established accounting practices when making estimations. The courts have consistently emphasized that historical performance, as demonstrated by well-maintained and audited financial records, should be the cornerstone for any assessment of income.

11.5 The choice of an arbitrary gross profit rate of 10.09% lacks justification when compared to the actual gross profit rates declared by the appellant in previous years. As demonstrated in the provided financial performance table, the gross profit rates for prior years show a consistent trend that is more reflective of the appellant's actual business operations. The significant jump to a 10.09% estimate appears to be a deviation without any supporting rationale or evidentiary backing.

Prayer:

In view of the facts and circumstances and legal precedents cited above, the additions so made may kindly be deleted in full and appeal of assessee may kindly be allowed.

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

Paper Book Index

S.No.	Particular	Pap Nos.
1.	Copy of ITR along with Computation for AY 2014-15	1-2
2.	Copy of Tax Audit Report in Form 303 for AY 2014-	3-15
3.	Copy of ITR along with Computation for AY 2015-16	16-17
4.	Copy of Tax Audit Report in Form 3CB for AY 2015-	18-29
5.	Copy of Financial Statements for AY 2015-16	30-41
6.	Copy of ITR along with Computation for AY 2016-17	42-43
7.	Copy of Tax Audit Report in Form 3CB for AY 2016-	44-58
8.	Copy of Financial Statements for AY 2016-17	59-67
9.	Copy of ITR along with Computation for AY 2017-18	68-69
10.	Copy of Tax Audit Report in Form 3CB for AY 2017-	70-89
11.	Copy of Financial Statements for AY 2017-18	90-96
12.	Copy of ITR along with Computation for AY 2018-19	97-98
13.	Copy of Tax Audit Report in Form 3CB for AY 2018-	99-111

14.	Copy of Financial Statements for AY 2018-19	112-120
15.	Copy of ITR along with Computation for AY 2019-20	121-121
16.	Copy of Tax Audit Report in Form 3CB for AY 2019-	122-134
17.	Reply filed before AO on 12-04-2021	135-163
18.	Reply filed before AO on 15-07-2021	164-165
19.	Additional Written Submissions filed before CIT(A) for AY 2014-15 on 11-11-2024	166-169
20.	Written Submissions filed before CIT(A) for AY 2014- 15	170-185
21.	Written Submissions filed before CIT(A) for AY 2015-	1861 95
	16 on 10-10-2024	
22.	Written Submissions filed before CIT(A) for AY 2016-	196-221
23.	Written Submissions filed before CIT(A) for AY 2017-	222-243
24.	Written Submissions filed before CIT(A) for AY 2018-	244-260
25.	Written Submissions filed before CIT(A) for AY 2019-	261-268
26.	Approval given by JCIT, Central Range Jaipur vide letter dated	269-269
27.	Approval given by JCIT, Central Range Jaipur vide letter dated	270-270

Paper Book Index-II

S. No.	Particular	Page Nos.
1.	Copy of Approval u/s 153D in the case of Sanjay Karnani for AY 2013-14 and 2014-15	1-1
2.	Copy of seized material pertaining Gopala Garments and Race Kids wear founda t the residence of partner	2-6

Paper Book Index

S.No.	Particular	Page Nos.
1.	Notice u/s 153A dated 29.05.2019 for AY 2014-15 to 2019-20	1-5
2.	Copy of Income Tax Returns filed u/s 153A for AY 2014-15 to 2019-20	6-11
3.	Copy of Tax Audit Reports in the Form 3CD for AY 2014-15 to 2019-20	12-81
4.	Financial Statements for AY 2014-15	82-90
5.	Financial Statements for AY 2015-16	91-96
6.	Financial Statements for AY 2016-17	97-121
7.	Financial Statements for AY 2017-18	122-159
8.	Financial Statements for AY 2018-19	160-162
9.	Financial Statements for AY 2019-20	163-169
10.	Reply filed before AO on 22-03-2021	170-183
11.	Reply filed before AO on 22-03-2021	184-189

12.	Written Submissions filed before CIT(A) for AY 2015-16 to 2019-20	190-199
13.	Written Submissions filed before CIT(A) for .AY 2015-16	200-209
14.	Written Submissions filed before CIT(A) for AY 2016-17	210-215
15.	Written Submissions filed before CIT(A) for AY 2017-18	216-233
16.	Written Submissions filed before CIT(A) for AY 2018-19	234-245
17.	Written Submissions filed before CIT(A) for AY 2019-20	246-255
18.	Approval u/s 153D for AY 2019-20	256-256
19.	Approval u/s 153D for AY 2015-16 to 2018-19	257-257

• **Case laws relied upon:**

S.No.	Particular	Page Nos.
1.	Jaipur ITAT in Resonance Eduventures Ltd Vs ACIT Central Circle-Kota in ITA No. 669 to 672/JPR/2024 vide order dated 10-03-2025	1-32
2.	Delhi ITAT in Apple Commodities Limited Vs DCIT, Central Circle-II, Noida in ITA No. 1510/Del/ 2022 vide order dated 16.04.2025	33-57
3.	Delhi ITAT in Shri Prateek Nagpal Vs ACIT, Central Circle-15 in ITA No.522/ De1/2022 vide order dated 10.01.2025	58-70
4.	Delhi High Court in PCIT-15 Vs Shiv Kumar Nayyar in ITA No. 285/2024 vide order dated 15.05.2024	71-78
5.	Delhi ITAT in ACIT Vs Ms Ambika Enterprises in ITA No.31/De1/2020 vide order dated 21.07.2023	79-85
6.	Delhi ITAT in Deepak Mittal Vs ACIT, Circle-60(1) Delhi in ITA No. 4709/Del/2017 vide order dated 23.03.2018	87-109
7.	Punjab and Haryana High Court in CIT Vs Dulia Ram (2024) 223 Taxmann 24	110-113
8.	CIT Vs GK Contractor (2009) 19 DTR 305 (Raj HC)	114-116
9.	India Rice Mills Vs (1996) 218 ITR 508 (Allah. HC)	117-119
28.	Delhi ITAT in ITO Vs Zexus Air Services P Ltd in ITA No. 2608/De1/2018 vide order dated 23.04.2021	120-143
29.	Malpani House of Stones Vs CIT (2017) 395 ITR 385 (Raj HC)	144-149
• 12.	CIT Vs Metachem Industries (2000) 245 ITR 160 (MP)	150-153

13.	ITAT Mumbai in Nickunj Eximp Enterprises P Ltd in ITA No. 1822/Mum/2021 vide order dated 23.11.2022	154-189
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10. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the addition made in assessment order was challenged on the legal argument as well as on the merits of the case. Relying on the various High Court Judgement and page 269 of the paper book that the approval granted by the Id. Additional / Joint Commissioner are mechanically on a same day as proposed and simply in a combined manner and thereby the assessment orders made are in correct and not in accordance with the law. This issue is decided in favour of the assessee by various High Courts.

As regards the addition on account of the opening capital the same cannot be added in the hands of the assessee wherein the Id. AO himself has agreed that the amount added was opening balance and therefore, the addition made was beyond the scop of assessment and thereby the addition made is required to be deleted even on merits of the case. On the one hand comparing the turnover the Id. AO considered the both the tally data but while on the issue of capital and unsecured loan Id. AO considered only one tally data which is not correct. On this issue he relied upon the decision of the co-ordinate bench of Mumbai ITAT in ITA no.

1822/Mum/2021. He also relied on the decision of the Hon'ble Rajasthan High Court in the case of Malpani House of Stone [395 ITR 385] wherein the High Court held that capital contribution by partners to assessee firm before commencement of business could not be treated as undisclosed income of the firm. He also relied upon our High Court decision on the same were issue on merits in the case of G. K. Contractors and thereby the others as referred in the case law paper book filed. As regards two data he already explained that the purpose was to compute the commission of the salespersons. He also contended that Id. AO applied the GP rate for all the year and therefore, that is also not correct and there he relying on the written submission prayed for necessary relief.

11. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). She submitted in the search two tally data record founds. Since there was not stock register the assessee plea that the same were maintained for the purpose of sales performance of the employee was not correct and therefore, she relied upon the order of the lower authority. As regards the addition of capital and unsecured loan Id. CIT(A) has granted relief based on the evidence placed on record by the assessee and

confirmed the addition were details were not submitted by the assessee. Ld. DR relied upon the decision of Apex Court in the case of 150 taxmann.com 263 in the case of Tirupati Buildings and Offices P. Ltd on the legal ground taken by the assessee. She also submitted that approvals accorded by JCIT, Central Range, Jaipur are in accordance with law, there is no merit in the contention raised by Ld.AR for the appellant. She further argued that assessment proceeding is a continuous process and is completed under the active guidance and monitoring/supervision of JCIT. It is not a matter of application of mind in few days.

12. In the rejoinder to the Id. DR submission the Id. AR of the assessee submitted that the assessee once it is clear on the part of the revenue that the capital is treated as opening capital the same cannot be added in the year under consideration. As regards the decision relied upon by the Id. DR are on different facts and the view he has advanced were confirmed as much as seven High Courts as referred in the judgment paper book filed. On the arguments of the Id. DR about the process of approval no evidence were placed on record in this case and his case is covered on the various High Court Judgment and even by the Apex Court in the case of CIT vs.

Serajuddin & Co. [2024] 163 taxmann.com 118 (SC). This decision is subsequent the decision relied upon by the Id. DR.

13. We have heard the rival contentions and perused the material placed on record.

First, we take up the technical ground raised by the assessee challenging the order of the lower authority on the ground that mandatory approval required as per provision of section 153D of the Act being mechanically and not as per the law required to be quashed. This ground legal ground for adjudication is going to the roots of the legality of the present proceedings we would like to take it first.

The assessee vide ground no. 1 being legal ground raised the contention that the Id. AO has erred in passing the Assessment Order u/s 153A without obtaining proper approval of the cases for the year under consideration, as mandated u/s 153D of the Act. The action of the Id. AO is illegal, unjustified, arbitrary and against the facts of the case and thereby the entire assessment order deserves to be quashed on grounds of this infirmity of law.

Apropos to this ground our attention was drawn to the approval of the assessment proceeding granted as per the letter issued by the Joint

Commissioner of Income Tax, Central Range, Jaipur who being the approving authority of the impugned order under challenge and that approval letter reads as under;


 भारत सरकार / Government of India
 कार्यालय / Office of the
 संयुक्त आयकर आयुक्त, केन्द्रीय खण्ड
Joint Commissioner of Income-tax, Central Range,
 कमरा नं. 403 चतुर्थ तल, जीवन निधि द्वितीय, एल.आई.सी. बिल्डिंग, अम्बेडकर सर्किल, जयपुर-302005
 Room No. 403, 4th Floor, Jeevan Nidhi-II, LIC Building, Ambedkar Circle, Jaipur -302005
 फोन/फैक्स: 0141-2941988

Dated: 16.07.2021

F.No. Jt.CIT(C)/Approval. u/s 153D/2021-22/ 840

To,
The Deputy Commissioner of Income-tax,
Central Circle-3, Jaipur.

Sub:-Approval u/s 153D of the I.T. Act, 1961 in the case of M/s Shri Ambika Garments (PAN-AATFS6984Q) for the AYs 2013-14 to 2015-16 (Karnani Group)
-regarding-

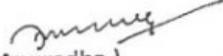
Ref:-Draft Asst. orders DCIT, Central Circle-3, Jaipur in F. No.341 dated 16.07.2021

The draft assessment orders in the following cases submitted by you are hereby approved u/s 153D of the Income-tax Act, 1961.

S. No.	Name of the assessee	PAN	A.Y.	Returned income	Assessed income
1	M/s Shri Ambika Garments	AATFS6984Q	2013-14	4,83,020/-	4,83,020/-
2	--do--	--do--	2014-15	4,98,020/-	3,88,52,430/-
3	--do--	--do--	2015-16	6,01,040/-	2,12,56,630/-

The approval reference shall duly be mentioned in the assessment orders and it should be ensured that the above orders are passed on ITBA well within time as per the Income Tax Act, 1961 and a compliance report may be sent within a period of 10 days along with copies of the assessment orders to this office for records.

Encls: Asstt. records in 3 Vol.


 (Anuradha)
 Joint Commissioner of Income-tax
 Central Range, Jaipur.

उपायुक्त आयकर
 केन्द्रीय खण्ड-3, जयपुर
 19 JUL 2021
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भारत सरकार / Government of India
कार्यालय / Office of the
संयुक्त आयकर आयुक्त, केन्द्रीय खण्ड
Joint Commissioner of Income-tax, Central Range,
कमरा नं. 403 चतुर्थ तल, जीवन निधि द्वितीय, एल.आई.सी. बिल्डिंग, अम्बेडकर सर्किल, जयपुर-302005
Room No. 403, 4th Floor, Jeevan Nidhi-II, LIC Building, Ambedkar Circle, Jaipur -302005
फोन / फैक्स: 0141-2941988

F.No. Jt.CIT(C)/Approval. u/s 153D/2021-22/ 857

Dated:20.07.2021

To,
The Deputy Commissioner of Income-tax,
Central Circle-3, Jaipur.

Sub:-Approval u/s 153D of the I.T. Act, 1961 in the case of M/s Shri Ambika Garments (PAN-AATFS6984Q) for the AYs 2016-17 to 2019-20 (Karnani Group)
-regarding-

Ref:-Draft Asst. orders DCIT, Central Circle-3, Jaipur in F. No.342 dated 16.07.2021

The draft assessment orders in the following cases submitted by you are hereby approved u/s 153D of the Income-tax Act, 1961.

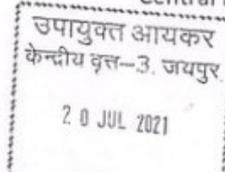
S. No.	Name of the assessee	PAN	A.Y.	Returned income	Assessed income
1	M/s Shri Ambika Garments	AATFS6984Q	2016-17	4,57,870/-	3,16,30,330/-
2	--do--	--do--	2017-18	6,00,460/-	3,31,14,520/-
3	--do--	--do--	2018-19	7,07,870/-	3,51,87,710/-
4	--do--	--do--	2019-20	6,44,490/-	58,89,080/-

The approval reference shall duly be mentioned in the assessment orders and it should be ensured that the above orders are passed on ITBA well within time as per the Income Tax Act, 1961 and a compliance report may be sent within a period of 10 days along with copies of the assessment orders to this office for records.

Encls: Asstt. records in 4 Vol.

(Anuradha)

Joint Commissioner of Income-tax
Central Range, Jaipur.





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संयुक्त आयकर आयुक्त, केन्द्रीय खण्ड

Joint Commissioner of Income-tax, Central Range,

कमरा नं. 403 चतुर्थ तल, जीवन निधि द्वितीय, एल.आई.सी. बिल्डिंग, अम्बेडकर सर्किल, जयपुर-302005
Room No. 403, 4th Floor, Jeevan Nidhi-II, LIC Building, Ambedkar Circle, Jaipur -302005
फोन / फॅक्स: 0141-2941988

F.No. Jt.CIT(C)/Approval. u/s 153D/2021-22/ 837

Dated: 15.07.2021
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To,
The Deputy Commissioner of Income-tax,
Central Circle-3, Jaipur.

Sub:-Approval u/s 153D of the I.T. Act, 1961 in the case of Sh. Sanjay Kumar Karnani (PAN-AGZPK3972A) for the AYs 2013-14 & 2014-15 (Karnani Group) - regarding-

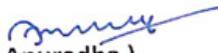
Ref:-Draft Asst. orders DCIT, Central Circle-3, Jaipur in F. No. 317 dated 13.07.2021

The draft assessment orders in the following cases submitted by you are hereby approved u/s 153D of the Income-tax Act, 1961.

S. No.	Name of the assessee	PAN	A.Y.	Returned income	Assessed income
1	Sh. Sanjay Kumar Karnani	AGZPK3972A	2013-14	Nil	Nil
2	--do--	--do--	2014-15	22,38,540/-	2,74,17,920/-

The approval reference shall duly be mentioned in the assessment orders and it should be ensured that the above orders are passed on ITBA well within time as per the Income Tax Act, 1961 and a compliance report may be sent within a period of 10 days along with copies of the assessment orders to this office for records.

Encls: Asstt. records in 2 Vol.


(Anuradha)

Joint Commissioner of Income-tax
Central Range, Jaipur.

संयुक्त आयुक्त

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संयुक्त आयकर आयुक्त, केन्द्रीय खण्ड

Joint Commissioner of Income-tax, Central Range,
कमरा नं. 403 चतुर्थ तल, जीवन निधि द्वितीय, एल.आई.सी. बिल्डिंग, अम्बेडकर सर्किल, जयपुर-302005
Room No. 403, 4th Floor, Jeevan Nidhi-II, LIC Building, Ambedkar Circle, Jaipur -302005
फोन/फैक्स: 0141-2941988

F.No. It.CIT(C)/Approval. u/s 153D/2021-22/ 838

Dated:16.07.2021

To,
The Deputy Commissioner of Income-tax,
Central Circle-3, Jaipur.

Sub:-Approval u/s 153D of the I.T. Act, 1961 in the case of Sh. Sanjay Kumar Karnani
(PAN-AGZPK3972A) for the AYs 2015-16 to 2018-19 (Karnani Group) -
regarding-

Ref:-Draft Asst. orders DCIT, Central Circle-3, Jaipur in F. No. 320 dated 13.07.2021

The draft assessment orders in the following cases submitted by you are hereby approved
u/s 153D of the Income-tax Act, 1961.

S. No.	Name of the assessee	PAN	A.Y.	Returned income	Assessed income
1	Sh. Sanjay Kumar Karnani	AGZPK3972A	2015-16	10,56,310/-	1,88,69,580/-
2	--do--	--do--	2016-17	10,26,740/-	2,42,25,650/-
3	--do--	--do--	2017-18	8,51,990/-	2,25,20,720/-
4	--do--	--do--	2018-19	14,85,340/-	3,04,53,690/-

The approval reference shall duly be mentioned in the assessment orders and it should be ensured that the above orders are passed on ITBA well within time as per the Income Tax Act, 1961 and a compliance report may be sent within a period of 10 days along with copies of the assessment orders to this office for records.

Encls: Asstt. records in 4 Vol.

(Anuradha)

Joint Commissioner of Income-tax
Central Range, Jaipur.



As is evident from the above approval so granted that the same was granted as per section 153D of the Act in the present case was granted by a consolidated letter covering multiple assessment years. The approval does not disclose any reference to the seized material, the appraisal report, or the draft assessment orders, nor does it contain any reasoning to demonstrate application of mind by the approving authority. This view was serviced as legal precedent of the Hon'ble Supreme Court in **ACIT vs. Serajuddin & Co. [2024] 163 taxmann.com 118 (SC)** which is after the decision relied upon by the Id. DR wherein the Apex Court held that approval u/s 153D is a *mandatory safeguard* and cannot be granted mechanically. Further, in **PCIT vs. Anuj Bansal [2024] 165 taxmann.com 3 (SC)**, Hon'ble Supreme Court upheld the finding that absence of application of mind by the approving authority renders the approval invalid. It has also been held by the Hon'ble Allahabad High Court in **PCIT vs. Sapna Gupta [2023] 147 taxmann.com 288 (All HC)**, that approval must be granted separately for *each assessment year*. Hon'ble Delhi High Court in **PCIT vs. MDLR Hotels (P) Ltd [2024] 166 taxmann.com 327 (Del HC)** and in **PCIT vs. Shiv Kumar Nayyar [2024] 163 taxmann.com 9 (Del HC)** quashed approvals granted in bulk for multiple assessments without application of mind. These judgments reinforce the principle that approval

under Section 153D is not a mere administrative ritual but a substantive safeguard, which must be exercised judiciously for each assessment year independently. That view was also consistently followed by the various benches of the ITAT for which reference was made to the decision of ITAT Delhi Benches in **Harish Bajaj vs. DCIT, ITA No. 2218 to 2223/Del/2023** and **Wave Industries Pvt. Ltd. vs. DCIT ITA 5241/Del/2015**, ITAT Pune in **Santosh Subhashappa Mukta vs. DCIT, ITA 18,19 & 20/PUN/2021**, where assessments framed on the basis of mechanical approvals u/s 153D were held to be invalid and quashed. The bench noted that as regards the contention of non-application of mind by the approving authority, at the outset, we note that the Hon'ble Orissa High Court in its judgment in the case of ACIT vs. Serajuddin & Co. (2023) 333 CTR (Ori) 228, considered a similar question of 'Approval', wherein the draft assessment orders were placed by the AO before the Id. Addl.CIT on 27/29.12.2010 for seven assessment years. The approval was granted by the Id. Addl. Commissioner for seven assessment years u/s 153D of the Act on 30.12.2010 by merely saying that the draft orders submitted by the officer in the above case for the seven assessment years are hereby approved. The Hon'ble Orissa High Court took note of this fact and quashed the

search assessment and decided the issue in favour of the assessee by holding as under:-

“22. As rightly pointed out by learned counsel for the Assessee there is not even a token mention of the draft orders having been perused by the Additional CIT. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like 'see' or 'approved' will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of section 158BG of the Act, it would equally apply to section 153D of the Act. There are three or four requirements that are mandated therein, (i) the AO should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind; (ii) the final approval must be in writing; (iii) The fact that approval has been obtained, should be mentioned in the body of the assessment order.

We also take note of the facts that when the revenue assailed the said judgment of Hon'ble High Court of Orissa, before the Hon'ble Supreme Court in ACIT vs. Serajuddin & Co. (SC) SLP (C) NO. 44989/2023, wherein the Division Bench of Hon'ble Supreme Court dismissed the said SLP by affirming the view taken by the Hon'ble High Court. The same is reproduced herein below :

“Delay condoned. Having regard to facts and circumstances of the case, we are not inclined to interfere in the matter. The Special Leave Petition is dismissed. Pending application(s) shall stand disposed of.”

During the course of hearing, Id. AR of the assessee further brought a decision of Hon'ble Delhi Tribunal in the case of Shri Dheeraj Choudhary VS ACIT in ITA No. 6158-6160/Del/2018 vide order dated 12.09.2025, wherein this issue was referred to the consideration of Hon'ble Third Member and outcome has been given in the favour of assessee.

Since the facts of the case on hand and the facts of the case laws as cited herein above on being consistent with the legal precedent of the case laws of the Hon'ble Supreme Court, the Hon'ble High Courts, and consistently applied by the coordinate benches of the Tribunal, we hold that the approval granted u/s 153D in the present case was accorded in a mechanical and consolidated manner, without due application of mind and without separate consideration of each assessment year. Such approval being invalid, the consequential assessment orders framed u/s 153A read with Section 153D for Assessment Years 2014-15 to 2019-20 cannot be sustained in law and are therefore quashed.

In result, the technical ground taken by the assessee is allowed for all these years.

14. The facts of the case in ITA Nos. 57 to 61/JP/2025 & 671 to 676/JP/2025 are similar to the case in ITA No. 56/JP/2025. As we have

heard both the parties and persuaded the materials available on record and based on that the bench has noticed that the issues raised by the assessee in this appeal ITA Nos. 57 to 61/JP/2025 & 671 to 676/JP/2025 are equally similar on set of facts and grounds as that of with 56/JP/2025. Therefore, it is not imperative to repeat the facts and various grounds raised. Hence, the bench feels that the decision taken by us in ITA No. 56/JP/2025 for Assessment Year 2014-15 shall apply mutatis mutandis in the case of Shri Ambika Garments & Sanjay Kumar Karnani in ITA Nos. 57 to 61/JP/2025 & 671 to 676/JP/2025 for the Assessment Years 2014-15 to 2019-20.

In the result, in all the appeals as referred above the technical ground raised by the assessee is allowed for all these years and thereby these appeals filed by the assessee allowed.

Now coming to the merits of the disputes

15. In Ground No. 2, 3 and 4 in ITA No.56/JPR/2025 and Ground No. 2, 3, 4 and 5 in ITA No. 671/JPR/2025 (AY 2014-15) appellants have contested the additions on account of unexplained capital and unsecured loans of Rs.3,80,43,718 in the hands of Shri Ambika Garments and 2,43,50,806/- made by AO, for which partial relief has been granted by CIT(A).

16. The brief facts as culled out from the records are that while search digital data maintained in the tally software was found from the premises of appellant, wherein entities in the name of “Hari Om” and “Jai Shri Ram” was maintained. In the statements recorded u/s 132(4), it was admitted that “Hari Om” data pertains to Shri Sanjay Kumar Karnani and “Jai Shri Ram” pertains to Shri Ambika Garments. The said tally data was starting from 01.01.2014, and the same was maintained calendar year wise. While assessment proceeding and appellate proceeding before CIT(A), the assessee - appellants taken a plea that said tally data is not reliable and not maintained systematically and crept with various fundamental errors which make it completely unreliable.

On the other hand Id.AO considered the said tally data as real affairs of the assessee, however, looking into the fact that said data is not maintained financial year wise and stock records are not maintained coupled with various errors and inconsistencies, assessee himself admitted, the tally data can be considered as not reliable and liable to be rejected u/s 145(3) of the Act. On the basis of these tally data figures, trading results have been estimated by way of making addition on account of unrecorded Gross profits along with additions of capital and unsecured loans as appearing on 01.01.2014. While appeal before CIT(A), Ld.CIT(A)

given the partial relief for the amounts already recorded in regularly maintained books of accounts and confirmed the remaining addition for which appellants are before us.

17. While hearing of the appeal the assessee filed a detailed submission which is extracted here in above. From that we note that the following written submissions in ITA No. 671/JP/2025:

***“Facts:** The AO observed that during the search proceedings, the first balance sheet for the period from 01.01.2014, to 31.12.2014, of the firm M/s Hari Om, which was seized, indicated a Prop. capital of ₹ 1,08,36,565/- and unsecured loans of ₹ 1,34,53,241/- and ₹ 61,000/- The AO inquired why these amounts should not be treated as undisclosed cash credits.*

In response, the assessee submitted that adding the amounts of capital and unsecured loans based on the tally data was unjustified due to the numerous errors and inconsistencies present in the data. The assessee asserted that the tally data lacked independent validity for income determination and required significant corrections. Despite this explanation duly supported by the evidence and instances, the AO disregarded the assessee's contention and the tally data found in the name of “Hari Om” were considered as the real books of account of the assessee by observing as under:

5.2 The reply filed by the assessee has been examined. The assessee submitted a routine reply that Hari Om tally was prepared by some staff

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member to calculate the incentive to be distributed to the various staff member through leading staff person. The aforesaid contention of the assessee is not found acceptable as the same is routine in nature and without any basis. Therefore, the contention that these are not books of accounts and merely prepared by some staff members to calculate the incentive is just an afterthought to escape from the rigor of income tax. Moreover, the volume of transactions are huge, therefore the contention that this extensive, detailed and laborious exercise is not representing the real affairs and just prepared by some staff member only to calculate incentive is clearly unimaginable.

18. As is evident that the tally data so found in the name of "Hari Om" was considered as the real books of accounts of the assessee but pointing out certain defects in the same, the alleged books of accounts were rejected u/s 145(3) and profits were estimated based by holding as under:

5.7 In view of aforesaid specific defects in the books of accounts, these books are not reliable or otherwise not capable of deducing the correct profitability of M/s Shree Ram Enterprises, therefore, provisions of Section 145(3) are invoked and the books of assessee are hereby rejected. Since the books have been rejected, profits are to be estimated u/s 144 on the basis of best judgment.

19. We also note that Ld. AO pointed out that the opening unsecured loans appearing in M/s Hari Om appeared to be merely the assessee's own funds, disguised as unsecured loans, with no satisfactory explanation of their source. The seized tally data showed unsecured loans of Rs. 1,20,13,344/- as of 31.12.2014, compared to an opening balance of Rs. 1,34,53,241/- as of 01.01.2014. As a result, the AO made an addition of Rs. 2,43,50,806/- to the assessment on account of unexplained opening capital and unsecured loans by holding as under:

6.3 The assessee contented that the capital balance appearing in the regular books of accounts of Shri Ram Enterprises should be reduced from the opening capital balance as per 'Hari Om'. The same is not found

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acceptable as capital appearing in regular books of accounts of Shree Ram Enterprises is not having the similar balance as appearing in 'Hari Om' and also entries in the account are not matching.

6.4 Vide Notice u/s 142(1) dated 05.01.2021, the assessee was asked to give explanation with respect to Unsecured Loans of Rs.1,20,13,344/- appearing as on 01.01.2014, in response to which assessee made the submission reproduced as above. The submission made by the assessee is not acceptable because the assessee is to prove the identity, creditworthiness and genuineness of unsecured loans appearing in 'Hari Om', which the assessee fails to prove. The further contention that balance of unsecured lenders appearing in the regular books of Shree Ram Enterprises should be reduced is unacceptable in the absence of evidence to prove that the parties of unsecured loans appearing in Hari Om and Shree Ram Enterprises are the same. In view of this, it is clear that amount shown as unsecured loan in Hari Om is nothing but assessee's own money shown in the garb of unsecured loans, source of which remains unexplained. As per seized tally data of M/s Hari Om as on 31.12.2014, unsecured loans is of Rs.1,20,13,344/- whereas opening unsecured loans as on 01.01.2014 is of Rs.1,34,53,241/-.

6.7 The balances escalated through cash not available out of withdrawals are surely unexplained. Examination of material seized during the search proceedings clearly reveals that in Assessment Year 2014-15, the total cash withdrawals were Rs.7,50,000/- as against the cash introduction of Rs.8,11,000/- leaving with unexplained increase in balance by Rs.61,000/-. Therefore, the same is added to the total income of the assessee for A.Y. 2014-15.

6.8 Therefore, unexplained capital of Rs.1,08,36,565/- (48622375-7524239-24618559-5643011), opening unexplained capital in form of unsecured loan Rs.1,34,53,241/- and Rs.61,000/- cash received in excess of withdrawal remain unexplained, hence, the amount of Rs.2,43,50,806/- (10836565+13453241+61000) is added to the total income of the assessee for A.Y. 2014-15. Penalty proceedings u/s 271(1)(c) of the Act is hereby initiated for concealed the particulars of income. The

assessee accepted loan of Rs.1,34,53,241/- in cash and made cash addition of Rs.8,11,000/- totalling to Rs.1,42,64,241/- is clear violation of provisions of section 269SS of the Act. Therefore, proposal of initiating of penalty proceedings u/s 271D for violation of provisions of section 269SS of the Act is being sent to the Joint Commissioner of Income Tax, Central Range- Jaipur.

(Addition of Rs.2,43,50,806/-)

20. We have heard the parties on the merits of the disputes and also gone through the written submission and orders of the lower authority. The bench noted that on the issue of addition made u/s. 68 of the Act based on the tally data which the Id. AO accepted that not complete and correct in all respects. On the issue of addition of Rs. 1,08,36,565/- to the opening capital made by the AO based on the tally data, the assessee has

consistently explained that the tally data was a consolidated record created by the staff primarily for calculating staff incentives. This data was not intended to represent the true financial position of the business and contained numerous errors and inconsistencies and this fact is accepted by the Id. AO. Specifically, entries had been inaccurately posted, some directly to the proprietor's account, and several outstanding balances were either un-posted or not properly written off. Therefore, the tally data was essentially a rough draft and lacked reliability for accurately determining income. As is evident that the assessee maintains comprehensive books of accounts, including a cash book, ledger, sales journal, purchase journal etc. All transactions, including purchases, sales, and expenses, are fully vouched and verifiable. These accounts were subjected to a tax audit, which confirms their accuracy. The AO, however, did not point out any defects in these regular accounts, nor were there any additions based on the regular accounts. Ld. AO proceeded to make the addition purely based on the seized tally data, which was incomplete and rife with errors. This data, comprising records of multiple businesses, was not a reliable basis for making additions. Furthermore, the AO did not find any defects or discrepancies in the regular books of accounts. The tally data, created for staff incentive calculation, was not intended to be used for income

determination. On this issue Id. AR of the assessee serviced the decision of CIT vs. H. S. Rathi (2015) 374 ITR 164 (Delhi) wherein it has been held that the addition made on the basis of inaccurate and incomplete data could not be sustained. The data used for the addition must be accurate and reliable for it to be considered valid. Even in the case of CIT vs. Smt. S. V. P. S. A. K. & Co. (2001) 251 ITR 646 (Kar), the Hon'ble High court observed that the AO must apply his mind to the accounts and should not rely solely on discrepancies in incomplete data. The correctness of entries in the books of accounts needs to be verified in light of the entire evidence. Not only that the Apex court in the case of CIT vs. Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC) held that the Supreme Court emphasized that any addition to income should be based on clear and cogent evidence and not on hypothetical or incomplete data. On this incomplete data in the case of CIT vs. M/s. D. S. S. Industries (2017) 400 ITR 568 (Cal) the High Court ruled that if the data relied upon for making an addition is inconsistent and flawed, such additions cannot be sustained. Not only that record reveals that Id. AO made an addition of ₹1,08,36,565/- which is the opening balance of the capital and ₹ 1,34,53,241/- which is also an opening balance of unsecured loans. In the assessment order, Ld.AO has also termed these amounts as opening capital and opening unsecured loans.

The finding so rendered by the Ld.AO makes it evident that the said amount was opening balance of the alleged capital. Similarly at Page-10, Para 6.4 the opening balance of alleged unsecured loan has been taken by recording a similar finding reproduced hereunder:

identity, creditworthiness and genuineness of unsecured loans appearing in 'Hari Om', which the assessee fails to prove. The further contention that balance of unsecured lenders appearing in the regular books of Shree Ram Enterprises should be reduced is unacceptable in the absence of evidence to prove that the parties of unsecured loans appearing in Hari Om and Shree Ram Enterprises are the same. In view of this, it is clear that amount shown as unsecured loan in Hari Om is nothing but assessee's own money shown in the garb of unsecured loans, source of which remains unexplained. As per seized tally data of M/s Hari Om as on 31.12.2014, unsecured loans is of Rs.1,20,13,344/- whereas opening unsecured loans as on 01.01.2014 is of Rs.1,34,53,241/-.

21. It is a well-established principle of law that opening balances cannot be added to income u/s 68 of the Act. This provision is specifically designed to address the issue of unexplained credits in the books of account for the current financial year, and not for balances carried forward from previous years. This issue is decided in the case of **CIT vs. H.S. Rathi (2015) 374 ITR 164 (Delhi)**: The Delhi High Court held that additions u/s 68 must be made for credits appearing during the year under consideration. The court clarified that opening balance, which are carried forward from

previous years, cannot be subject to additions u/s 68. Similarly, in the case of **CIT vs. G. K. K. Enterprises (2002) 257 ITR 371 (Guj)** the **Gujarat High Court held that** Section 68 pertains only to unexplained credits introduced during the year and not to opening balances. The addition u/s 68 should be restricted to credits during the financial year under review and also in the case of **CIT vs. Orient Trading Co. (2001) 248 ITR 258 (Cal)**. Even the co-ordinate bench of Jaipur ITAT in the case of DCIT Vs Alok Malpani in ITA No.334/JP/2022 vide order dated 08.12.2022 taken a similar view.

Furthermore, the AO did not raise any issues regarding new unsecured loans taken during the year under consideration, and these were deemed genuine. Therefore, if there were any discrepancies or issues, they should have been addressed with respect to fresh credits introduced during the current year, not with opening balances. We also note that on one hand, books of accounts have been rejected and on the other hand falling on the very same set of books to make the addition u/s 68. As submitted above, at Page-4, Para-5.5 Ld. AO has pointed out the several defects in the books of accounts viz. not maintained financial year wise, not maintaining any stock records thus taking the stock value at the end of year on presumption only and **any other deficiencies pointed out**

by the assessee and admitted by the Ld.AO and on the basis of these defects and deficiencies, the books of accounts were rejected u/s 145(3). While doing so Id. AO observed that all bank transactions related to purchases and sales were recorded both in the books of Shri Ram Enterprises and Hari Om, including instrument numbers. Despite this, the AO relied on the tally data seized during the search proceedings to conclude that the assessee was involved in unaccounted sales and purchases. Consequently, the AO deemed the regular books of account maintained under the trade name Shri Ram Enterprises to be unreliable and not reflective of the true profit of the assessee. Having done so of rejecting the books of account u/s 145(3), the AO estimated the average gross profit rate at 10.09% based on best judgment, resulting in a trading addition of Rs. 8,28,572/-. This estimation was made u/s 144, which pertains to assessments based on the best judgment of the AO. Therefore, once that books were not relied upon no separate addition u/s 68 can be made, even if the assessee has not fully discharged the burden of proof concerning amounts shown in the books of account. This principle is established in several judicial precedents as held by our Rajasthan High Court in the case of **CIT Vs. G.K. Contractor 19 DTR 305 (Raj)** wherein the Hon'ble Jurisdictional High Court held that when net profit is estimated

by the AO by rejecting the book result u/s 145(3) of the Act, no separate addition can be made on account of cash creditor the finding reads as under:

“AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee's books of account by invoking the provisions of section 145(3), no separate addition can be made on account of cash credit u/s.68, even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account”

From the decision compilation as serviced by the assessee by relying in the case of Dulla Ram vs. CIT (2014) 42 taxmann.com 349 (P&H High Court) we note that Hon'ble High court reaffirmed the principle that when the AO resorts to estimating profit after rejecting books of account, it encompasses all potential discrepancies, including unexplained credits. The estimation should be deemed sufficient to address the income and no additional separate addition under Section 68 is warranted unless clear evidence of unexplained credits is presented. Once the AO has rejected the books of account u/s 145(3) and estimated the profit, such estimation should account for all discrepancies, including those related to unexplained credits. No separate addition u/s 68 is appropriate in this context unless specific and concrete evidence of unexplained cash credits is provided. The principles established in the cases of G. K. Contractor and Dulla Ram

reinforce that the comprehensive estimation of profit precludes additional, independent additions u/s 68. A Similar view has been taken in the case of Malpani House of Stones Vs CIT (2003) 131 Taxman 470 (Raj HC).

Even otherwise the addition of Rs.1,08,36,565/- shown as the opening balance of Raghav Karnani Minor son of Mr. Sanjay Karnani capital u/s 68 of the Act considering the same as unexplained capital. Section 68 of the act casts a duty upon the assessee to explain the source of any sum found credited in the books of accounts. In the instant case, the assessee duly explained that the sum so found credited is the opening balance of Propertor's capital account, which is carried forwarded balance of earlier years. Under these circumstances, the onus casted upon the assessee stood discharged once it was explained and resultantly the addition so made in the hands of the assessee cannot be sustained. Record also reveals that the addition has been made on account of a ledger account appearing in the "Hari Om" in the name of Raghaw Karnani, who is minor son of the assessee, treating the same as unexplained capital account of Shri Ram Enterprises, proprietorship concern of Shri Sanjay Kumar Karnani. Therefore, the addition of Rs.1,08,36,565/- on account of alleged opening capital and addition of Rs.1,34,53,241/- are carried forwarded balances from the prior period, thus not involving any amount

credited in the books of accounts in the current year, therefore, no addition for the same is required to be made in AY 2014-15 and thereby directed to be delete.

From the records the bench noted that the nature of the entries recorded in the Raghaw Karnani account, the impugned ledger account, which was found and seized, pertains to the period from January 1, 2014 to December 31, 2017. Over the span of these four years, the account solely consists of book entries, with no evidence of any actual flow of funds. This clearly indicates that the account is merely a notional record and does not reflect any real transfer of money or funds by the assessee to constitute any alleged unexplained capital. The nature of entries posted in the said account clearly highlights that opening balance is nothing but the amount lying accumulated in the account due to certain book entries passed without involving any actual flow of the funds, therefore, it cannot be construed as a basis for any addition under section 68 of the Income Tax Act. The bench also noted the opening amount punched in the tally were not indicating any actual balances or financial positions of the assessee. As the tally so maintained was full of errors are omissions, some of those instances as pointed out in the written submission which was not controverted are as under :

- (a) *The accurate and correct quantification of closing stock is crucial in the preparation of the books of accounts, as it plays a direct role in the calculation of the overall profitability of a business. The value of closing stock impacts on the profit and loss statement, which, in turn, affects the balances in the capital account. Any discrepancies or errors in determining the closing stock can lead to distorting the profits and, consequently, the capital balances. To constitute a books of account complete for the purpose of deriving the profits, it is essential that financial year wise closing stock figures are available, involving physical stock counts, valuation processes and then the closing stock is reflected in the books to ensure correct quantification of profits. In the tally data of "Hari Om" so found and impounded, it is evident that the inventory details are not maintained and neither the same was carried out. Instead of detailed records reflecting the actual stock, only an imaginary single figure was "punched in" that too at the end of December. This method, rather than relying on an accurate and methodical approach to stock valuation, represents a superficial entry that does not provide any real or meaningful information about the actual state of the stock and in turn actual profitability, making the entire data as deaf and dumb for the purpose of determining the profitability of the assessee or to assume that amount so recorded in the capital accounts or unsecured loans constitute the real affairs of the assessee.*
- (b) *The unauthenticity and non-reliability of Hari Om is further evident from the fact that the closing balance sheet of Hari Om is depicting the cash in hand of Rs.27,55,263.35/-, whereas during the course of search, no such cash was found.*
- (c) *The rule of classification has not been followed properly, like account of Raghaw Karnani classified under capital, which is purely a notional account. Similarly, Mahesh Munhdra account which is towards purchases thus constituting creditor classified under unsecured loans and in some period the very same account has been classified under capital account. Same is the case with Ramesh Mundhra Account, who is nor the proprietor still his account has been wrongly classified under Capital account. In this regards, screenshot of tally is placed hereunder:*

Balance Sheet		Hari Om 2016 - (from 1-Jan-2016) updated		GRIFFIN 2	
		Hari Om 2016 - (from 1-Jan-2016) updated as at 31-Dec-2017		Hari Om 2016 - (from 1-Jan-2016) updated as at 31-Dec-2017	
Liabilities				Assets	
Capital Account		2,96,98,860.40		Fixed Assets	
				53,21,305.00	
MAHESH KUMAR MUNDHARA	21,99,357.40			LAND & BUILDING	
Old Difference				A/c A/c	2,21,939.00
Opening Balance				CAMERA+INTERCOM	1,62,702.00
Raghaw Karnani	2,53,00,452.06			Car A/c	10,55,966.00
RAMESH JI MUNDHRA	21,99,051.00			COMPUTER A/C	68,305.00
Current Liabilities	2,50,56,400.22			ELECTRIC LIGHT +FAN	1,76,335.00
Unsecured Loans	1,95,45,400.22			Furniture A/c	28,82,065.00
R K G Jaipur	30,00,000.00			GENERATOR A/C	1,22,472.00
Suspense				HONDA SCOOTY	10,000.00
Vimla Devi	25,11,000.00			HYDRO LIFT A/C	78,038.00
Current Liabilities	8,04,85,503.38			INVERTOR A/C	27,904.00
Duties & Taxes				Noble Lift	3,39,453.00
Provisions	17,00,000.00			Tempo A/c	1,24,936.00
Sundry Creditors	7,87,85,503.38			WATER FILTER MACHINE A/C	51,190.00
				Current Assets	12,97,28,228.06
				Closing Stock	4,26,51,563.00
				Loans & Advances (Asset)	1,06,60,994.00
				Sundry Debtors	7,59,09,963.43
				Cash-in-hand	3,53,838.35
				Bank Accounts	1,51,689.28
				Profit & Loss A/c	1,91,231.00
				Opening Balance	
				Current Period	(11,81,53,405.40)
				Less: Transferred	1,83,44,636.40

- (d) The payment of salary to staff shown as Profit and Loss appropriation account.
- (e) An account titled as "Old Difference" carried in the Hari Om and shown under the category of capital account. Similarly, suspense account also shown in the Hari Om
- (f) The aforesaid instances further go on to show that Hari Om data was full of error and not maintained systematically and accounts classified under capital were not strictly capital accounts in the nature because the assessee being a proprietorship concern, only one capital account can be there and the same was Sanjay Karnani Person account maintained in the very same tally (enclosed in paper book at Page-10), thus finding of Ld.AO that Raghaw Karani account is capital account of assessee is unreasonable and contrary to the correct facts of the case.

So far as alleged opening loan of Rs.1,34,53,241/- is concerned, the same consists of opening balance of alleged loan punched in the following names:

Closing Balance	
Credit	
Ajit Ji Advocate	967832.00
Jain Vastralaya	3628051.51
MAHESH JI MUNDHRA	5643011.00
Milan Rathi	413020.00

<i>Narayani Bhuva Ji</i>	<i>50855.00</i>
<i>RENU KARNANI</i>	<i>1043552.38</i>
<i>RITIKA KARNANI</i>	<i>272819.18</i>
<i>Sapna Karnani</i>	<i>1185157.55</i>
<i>Sharda Devi Karnani</i>	<i>157305.00</i>
<i>SUMAN BAJAJ</i>	<i>40054.00</i>
<i>SURESH SWAMI</i>	<i>51583.00</i>
<i>Grand Total</i>	<i>1,34,53,240.62/-</i>

From the submission made we note that the names listed above shows that these were accounts created in the name of family members and amounts have been shown therein by way of book entries. Certain accounts are towards expense payable to advocate, which is in fact in the nature of creditor. Similarly, Jain Vastralay is a supplier of clothes thus in the nature of sundry creditor. Similarly, Mahesh Mundhra account is also towards purchases made, thus not falling under category of unsecured loans to make any addition u/s 68 of the Act. Therefore, considering the facts and judicial precedent we hold that the addition of Rs. 1,08,36,565/- (opening capital) and Rs. 1,34,53,241/- (unsecured loans) represent balances from earlier financial years and cannot be added in the year under consideration as per provision of section 68 of the Act and therefore,

the same is directed to be deleted and thereby Ground No. 2, 3 and 4 in ITA No.56/JPR/2025 and Ground No. 2, 3, 4 and 5 in ITA No. 671/JPR/2025 (AY 2014-15) are allowed.

22. Vide Ground No. 3, 4 and 5 of ITA No. 58/JP/2025, Ground No. 3 and 4 of ITA No.59/JP/2025 and Ground No. 3 of ITA No.60/JP/2025, wherein the above named assessee – appellant contested the additions made on account of Race Kids wear and Gopala Garments.

The brief facts related to the disputes are that while search proceedings, several loose papers were discovered at the residential premises of Shri Ramesh Kumar Mudhra, (Partner of assessee firm) located at H/3 – Mahamandir, Nathji Ka Asan, Outside Second Pole, Jodhpur. Among these documents was a page titled "M/s. Gopala Garments," covering the period from 01.01.2016 to 31.12.2017. This document was seized and was marked as Exhibit-17 of Annexure-AS (Party No. A-1). Other pages were found titled "M/s. Race Kids Wear, Delhi," which pertains to the financial activities and transactions for the period from 01.01.2016 to 31.12.2017. These documents were seized and were marked as Exhibit-17 of Annexure-AS (Party No. A-1) and are placed on record at Page-2-6 of Paper Book-II filed by the assessee.

In the assessment proceeding as well as in the appellate proceeding assessee has taken a plea that these documents do not pertain to the appellant firm and these documents does not constitute books of accounts to make any addition u/s 68. An alternative plea was taken that if these are considered belonging to the assessee firm, then no separate addition for these is required as Jai Shree Ram is the consolidated data and no such incriminating and corroborative evidence was found to suggest that these documents have any standalone existence.

On this issue the Id. AR of the assessee submitted that while search proceedings, several loose papers were discovered at the residential premises of Shri Ramesh Kumar Mudhra, located at H/3 – Mahamandir, Nathji Ka Asan, Outside Second Pole, Jodhpur. Among these documents was a page titled "M/s. Gopala Garments," covering the period from 01.01.2016 to 31.12.2017. This document was seized and is recorded as Exhibit-17 of Annexure-AS (Party No. A-1) whose image reads as under :

Gopala Garments(1-1-2015/31-12-2015)			
Delhi			
Balance Sheet			
1-Jan-2016 to 31-Dec-2016			
Liabilities	as at 31-Dec-2016	Assets	as at 31-Dec-2016
Capital Account	36,01,852.00	Fixed Assets	1,50,267.00
Dev Gattani	17,60,405.00	Machinery	1,50,267.00
Maheshji Mundhra	9,20,724.00		
Rameshji Mundhra	9,20,723.00	Current Assets	35,77,585.00
Loans (Liability)		Closing Stock	23,95,000.00
Current Liabilities	1,26,000.00	Sundry Debtors	10,08,050.00
Sundry Creditors	8,000.00	Cash-in-hand	1,59,535.00
Outstanding Factory Rent	36,000.00	Advance Anurag Emordary	5,500.00
Outstanding Master	70,000.00	Advance Elastic	9,500.00
Outstanding Salary	12,000.00		
Profit & Loss A/c			
Opening Balance			
Current Period	10,12,770.00		
Less: Transferred	10,12,770.00		
Total	37,27,852.00	Total	37,27,852.00

Gopala Garments(1-1-2015/31-12-2015)			
Delhi			
Profit & Loss A/c			
1-Jan-2016 to 31-Dec-2016			
Particulars	1-Jan-2016 to 31-Dec-2016	Particulars	1-Jan-2016 to 31-Dec-2016
Opening Stock	20,35,000.00	Sales Accounts	1,11,92,358.00
Purchase Accounts	64,01,197.00	Purchase Return	(-)12,306.00
Label Boxes	3,55,658.00	Sales	1,13,41,474.00
Purchases	60,45,539.00	Trade Discount	(-)1,36,720.00
Direct Expenses	29,44,801.00	Direct Incomes	3,031.00
Dying	1,16,864.00	Discount Recevd	3,031.00
Elastic	54,370.00	Closing Stock	23,95,000.00
Embordary & Print	1,75,231.00		
Kajbution	1,25,100.00		
Labour Payment	15,80,733.00		
Master	1,50,298.00		
Material	4,47,509.00		
Overlock	43,372.00		
Press Man	2,14,324.00		
Teen Silai	37,000.00		
Gross Profit c/o	22,09,391.00		
	1,35,90,389.00		
Indirect Expenses	11,96,621.00	Gross Profit b/f	22,09,391.00
Depreciation	16,696.00		
Factory Electricity	1,44,000.00		
Factory Rent	2,16,000.00		
Indirect Expenses	18,949.00		
Interest on Capital	2,78,472.00		
Janerater & Desile	11,260.00		
Machine Repair	31,090.00		
Other Expenses	70,835.00		
Staff Salary	4,09,319.00		
Nett Profit	10,12,770.00		
Total	22,09,391.00	Total	22,09,391.00

Liabilities		as at 31-Dec-2017	Assets		as at 31-Dec-2017
Capital Account		51,99,951.00	Fixed Assets		1,44,708.00
Dev Gattani	25,41,912.00		Machinery	1,44,708.00	
Maheshji Mundhra	13,29,020.00				
Rameshji Mundhra	13,29,019.00		Current Assets		68,50,665.00
Loans (Liability)			Closing Stock	39,25,000.00	
Current Liabilities		17,95,422.00	Sundry Debtors	27,99,840.00	
Duties & Taxes	98,457.00		Cash-in-hand	1,25,825.00	
Sundry Creditors	16,06,965.00				
Outstanding Kejbuttion	40,000.00				
Outstanding Master	50,000.00				
Profit & Loss A/c					
Opening Balance					
Current Period	11,91,238.00				
Less: Transferred	11,91,238.00				
Total		69,95,373.00	Total		69,95,373.00

Similarly, during the course of search several loose papers were discovered at the residential premises of Shri Ramesh Kumar Mudhra, located at H/3 – Mahamandir, Nathji Ka Asan, Outside Second Pole, Jodhpur. Among these documents were pages titled "M/s. Race Kids Wear, Delhi," which pertained to the financial activities and transactions for the period from 01.01.2016 to 31.12.2017. These documents were seized and are officially recorded as Exhibit-17 of Annexure-AS (Party No. A-1). For reference, an image copy of these documents reads as under:

RACE KIDS WEAR
DELHI

Balance Sheet
1-Jan-2016 to 31-Dec-2016

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Liabilities		as at 31-Dec-2016	Assets		as at 31-Dec-2016
Capital Account		87,67,300.00	Fixed Assets		2,48,550.00
Maheshji Mundhra	28,18,040.00		Machinery	2,48,550.00	
Manish Gattani	19,40,611.00				
Rameshji Mundhra	40,08,649.00		Current Assets		1,12,83,900.00
		10,53,150.00	Closing Stock	55,75,000.00	
Loans (Liability)			Loans & Advances (Asset)	30,000.00	
Babulaji Soni	5,60,000.00		Sundry Debtors	48,86,130.00	
Commatai	(-)4,41,340.00		Cash-in-hand	7,68,520.00	
Kishan Aggarwal(Jodhpur)	5,38,815.00		Advance Labour	24,250.00	
Loan (Rashmi Soni)	3,95,675.00				
		17,12,000.00			
Current Liabilities					
Sundry Creditors	16,60,000.00				
Outstanding Master	52,000.00				
Profit & Loss A/c					
Opening Balance					
Current Period	23,04,074.00				
Less: Transferred	23,04,074.00				
Total		1,15,32,450.00	Total		1,15,32,450.00

RACE KIDS WEAR DELHI			
Profit & Loss A/c 1-Jan-2016 to 31-Dec-2016			
Particulars	1-Jan-2016 to 31-Dec-2016	Particulars	1-Jan-2016 to 31-Dec-2016
Opening Stock	45,90,000.00	Sales Accounts	3,44,46,193.00
Closing Stock	45,90,000.00	Clothes Sales	20,83,136.00
Purchase Accounts	2,25,95,056.00	Cutting	32,55,959.00
Goods Purchas	50,62,419.00	Purchase Return	(-)1,62,570.00
Label & Boxes	8,44,634.00	Sales	3,16,19,175.00
Purchase	1,69,84,734.00	Trade Discount	(-)23,49,507.00
Sales Return	(-)2,96,731.00	Direct Incomes	1,18,955.00
Direct Expenses	77,52,121.00	Discount Received	1,18,955.00
Dying	2,54,622.00	Closing Stock	55,75,000.00
Elastic	62,440.00	Closing Stock	55,75,000.00
Embordary & Prints	8,31,538.00		
Fabricater	7,52,680.00		
Kajbuton	4,07,200.00		
Labour Payment	30,74,354.00		
Master	3,09,158.00		
Material	14,43,954.00		
Overlock	93,040.00		
Pressman	5,12,900.00		
Teen Selai Machine Exp	10,235.00		
Gross Profit c/o	52,02,971.00		
	4,01,40,148.00		4,01,40,148.00
Indirect Expenses	28,98,897.00	Gross Profit b/f	52,02,971.00
Depreciation	27,620.00		
Factory Electricity	1,40,230.00		
Factory Rent	3,77,000.00		
Indirect Expenses	71,230.00		
Interest on Capital	7,63,301.00		
Interest on Loan	2,23,584.00		
Janarater & Diesel	22,720.00		
Machine Repair	45,653.00		
Other Expenses	69,279.00		
Other Staff Salary	7,85,550.00		
Packing Charges	2,27,980.00		
Travelling Exp.	1,44,750.00		
Nett Profit	23,04,074.00		
Total	52,02,971.00	Total	52,02,971.00

RACE KIDS WEAR DELHI			
Profit & Loss A/c 1-Jan-2016 to 31-Dec-2016			
Particulars	1-Jan-2016 to 31-Dec-2016	Particulars	1-Jan-2016 to 31-Dec-2016
Opening Stock	45,90,000.00	Sales Accounts	3,44,46,193.00
Closing Stock	45,90,000.00	Clothes Sales	20,83,136.00
Purchase Accounts	2,25,95,056.00	Cutting	32,55,959.00
Goods Purchas	50,62,419.00	Purchase Return	(-)1,62,570.00
Label & Boxes	8,44,634.00	Sales	3,16,19,175.00
Purchase	1,69,84,734.00	Trade Discount	(-)23,49,507.00
Sales Return	(-)2,96,731.00	Direct Incomes	1,18,955.00
Direct Expenses	77,52,121.00	Discount Received	1,18,955.00
Dying	2,54,622.00	Closing Stock	55,75,000.00
Elastic	62,440.00	Closing Stock	55,75,000.00
Embordary & Prints	8,31,538.00		
Fabricater	7,52,680.00		
Kajbuton	4,07,200.00		
Labour Payment	30,74,354.00		
Master	3,09,158.00		
Material	14,43,954.00		
Overlock	93,040.00		
Pressman	5,12,900.00		
Teen Selai Machine Exp	10,235.00		
Gross Profit c/o	52,02,971.00		
	4,01,40,148.00		4,01,40,148.00
Indirect Expenses	28,98,897.00	Gross Profit b/f	52,02,971.00
Depreciation	27,620.00		
Factory Electricity	1,40,230.00		
Factory Rent	3,77,000.00		
Indirect Expenses	71,230.00		
Interest on Capital	7,63,301.00		
Interest on Loan	2,23,584.00		
Janarater & Diesel	22,720.00		
Machine Repair	45,653.00		
Other Expenses	69,279.00		
Other Staff Salary	7,85,550.00		
Packing Charges	2,27,980.00		
Travelling Exp.	1,44,750.00		
Nett Profit	23,04,074.00		
Total	52,02,971.00	Total	52,02,971.00

RACE KIDS WEAR DELHI			
Profit & Loss A/c 1-Jan-2017 to 31-Dec-2017			
Particulars	1-Jan-2017 to 31-Dec-2017	Particulars	1-Jan-2017 to 31-Dec-2017
Opening Stock	55,75,000.00	Sales Accounts	4,11,93,041.00
Closing Stock	55,75,000.00	Clothes Sales	49,05,261.00
Purchase Accounts	2,79,30,297.00	Commision	(-)68,900.00
Goods Purchas	34,40,146.00	Purchase Return	(-)2,31,054.00
Label & Boxes	10,81,220.00	Sales	3,97,91,266.00
Purchase	2,37,46,262.00	Trade Discount	(-)32,03,532.00
Sales Return	(-)3,37,331.00	Direct Incomes	1,05,988.00
Direct Expenses	79,29,770.00	Discount Received	1,05,988.00
Bag	3,75,000.00	Closing Stock	62,80,000.00
Dhaga Cutting & Id Lagwai (Outer Side)	2,94,434.00	Closing Stock	62,80,000.00
Dying	32,108.00		
Elastic	2,600.00		
Embordary & Prints	1,64,327.00		
Fabricater	99,666.00		
Kajbuton	4,67,650.00		
Labour Payment	33,51,806.00		
Master	3,91,422.00		
Material	17,33,597.00		
Mukhiya Commision	2,58,300.00		
Overlock	1,24,670.00		
Pressman	6,34,190.00		
Gross Profit c/o	61,43,962.00		
	4,75,79,029.00		4,75,79,029.00
Indirect Expenses	33,23,320.00	Gross Profit b/f	61,43,962.00
Accounting Fee	25,500.00		
Depreciation	28,687.00		
Factory Electricity	2,20,222.00		
Factory Rent	3,90,000.00		
Indirect Expenses	56,750.00		
Interest on Capital	7,68,155.00		
Interest on Loan	1,58,231.00		
Intrest on Commati	38,560.00		
Janarater & Diesel	10,092.00		
Machine Repair	35,870.00		
Other Expenses	1,17,914.00		
Other Staff Salary	8,19,380.00		
Packing Charges	4,68,334.00		
Stationery	3,500.00		
Travelling Exp.	1,82,125.00		
Nett Profit	28,20,642.00		
Total	61,43,962.00	Total	61,43,962.00

When the assessee asked to explain various points related to the seized papers, including opening stock, opening capital, unsecured loans, creditors, and profit & loss statements. In response, the assessee

submitted a reply on 12.04.2021, indicating that during the search, Shri Ramesh Kumar Mundhra was confronted with these loose papers. He stated in response to Q. 33 from his statement recorded on 02.10.2018, that M/s. Race Kids Wear, Delhi, and Gopala Garments do not belong to him. He claimed these businesses belong to his relatives, who were new to the business and thereby was for making them assistance without expecting anything in return. Even Shri Mundhra's statements were accepted during the search without objections or follow-up questions. Additionally, no other evidence was found during the search to link these firms to the assessee or its partners. Importantly, no digital data or other materials related to Gopala Garments and Race Kids Wear were found, apart from the contested profit and loss statements. But Id. AO reviewed the response and rejected the assessee's claim, stating that since the documents were found in the assessee's possession, it did not prove they did not belong to him. The AO also argued that the affairs of Gopala Garments and Race Kids Wear were already included in Jai Shree Ram, but the documents did not match the tally data for that firm. Consequently, the AO disregarded the assessee's explanations and added unsecured loans of ₹10,53,150 from Race Kids Wear as unexplained cash credits under Section 68 of the Act and alleged profit of Rs.8,29,212/-.

The bench noted that these documents were stand along documents without any incriminating material and if we look into the nature of documents found during the course of search. These are one pager sheets not having any other corroborative evidence to show that these pertains to the affairs of assessee firm. Nor it contain the name or address of assessee firm. The very nature of these very sheets is not qualifying to be the books of accounts to make any addition u/s 68 or for making any trading additions. Clearly documents/sheets seized during the search should not be considered the books of accounts of the assessee. These sheets do not have independent validity for determining income. This means that the same cannot be relied upon as a standalone source for assessing the financial performance of the business. Therefore, these points, it is clear that the seized Tally data cannot serve as a reliable basis for any financial conclusions regarding the assessee's income. Proper documentation and verifiable records are essential for ensuring fair and accurate tax assessments. Revenue also not proved that the assessee or that of the family members really operates the firm M/s Race Kids Wear, Delhi, or Gopala Garments. Instead, these businesses are owned by his relatives, who are relatively new to the business. The assessee contended that these relatives sought his assistance in their ventures, but did so

without any expectation of compensation or ownership interest. The principle of actual ownership is critical in tax assessments, particularly when attributing income or liabilities to an individual. The law requires clear evidence of ownership and control over a business entity to hold someone accountable for its income or obligations. In the case of CIT vs. Suman Gupta (2022), the Rajasthan High Court underscored the necessity for tax authorities to establish a direct connection between an assessee and the businesses in question. The court emphasized that mere association or involvement in a business does not automatically confer ownership or accountability for its financial outcomes.

These contentions are further fortified that the seized documents were not found at the business premises of assessee rather it was found at the residential premises of a partner. Moreover, the name of entity/business shown in the seized document also shows the address of Delhi and not of Jodhpur or any other place related to assessee or its partners where they operate. It is further important to peruse the nature of expenses shown in the seized profit and loss account. A bare perusal thereof clearly shows that most of the expenses are nil. We also note from the seized profit and loss accounts which shows that most of the expenses are in the nature of manufacturing expenses such as factory rent, master

salary, kajubutton etc, whereas during the course of search, no such business was found to indicate that assessee was engaged in any such activity. This further bind force to the contention of the assessee that these papers does not belong to the assessee, therefore, even on that count no adverse view can be taken in the hands of the assessee on the basis of these documents. Role of assessee was to provide informal assistance and guidance, which is a common practice among family members in any business. This is supported by the testimony of Shri Ramesh Kumar Mundhra, who clarified during the proceedings that he merely offered support to his relatives as they navigated the challenges of starting a new business. It is noteworthy that no documentary evidence has been presented to substantiate claims of ownership of M/s Race Kids Wear and Gopala Garments by the assessee against the averments made by the assessee or that of Shri Ramesh Kumar. The absence of such evidence further reinforces the assertion that these firms are distinct entities owned by other individuals, not the assessee. Similarly the addition of Rs. 10,53,150/- relates to the unsecured loans in the assessee's financial records is based exclusively on loose papers, specifically an alleged balance sheet for M/s Race Kids Wear dated 31.12.2016. The assessee contends that this inference is fundamentally flawed, as it relies on

unverified documents without any corroborative evidence to substantiate the existence of these credit entries during the relevant assessment year. The absence of supporting documentation raises significant doubts about the validity of the alleged unsecured loans. During the search, no additional evidence was discovered that could confirm the entries in the loose papers. According to established tax principles, any assertion of income or liabilities must be backed by credible and corroborative evidence. As highlighted in the decision of the co-ordinate bench Jaipur's decision M/s Hari Om Enterprises vs. ITO (ITA No. 1234/JP/2023), the tribunal clearly stated that findings based on unverified documents cannot form the basis for tax assessments. The bench further noted that such uncorroborated evidence fails to meet the necessary standards for establishing financial transactions. Even the Delhi High Court in the case of CIT vs. S. K. Sinha (2020) 115 taxmann.com 470 (Delhi), held that the Income Tax Department cannot rely solely on loose papers without any corroborative evidence to justify additions to an assessee's income. The court emphasized that the integrity of financial records is crucial and that any assertions made based on loose or unverified documents are insufficient for tax purposes. Even otherwise the averments of the revenue that M/s Gopala Garments and M/s Race Kids Wear are related to the assessee lacks any corroborative

evidence beyond the loose papers that were seized and other corroborative or supportive documents were found or placed on record by making necessary enquiry. The absence of reliable documentation is a critical factor in assessing the legitimacy of the claims made by the tax authorities. The loose papers in question do not constitute credible evidence that can be used to link the firms to the assessee. As the tax assessments must be supported by concrete evidence, which has been established in several judicial precedents such in the case of CIT vs. Ashoka Iron Works (2021) 121 taxmann.com 159 (Raj.), the court emphasized that any additional assessments must be grounded in credible and substantiated evidence rather than conjecture or assumptions. The Hon`ble Court made it clear that mere presumption, without solid proof, cannot justify the addition of income. These ruling underscores the principle that the burden of proof lies with the tax authorities to demonstrate a clear connection between the taxpayer and any alleged income or liabilities. The legal framework requires that tax assessments should not be based on presumption or assumption having speculative conclusions. The lack of tangible evidence linking the assessee to the operations or financial outcomes of Gopala Garments and Race Kids Wear calls into question the validity of any additions made to the assessee's income. When Shri Ramesh Kumar have clarified about the

transaction If any amounts were indeed provided as loans or assistance by Shri Ramesh Kumar Mundhra or Mahesh Kumar Mundhra, these transactions should be appropriately addressed in their respective tax assessments. It is essential to maintain clarity regarding the sources of such financial support, as this aligns with the principles of accurate financial reporting and taxation. Therefore, the burden of proof lies with the tax authorities to establish the legitimacy of any claims regarding the source of loans. If there is a need to evaluate the loans extended by Shri Ramesh Kumar Mundhra or Mahesh Kumar Mundhra, this should be carried out distinctly in their assessments rather than incorrectly attributing these loans to the assessee without sufficient or corroborative evidence. We also note that no digital data or supporting materials were discovered during the search that could substantiate this claim. As argued by the Id. AR of the assessee that the contention of the Id. AO was that M/s. Gopala Garments and M/s. Race Kids Wear are not independent entities but rather operational units of M/s Ambica Garments. This characterization carries significant implications for the assessment of income and taxation. Given this relationship, the consolidated financial affairs of Ambica Garments are already reflected in the financial statements of Jai Shri Ram. Since any profits generated by Gopala Garments and Race Kids Wear are included

within the overall profits reported by Jai Shri Ram, it follows that any attempt to add these profits to the assessee's income would constitute double taxation as held in the case of CIT vs. S. K. Gupta (2019) 106 taxmann.com 268 (Delhi High Court). In this case, the High court emphasized that duplicative assessments, which result in double taxation of the same income, are not permissible under tax law. The Delhi High Court highlighted the importance of preventing the imposition of additional tax liabilities on income that has already been reported and taxed at the level of a consolidated entity.

Based on these discussion Ground No. 3, 4 and 5 of ITA No. 58/JP/2025, Ground No. 3 and 4 of ITA No.59/JP/2025 and Ground No. 3 of ITA No.60/JP/2025 are allowed.

In the result, all appeals of the assessee are disposed off in terms of the above observations.

Order pronounced in the open court on 15/10/2025.

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:- 15/10/2025

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Ambika Garments, Jodhpur
Shri Sanjay Kumar Karnani, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-03, 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. 56 to 61/JP/2025 & 671 to 676/JP/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar