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

डा॰ 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. 466 to 468/JP/2025
निर्धारण वर्ष/Assessment Years : 2016-17 to 2018-19

Anshu Sahai (HUF) SP-15 Bhabha Marg Tilak Nagar, Tilak Nagar, S.O. (Jaipur), Jaipur	बनाम Vs.	ACIT, Central Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJHA9662H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Rajeev Sogani, CA &
MS Ruchika Sogani, Adv.
राजस्व की ओर से/ Revenue by : Sh. Sanjay Dhariwal, CIT-DR

सुनवाई की तारीख/ Date of Hearing : 16/09/2025
उदघोषणा की तारीख/Date of Pronouncement: 03/11/2025

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These three appeals are filed by the assessee aggrieved from the three separate order of Commissioner of Income Tax (Appeal), Jaipur -04 [for short CIT(A)] for the assessment years 2016-17 to 2018-19 dated 29.01.2025. The said order of the ld. CIT(A) arise as against the three separate order dated 26.03.2024 passed under section 153C of the Income

Tax Act, 1961 [for short Act] by ACIT, Central Circle -02, Jaipur [for short AO].

2. Since the issues involved in these appeals in ITA Nos. 466 to 468/JP/2025 for A.Ys 2016-17 to 2018-19 are inter related, identical on facts and are almost common, except the difference in figure disputed in each year, therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset of hearing the ld. AR of the assessee submitted that the matter in ITA No. 466/JP/2025 may be taken as a lead case for discussions as the issues which are common for the subsequent year be decided accordingly. On this ld. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 466/JP/2025 for Assessment Year 2016-17 is taken as a lead case.

4. Before moving towards the facts of the case in the lead case we would like to mention that the assessee has assailed the appeal for

assessment year 2016-17 in ITA No. 466/JP/2025 on the following grounds;

1. In the facts and circumstances of the case and in law, ld. CIT(A) has erred in confirming the action of ld. AO in assuming jurisdiction under section 153C of the IT Act, 1961. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the assessment order passed under section 153C being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, ld. CIT(A) has erred in upholding the assessment order which was passed without obtaining proper approval under section 153D of the IT Act, 1961 and making unnecessary observations in this regard. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire assessment order as absence of proper approval under section 153D has vitiated the assessment order.

3. In the facts and circumstances of the case and in law, ld. CIT(A) has erred in upholding the addition amounting to Rs. 16,21,91,214/- (*albeit* as part of capital gains). The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition.

4. In the facts and circumstances of the case and in law, ld. CIT(A) has erred in upholding the action of ld. AO in invoking the provisions of section 115BBE although accepting the additions to be part of capital gains. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the applicability of the provisions of section 115BBE.

5. The Assessee craves its right to add, amend or alter any of the grounds on or before the date of hearing.

5. Succinctly, the facts as culled out from the records are that a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of the Gokul Kripa Group on 19-01-2021.

During the search, incriminating documents relating to the assessee were found and seized. It was found that assessee has entered into unaccounted financial transaction with M/s Gokul Kripa Group. Necessary satisfaction was drawn by ACIT, Central Circle-2, Jaipur and sent to the AO having jurisdiction over the assessee for initiating action u/s 153C of the Act for AY 2015-16 to 2021-22 vide letter no. 368 dated 17.10.2022. The assessee has filed return of income u/s 139 of the Act on 11.10.2016 at income of Rs.35,18,520 /-. Thereafter, the case was assessed u/s 143(3) at income of Rs.2,18,95,010/-. Notice u/s 153C was issued to the assessee on 18.01.02023 requiring him to comply with the notice by filing return of income/file the return of income within 30 days of receipt of the notice. In response to the said notice u/s 153C, a return declaring an income of Rs.2, 18,95,010/- was filed by the assessee on 16.02.2023. The jurisdictional AO has issued notice u/s 143(2) dated 10.04.2023 and asked to file certain information/details in support of income during the year under consideration. Thereafter, the case was centralized to ACIT, Central Circle-2, Jaipur vide order u/s 127 of PCIT-2, Jaipur vide order dated 13.07.2023. The assessment proceedings were commenced by issuance of notice u/s 142(1) along with questionnaire on 18.12.2023.

5.1 In the questionnaire issued by the ld. AO it was contended by the ld. AO that Gokul Kripa Group accepts on money (in cash) on sales of its plots in all its ongoing projects. Gokul Kripa Group made payments in cash out of books while purchasing the land for its projects. This facts were accepted in the statement recorded. The assessee including his family members also sold their land to the Group. That Group has developed two schemes namely Royal Residency Phase-1 and Phase -2 in Sanganer Tehsil, Jaipur that scheme land was purchased from the assessee and its family members. During the course of search at one of the business premises of GokulKripa Group at 1, Shivshanker Colony, near mansarover Metro Station, Jaipur a computer(Destop PC) was found (PC-3). On examination of this computer, an excel sheet bearing name excel sheet bearing name '1. Pay-Exp' was found. The path of the excel sheet is GokulKripa Group 1st Floor Accounts PC-3\image\E HAPPY Prakash Sir Scheme\1. Pay-Exp.xlsx and the hash value of the image of this PC was 0d848d309d19ac1bobbc523aod295964. This excel sheet contains entries related to purchase of land for development of various scheme. The entries of cheque payment as well as cash payment along with names of the party and dates are duly recorded in the excel sheet. Further the bifurcation of payment made by the key persons namely Shri Sumer Singh Saini (SSS),

Shri Phool Chand Saini (PCS) Shri Rajesh Kumar (RK) and Shri Ganga Singh Tanwar (GST) is also recorded in this excel sheet. The extracts of excel sheet having name 1 Pay Exp and Sheet name RR reflects payment to the assessee including others in cash also, apart from cheque payments. The sheets were reproduced in the assessment order by the ld. AO from page 4 to 14. Ld. AO from that excel sheet noted that M/s. Gokul Kripa Colonisers & Developers P. Ltd. [GKCDPL] developed two scheme namely Royal Residency Phase I and II. Ld. AO prepared a table relating to the entries of the assessee and their family members at page 14 to 18 wherein details of cheque payment and cash payments were recorded. Thereafter ld. AO reproduced the ledger account of the assessee in the books of GKCDPL. The ld. AO based on that tabulation and ledger noted that the entries noted in excel sheet is exactly the same as recorded in the ledger so far as it relates to the payment of cheque is concerned and thereby he tried to establish the authenticity and correctness of the transaction recorded in the excel sheet.

Based on these observations ld. AO noted that total amount of payment recorded in the excel sheet produced above is Rs. 125,39,20,400 (as per excel sheet found from the PC of Prakash) including cheque payment of Rs. 64,32,96,800/- (as per excel sheet found from the PC of

Prakash) and cash payment of Rs. 60,83,46,930/- (as per excel sheet found from the PC of Prakash) an amount of Rs. 2,21,45,130/- was recorded in the books of accounts and reflected in ledger produced above being cash payment for the stamp charges. Thus, the balance cash payment of Rs. 58,62,01,800/- was not recorded in the regular books of accounts. Based on the payment made by an account payee cheque ld. AO in respect of the assessee and his group tabulated the cash payment and cheque payment made by Gokul Kripa Group at page 28 & 29 of the assessment order. The chart so prepared reads as follows:

S.No(i)	Name of the assessee(ii)	Amount received through cheque(iii)	Total amount received in cash (iv)	Prop. Amount received in cash in ratio of amount received in cheque(iii*iv/vi)
1	*AnshuSahay HUF*	*25,84,80,000*	*56,31,38,250*	*37,43,82,651*
2	*Dr.MadhuriSahay*	*1,41,60,000*		*2,05,09,356*
3	*Shri AnshuSahay*	*11,61,60,000*		*16,82,46,252*
Total		*38,88,00,000(vi)*		*56,31,38,250*

Based on that tabulation, the ld. AO issued a show cause notices to the assessee asking as to why the cash receipts of Rs. 37,43,82,651/- pertaining to A. Y. 2016-17 to 2018-19 against the sale of land may not considered as undisclosed income of the assessee. The assessee submitted the reply which ld. AO placed on record.

Ld. AO noted that the searched group i.e. Gokul Kripa Group has purchased land for its project Royal Residency Phase I and II from the assessee HUF and Ms. Madhuri Sahay. An amount of Rs. 38,88,00,000/- has been paid to these parties through cheques. Payments mentioned in cash for Rs. 56,31,38,250/- was considered over and above consideration paid in lieu of sale of land besides what was recorded in the books of accounts. The proportionate cash received by the assessee HUF and Ms Madhuri Sahay was thereby calculated as tabulated herein below:

S.No(i)	Name of the assessee(ii)	Amount received through cheque(iii)	Total amount received in cash (iv)	Prop. Amount received in cash in ratio of amount received in cheque(iii*iv/vi)
1	*AnshuSahay HUF*	*25,84,80,000*	*56,31,38,250*	*37,43,82,651*
2	*Dr.MadhuriSahay*	*1,41,60,000*		*2,05,09,356*

3	*Shri AnshuSahay*	*11,61,60,000*		*16,82,46,252*
Total		*38,88,00,000(vi)*		*56,31,38,250*

S.No	*Name of the assessee*	*FY 2015-16 AY 2016-17*	*FY 2016-17 AY 2017-18*	*FY 2017-18 AY 2018-19*	*Total*
1	*Anshu Sahay HUF*	*16,21,91,214*	*17,81,66,880*	*3,40,24,557*	*37,43,82,651*
2	*Dr. Madhuri Sahay*	*88,85,130*	*97,60,300*	*18,63,926*	*2,05,09,356*
3	*Shri Anshu Sahay*	*7,28,88,165*	*8,00,67,570*	*1,52,90,517*	*16,82,46,252*
		24,39,64,509	*26,79,94,750*	*5,11,79,000*	*56,31,38,249*

Based on this calculation again the assessee was asked to show cause as to why the aforementioned addition should not be made in his hand. The assessee submitted his reply which was considered by the ld. AO but was not found tenable. Ld. AO also went on to observe that the entries made by the Gokul Kripa group in excel sheet are not part of regular books of accounts. It is due to search and seizure action carried out in the case of that group found these unrecorded transactions. Ld. AO thereby also noted that the assessee failed to furnish any reasons as to how the transactions made through banking channel as mentioned in excel sheet got duly matched with the bank statements of the assessee. The ld. AO extracted those matched transactions at page 37 and 38 of his order. Based on that

observations ld. Ao noted that the excel sheet is true and correct account prepared by Gokul Kripa Group for expenditure incurred by them for purchase of land. As, the transactions made through banking channel are duly corroborated with the bank statements making it amply clear that the transactions made in cash had also been executed by the search group meaning thereby the assessee has received cash payments over and above the payments received through banking channel. Moreover, the assessee has failed to respond to the query in this regard and mere denial without any documentary evidence has no force in the eye of law. The assessee has challenged the addition u/s 68 of the Act. The addition was made due to the facts that the cash receipts remained unaccounted and not part of regular books of accounts. At an appellate state, if it is held by any appellate authority that the cash receipts by the assessee company cannot be treated u/s 68 of the Act, then the cash receipts will be taken as receipts for calculations of income from capital gain for the year under consideration. The incriminating material found/seized in the search and seizure action in "Gokul Kripa Group" was in the form of diaries/ registers including digital record wherein transactions executed by the key persons of the company GKCDPL, is written/mentioned. Ld. AO thereby noted that;

a) These digital record have project wise excel sheets wherein payments made to the seller of the land including any other expenditure incurred on project

was mentioned. These details mentioned in these excel sheets includes both payments made from banking channel and cash paid to the sellers in lieu of sale of their lands. The unaccounted transaction related to assessee are found recorded in seized incriminating material i.e. one excel sheet as discussed above. Therefore, in view of above discussion, it can be concluded that the proceedings were initiated and additions are being made after considering documentary evidence that the assessee has entered into unaccounted financial transactions with the Gokul Kripa Group.

b) Here, it is to mention that the statements of Phool Chand Saini, Director of M/s Gokul Kripa Colonizers & developers Pvt. Ltd. & key person of Gokul Kripa Group, were recorded during search on 19.01.2021 at 1, Shivshanker Colony, near Mansarover Metro Station, Jaipur wherein he has accepted that there were unaccounted transactions recorded in these seized material which were not recorded in the regular books of accounts of the Gokul Kripa group companies. He has elaborated the purpose of these unaccounted cash transactions. He further accepted that these transactions mentioned in this incriminating material were in suppressions of "00". Thus, the evidences are further strengthened from statement of Shri Phool Chand Saini recorded on oath u/s 132(4) of the Act during search as he has specifically explained that the consideration amount above the DLC rate on account of purchase of land by the Gokul Kripa Group was done in cash. Here it is pertinent to mention that the statements recorded on oath u/s 132(4) of the Act during search are admissible evidence under the Income-tax Act, 1961.

As discussed supra, in the case of the assessee, certain incriminating documents related to financial transactions on account of sale of land have been found and seized during the course of search in case of Gokul Kripa Group. Notices u/s 153C was issued after following due process and notice u/s 142(1)/144 were issued to the assessee to explain the transactions entered in with Gokul Kripa Group. The assessee has sold land situated at Village Sarangpura, Tehsil Sanganer, Jaipur to M/s Gokul Kripa Colonisers & Developers Pvt. Ltd. for consideration of Rs.25,84,80,000/- as mentioned in registered deed (total sale of land in F.Y. 2015-16, 2016-17) and cash

receipts of Rs.37,43,82,651/- (Rs 16,21,91,214/- for A.Y. 2016. 17, Rs. 17,81,66,880/- for A.Y.2017-18 and Rs.3,40,24,557/- in A.Y. 2018-19) that were received over and above the consideration received through banking channel. However, assessee failed to explain the unaccounted financial transactions. Thus, as tabulated in the assessment order at page 35 of the assessment order wherein it has been calculated that the assessee has received cash of Rs. 16,21,91,214/- from M/s Gokul Kripa Colonisers & Developers Pvt. Ltd. and failed to explain nature of receipt. Therefore, the receipt of Rs. 16,21,91,214 /- was treated as unexplained cash credits and additions of Rs 16,21,91,214/- u/s 68 of the Act read with section 115BBE of the Act.

6. Aggrieved from the order of Assessing Officer, assessee preferred an appeal before the ld. CIT(A). Apropos to the grounds so raised the relevant finding of the ld. CIT(A) is reiterated here in below:

> **Ground Nos. 1, 2 & 3**
>
> 5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-
>
> In these ground of appeal the appellant has stated the date of transfer of seized material by the AO of the searched person to the AO of the appellant on 17.10.2022 as the deemed date of search. And has contended that since section 153C is applicable to the search and seizure action which took place before the 01.04.2021 hence the action could not have been taken under this section.

The phrase "for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and has been inserted in sub-section (1) of Section 153C of the Act by the Finance Act, 2017, w.e.f. 1-4-2017 before the phrase "for the relevant assessment year or years referred to in sub-section (1) of section 153A". This has clarified the law beyond any confusion that date of search mentioned in section 153A is the relevant date of search for the purpose of determining the six years or ten years or the relevant years under the section 153C of the Act.

The judgement in the case of Commissioner of Income-tax-14 v. Jasjit Singh [2023] 155 taxmann.com 155 (SC)[26-09-2023] is in the context of the assessment years 2009-10 which is much earlier than the amendment in sub-section (1) in section 153C of the Act by the Finance Act 2017. The amendment of Finance Act 2017 has been done in sub-section 153C(1) of the Act to specifically provide for which six assessment years as the amendment specifically refers to the years mentioned in sub-section (1) of section 153A of the Act to delink the years to be assessed from the provisio to section 153C(1).

The amendment by Finance Act 2017 supports the stand taken by the Revenue in the case of Jasjit Singh (supra) that "date referred under proviso to Section 153(1) is relatable to the second proviso to Section 1534, only as far as it concems abatement and that "the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement"

Proviso below sub-section (1) of section 153C of the Act was inserted by the Finance Act 2005 w.r.e.f. 01.06.2003 In this regard the extract of the "Memorandum" is as under.-

Under the existing provisions of section 153A, where the Assessing Officer is satisfied that books of account or documents or assets seized under section 132 or requisitioned under section 132A belong to a person other than a person in whose case search under section 132 or requisition under section 132A was made, he shall handover the same to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person under section 153A. Second proviso to section 153A provides that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in the said section pending on the date of initiation of the search under section 132 or on the date of making of requisition under section 132A, as the case may be, shall abate.

It is proposed to amend the said section so as to provide that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having the jurisdiction over such other person.

In this regard the extract of the "Notes on Clauses" is as under-

Clause 47 seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

Under the existing provisions of section 153A, where the Assessing Officer is satisfied that books of account or documents or assets seized under section 132 or requisitioned under section 132A belong to a person other than a person in whose case search under section 132 or requisition under section 132A was made, he shall handover the same to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person under section 153A Second proviso to section 153A provides that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in the said section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be shall abate.

It is proposed to amend the said section so as to provide that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having the jurisdiction over such other person.

From the above referred 'memorandum' and 'Notes on clauses' the legislative intent behind the introduction of the proviso in humble understanding appears to be with reference to the abatement.

Provisio below sub-section (1) of section 153C of the Act was inserted by the Finance Act 2005 w.r.e.f. 01.06.2003. This provisio reads as under:-

"Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in

the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:"

(emphasis supplied)

Second Provisio to 153A(1) provides for the abatement and reads as under.-

"Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:"

Thus the provisio below the sub-section (1) of section 153C pertains to or is for the purposes of abatement in view of the amendment by the Finance Act 2017.

As per the CBDT Circular No 3 of 2006, on the title: FINANCE ACT, 2005 EXPLANATORY NOTES ON PROVISIONS RELATING TO DIRECT TAXES (OTHER THAN BANKING CASH TRANSACTION TAX AND FRINGE BENEFIT TAX,) the amendment is explained as under-

"3.26 Rationalisation of the provisions relating to assessment of income in search and seizure cases - Under the existing provisions of clause (a) of sub-section (1) of section 153B, an Assessing Officer is required to make an order of assessment or re-assessment of total income of the six assessment years preceding the assessment year relevant to the previous year in which search under section 132 is conducted or requisition under section 132A is made, within a period of two years from the end of the financial year in which the last of the authorizations for search, or for requisition was executed.

Clause (b) of the said sub-section provides that an Assessing Officer shall make an order of assessment or re-assessment of total income of the assessment year relevant to the previous year in which search is conducted or requisition under section 132A is made, within a period of two years from the end of the financial year in which the last of the authorizations for search under section 132 or requisition under section 132A was executed.

The time-limit provided in the aforesaid clauses (a) and (b) is also applicable for making assessment or re-assessment in the case of other person referred to in section 153C.

With a view to rationalize the above provisions in respect of the other person referred to in section 153C, a proviso has been inserted in sub-section (1) of the said section 1538 providing that in the case of such other person the time-limit for making assessment or re-assessment of total income of the assessment years referred to in clauses (a) and (b) of the said sub-section shall be two years from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed or one year from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over to the Assessing Officer having jurisdiction over such other person, whichever is later.

The existing provisions of section 153C provide that where the Assessing Officer is satisfied that books of account or documents or assets seized under section 132 or requisitioned under section 132A belong to a person other than a person in whose case search under section 132 or requisition under section 132A was made, he shall hand over the same to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person under section 153A Second proviso to section 153A provides that any assessment or re-assessment, relating to any assessment year falling within the period of six assessment years referred to in the said section, pending on the date of initiation of search under section 132 or on the date of making of requisition under section 132A, shall abate. The existing section 153C has been renumbered as sub-section (1) of the said section. Further, a new proviso to sub-section (1) of section 153C has been inserted providing that in the case of such other person, the reference to the date of initiation of search under section 132 or making of requisition under section 132A in the second proviso to section 153A, shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having the jurisdiction over such other person.

A new sub-section (2) has been inserted in section 153C providing that in case of such other person for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, where (a) no return of income has been furnished by such person and no notice under sub-section (1) of section 142 has been issued to him, or (b) a return of income has been furnished by such person but no notice under sub-section (2) of

section 143 has been served and the limitation of serving the notice under sub-section (2) of section 143 has expired, or (c) assessment or re-assessment, if any, has been made, before the date of receiving of books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such assessing officer shall issue the notice and assess or re-assess total income of such other person for such assessment year in the manner provided in section 153A. The provisions of the newly inserted sub-section (2) would apply where books of account or documents or assets seized or requisitioned referred to in sub-section (1) of the said section 153C, have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income under sub-section (1) of section 139 for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A.

In other words, the amendments brought in section 153B and section 1530 shall have the following effects in relation to assessment or reassessment in case of other persons referred to in section 153C-

A period of one year from the end of financial year in which the books of account or documents or assets seized or requisitioned are handed

(i) over to the Assessing Officer having jurisdiction over such other person shall be available for the purposes of making assessment or reassessment under section 153A;

Any assessment or reassessment for any assessment year falling within a period of six assessment years immediately preceding the assessment year relevant to the previous year in which search is

(ii) conducted or requisition is made pending on the date on which books of account or documents or assets seized or requisitioned are received by the Assessing Officer having jurisdiction over such other person, shall abate;

(ii) For assessment year relevant to the previous year in which search is conducted or requisition is made, the assessment or reassessment shall be made under section 153A if following conditions are satisfied:-

seized or requisitioned books of account or documents or assets are received by the Assessing Officer having jurisdiction over

(a) such other person after the due date for furnishing retum under sub-section (1) of section 139 in his case for such assessment year, and

(b) before the date of receipt of seized or requisitioned books of account or documents or assets by the Assessing Officer having jurisdiction over such other person-

(i) no return of income has been furnished by such other person under sub-section (1) of section 139 and no notice under sub-section (1) of section 142 has been issued to him for such assessment year, or

(ii) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 for such assessment year has been served and the limitation of serving such notice has expired, or

(iii) assessment or reassessment, if any, for such assessment year has been made.

These amendments have been brought into effect retrospectively from 1st June, 2003."

(emphasis supplied)

As per the CBDT Gircular also, in case of section 163C of the Act, assessments of the preceding six years as pending on the date on which books of account or documents or assets seized or requisitioned are received by the Assessing Officer having jurisdiction over such other person, shall abate

In view of the above discussion if in case the date of transmission of documents from the assessing officer of the searched person to the assessing officer of the other person is treated as the date of search for all and every purposes whatsoever then it would lead to the following consequences:-

(i)coverage of those years in the set of 10 years of the section 153C of the Act for which there is not even a possibility of seized material from the search of the other person. For example if the actual search and seizure action is taken place in March 2015 and the transmission of the documents from the AO of the searched person to the AO of the other person has taken place in April 2017, and the 10 years are to be AY 2008-09 to 2017-18 in that case it is impossible and they will not be any seized material for the period FY 15-16 and FY 16-17 (AY

2016-17, 2017-18) whereas these two years falling the set of 10 years of the section 153C of the Act.

Even though in the present case the assessment years of the appellant 2016-17 to 2018-19 falls within the period of block of 6 years as well as 10 years and at the same time the income escaping assessment is represented in the form of asset as the income which has escaped assessment is the unaccounted cash received by the appellant. In this regard reliance is also placed on the judgement of Hon'ble Gujarat High Court in the case of Bhavin Kishorebhai Zinzuwadia v. Assistant Commissioner of Income-tax Central Circle 2(3) [2024] 169 taxmann.com 505 (Gujarat)[02-12-2024] as per ratio of this judgement, the validity of the notice is to be seen w.r.t. the 10 years (and not merely 6 years) as provided in section 153C.

(ii)it is a settled legal principle that the interpretation should not render any provision of the law as otiose. The phrase "for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and has been inserted in sub-section (1) of Section 153C of the Act by the Finance Act, 2017, w.e.f. 1-4-2017. These amendments needs to be given full play in fulfilling in the interpretation. However if the proviso below subsection (1) is taken to mean that the 6 years/ 10 years are to be counted from the date of the handing over of the search material in that case the specific amendment of 2017 does not get any meaning and is rendered as otiose.

(iii) it is important to note that Honourable Supreme Court in the case of Commissioner of Income-tax -III v. Calcutta Knitwears [2014] 43 taxmann.com 446 (SC)/[2014] 223 Taxman 115 (SC) (MAG)/[2014] 362 ITR 673 (SC)/[2014] 267 CTR 105 (SC)[12-03-2014] has held that the satisfaction note for initiating action in case of person other than the searched person can be recorded (i.e. the proceedings can be initiated) even after the completion of assessment in the case of the person in whose case the said section had taken place Also in this regard is no adverse inference regarding the period of the block or the years covered under the block. The implication of the same is that extended time had already been provided for going back in time with reference to the actual date of search and seizure action.

It has been held in the case of LKS Gold House (P.) Ltd. v. Deputy Commissioner of Income-tax [2024] 161 taxmann.com 604 (Madras) [18-01-2024] as under:-

87. There is no time limit prescribed for the issuance of satisfaction note(s) under Section 153C of the Income Tax Act, 1961. In terms of decision of the Hon'ble Supreme Court in CIT-III v. Calcutta Knitwears. Ludhiana [2014] 6 SCC 444, satisfaction notes under Section 158BC of the Income Tax Act, 1961 can be prepared by the "Assessing Officer" of the "searched person":

(a) At the time of or along with the initiation of proceedings under Section 158BC of the Income Tax Act, 1961 against the "searched person", or

(b) In the course of assessment of the "searched person" under Section 158BC of the Income Tax Act, 1961; or

(b) Immediately after the completion of the assessment proceedings under Section 158BC of the Income Tax Act, 196 against the "searched person"
……..

101. It is only during the course of the assessment proceedings, of the "searched person" the Assessing Officer of the "searched person" will be in a position to establish the transaction which provides a link between the "other person with the "searched person" with their former PAN. It is only thereafter, the "satisfaction note(s)" can be prepared to persuade the "Assessing Officer of the "other person" to initiate appropriate proceedings under Section 153C of the IT Act, 1961.
It has also been held in the above referred case of LKS Gold (supra) that:-

106. Even if the Assessing officer of the searched person" and that of the "other person" Le the petitioner were same, it has to be construed that the officer concerned was wearing two different hats one as the "assessing officer" of the "searched person and one as the "assessing officer" of the "other person". "other person". It would be different if they are different in which case it is the date of actual handing over of the books of account or documents or assets seized or requisitioned.

107. Merely because, the assessing officers are one and the same for both "searched person" and the "other person" ipso facto would not mean that the moment the documents were seized either by the investigating team and handed over to the assessing officer for completing the assessment under section 153A of the Income Tax Act, 1961, the limitation for completing the assessment in the case of "other person" would start running under 3rd proviso to section 153B (1) of the Income Tax Act, 1961.

(iv) In case the search and seizure action takes place in last week of March 2021 and the seized material is transferred by the AO of the search the assessee to the AO of the other assessee in the month of April 2021 apparently in the case of the other person on the date of search would be treated as April 2021 going by the interpretation given by the appellant and in such a situation section 153C will not apply as per the interpretation of the appellant due to the sunset clause. This interpretation is against the ratio of judgement of Hon'ble Supreme Court in Calcutta Knitwears (supra) as discussed in earlier paras.

(v) the sunset clause has been provided in separate subsection (3) and it does not refer to any deeming date. This subsection refers to initiation of search action or requisition of books of accounts etc. on or after 01-04-2021. In the section there is a clear-cut reference to search initiated under section 132 or requisition under section 132A of the Act. Hence the concept of deemed date of search is not applicable to sub section (3). Thus, this subsection further adds to the above discussed amendment of 2017 regarding the crucial date of search for the purposes of applicability of section 153C of the Act. In case the deeming date of search is treated as the date of search for all purposes provided in subsection (1), in that case there arises a conflict between subsection (1) and subsection (3), which can be resolved by taking the date of search as provided in 2017 amendment is the actual date of search irrespective of the deeming date of search as provided in the proviso below the subsection (1).

The above judgement also needs to be considered in the interpretation of the identifying the block of 10 years of the section 153C of the Act. There are numerous judgements wherein it has been held that provisions of section 158BD and 153C are in substance similar and in section 158BD the block period is not dependent upon the date of transfer of seized material.

In view of the above discussion dismissed. these grounds of appeal of the appellant are hereby dismissed.

Ground No. 4

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

In the ground of appeal the appellant has mentioned the "no proper satisfaction note was recorded". The implied implication is that the satisfaction note has been perused by the appellant and the same is not found to be proper by the appellant. However the appellant has not with reference to the contents of the satisfaction note as to why the satisfaction note is not proper. Thus the contention of the appellant is a bald and vague and is liable to be dismissed.

The appellant has also mentioned in the ground of appeal that 'There is no mention in the satisfaction note that entries/material found during the search of Gokul Kripa Group has any bearing on determination of total income of the assessee. The implied meaning of the same is the the satisfaction note has been produced by the appellant and after perusal of the same the above referred contention of not being proper is that there is no mention in the satisfaction note that the contents of the search material has a bearing on the determination of the total income of the assessee.

However there is no legal requirement that the assessing authority is required to expressly state so in the satisfaction note. What is to be seen is that whether the intent of the satisfaction note satisfies the intent of the section 153C of the Act.

It is important in the facts of the case that in the appellant submissions neither the appellant has submitted the copy of the satisfaction note nor the appellant has highlighted from the contents of the satisfaction note as to how the same is in violation of the section 153C of the Act. Conversely in the submissions in the appeal the appellant has made contradictory submissions. In the appellant submissions the appellant has stated that the satisfaction note was not received by the appellant. The submission is against the specific ground of appeal raised by the appellant and the new claim made in the appeal in this regard is beyond the scope of the ground of appeal raised by the appellant and also contradictory to the ground of appeal itself. The same cannot be entertained. It is also important to note that in the appellant submissions no prayer has been made requesting for the copy of the satisfaction note and a mere statement has been made. This shows that the appellant is not interested in getting the copy of the satisfaction note and this further supports the above discussion that the copy of satisfaction note is already available with the appellant

Once having accepted the notice and having participated in the proceedings thereby submitting to the jurisdiction of the Assessing Officer, considering the settled principles of law, the assessee cannot take a position that there is a

jurisdictional defect in the Assessing Officer proceeding to adjudicate the notice, by alleging defect in the notice.

Such plea can be accepted only when a demonstrable prejudice, was to be set out by the assessee, which would go to the root of the adjudication. If there is nothing on prejudice being pointed out to the Court except for bald plea of defect in the notice, such plea as made by the assessee.cannot be accepted

It is the principle of law as laid down by the Hon'ble Supreme Court that in accepting any plea of breach of principles of natural justice, such plea would be required to be tested on the aspect of prejudice, as observed in para 62 in case of Veena Estate (P.) Ltd. v. Commissioner of Income-tax [2024] 158 taxmann.com 341 (Bombay)/[2024] 461 ITR 483 (Bombay) [11-01-2024].

It is abundantly clear from the principles of law as laid down by the Supreme Court as noted above, that a technical plea of breach of principles of natural justice cannot be taken, unless a case of prejudice has been made out, and if no case of prejudice is made out, certainly a plea of breach of principles of natural justice would be a hollow plea or a plea in futility. This for the reason, that a person complaining of breach of principles of natural justice needs to show that curing such breach, would culminate the proceedings with a different consequence favourable to the assessee. It is only after considering such pleas, it would be a fair decision, rendering justice to the complainant, as observed in para 62 in case of Veena Estates (supra).
It is principle of law as laid down by the Hon'ble Supreme Court in Natwar Singh v Director of Enforcement [2010] 13 SCC 255, wherein the Supreme Court has observed that there can never be a technical plea of breach of principles of natural justice and plea would be a realistic plea which can be proved on the principle of prejudice.

It is a settled principle of law that any breach of the principles of natural justice cannot be addressed by a straight jacket formula. Any complaint of breach of principles of natural justice would be required to be considered in the facts of the case. When the facts of the case would demonstrate it, to be an undisputed position, that no real prejudice was caused to a party aggrieved by an order, being alleged to be breach of the principles of natural justice, the Court would certainly not interfere. Such complaint and/or a genuine grievance of the breach of principles of natural justice accompanied with the prejudice it would cause, is required to be made with utmost promptness. Any delay in making such complaint or raising a grievance would give rise to a position that such grievance

is either not genuine or is belated and/or a technical plea being agitated. In Natwar Singh (supra), the Hon'ble Supreme Court while observing on the test of real prejudice, observed that there is no such thing as "technical infringement of natural justice", as what is necessarily to be seen is that there must have been caused some real prejudice to the complainant. It was observed that the requirements of natural justice must depend inter alia as involved in the facts and circumstances of the case and the nature of the inquiry, etc. (para 41 in case of Veena Estates (supra)) The relevant observations of the Hon'ble Supreme Court are required to be noted which read thus

“26 Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth. Can the Courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing. Courts can insist and require additional steps as long a such steps would not frustrate the apparent purpose of the legislation."

In view of the above discussion this ground of appeal is hereby dismissed.

Ground No. 5

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

The appellant has contended that the procedure as per section 65A & 65B of the Evidence Act has not been followed by the assessing authority. However the contention of the appellant is mere based on presumptions and assumptions. Further the appellant has stated that the learned AO has not mentioned in the said section that steps were taken in this regard. However there is no requirement to record such satisfaction in the satisfaction note. There is no requirement in the law in this regard

Commissioner of Income-tax 12024] 161 taxmann.com 604 (Madras [18-01-2024) Further it has been held in the case of LKS Gold House (P.) Ltd. v. Deputy as under-

71. Indian Evidence Act, 1872 applies to all judicial proceedings in or before any Court including Courts martial, [other than Courts-martial convened under the Army Act (44 & 45 Vict., c. 58)] [the Naval Discipline Act (29 & 30 Vict 109]: or 6[*] the Indian Navy (Discipline) Act, 1934 (34 of 1934).] [or the Air Force Act (7 Geo. 5, c. 51)). It does not apply to even proceedings before an arbitrator. Provisions of the Indian Evidence Act, 1872 do not apply to a Quasi judicial proceedings before a Quasi-judicial officer such as Assessing Officer under various Tax Law or Appellate Authority and Tribunal under them.
……..

73. These provisions are relevant only for civil and criminal proceedings before the court of law. As far as Assessment proceedings are concemed, the Assessing Officers are not governed by the strict rules of the Indian Evidence Act, 1872.

74. Therefore, the decision of the Hon'ble Supreme Court in the case of Sunder v. State, MANU/SC/0282/23 and in the case of P.V. Anwar v. P.K Basheer, 2014 AIR SCW 5695 cited are not relevant as they deal with criminal proceedings before the Court.

75, The Assessment proceedings under the Income Tax Act, 1961 before an Assessing Officer is not a judicial proceeding It is a Quasi judicial proceeding before a Quasi judicial officer. Therefore, the provisions of The Evidence Act, 1872 particularly special provisions relating to evidence relating to Section 65A, Section 65B and Section 66 are not relevant.

76. The decision of this court in the case of Vetrivel Madras v. ACIT, [2021] 129 taxmann.com 126/282 Taxman 321/437 ITR 178 (Madras) fails to note that Section 658 cannot be invoked in a quasi-judicial proceedings as the assessing officers are not governed by strict rules of evidence. Therefore, I am unable to follow the view of the Court in Vetrivel Madras v. ACIT, ITR 178 (Madras). [2021] 129 taxmann.com 126/282 Taxman 321/437

77. The definition of "Books and Books of Accounts" in Section 2(12A) of the Income Tax Act, 1961, at the time when the search was conducted at the premises of the "searched person" under section 132 of the Income Tax Act. 1961 on 10.11.2020, i.e., before amendment and after amendment to Section 2 of the Income Tax Act, 1961 by the Finance Act, 2022 with effect from 01.04.2022 read as under:-
……..

78. Since the definition uses the word "includes" it should be given a wide connotation. Mere substitution of phrase "in the written form or as print-outs of data stored" with "in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in" will not mean that the information that was stored in a floppy disk, tape or pen drive or any other form of electro-magnetic data storage device did not qualify as books and books of account for the purpose of section 2(12A) of the IT Act, 1961.

79. The amendment to the definition of "Books and Books of Accounts to clause (12A) to Section 2 of the Income Tax Act, 1961 by The Finance Act. 2022 w.e.f 01.04.2022 by substituting the words "in written form or as print-outs of data stored" with "in written form or in electronic form or in form or in digitial form or as print-outs of data stored in such electronic form or in digital form" was intended to merely align the definition with the current practice on account of the advancement of technology and its widespread utility in daily conduct of business for maintaining books of accounts. Today books of accounts are also maintained in "electronic form" by a significant section of the assessees in the current age as is evident from explanatory notes to the provisions of the Finance Act. 2022 in "Books and Books of Accounts to clause (12A) to Section 2 of the Income Tax Act, 1961.

80. The Amendment to the definition of "books and books of accounts" in clause (12A) to Section 2 of the IT Act, 1961 is clarificatory and therefore, retrospective.
81. The expression print-outs of data stor MEN would include pdf copies of the print-outs in electronic form or in digital form. At the time when the search was completed on 10.11.2020 not only print outs of data stored in a floppy disk, tape, pen drive or any other form of electro-magnetic data storage device was included in the definition of "Books and Books of Accounts also other forms of storage implying that the informations stored in such form of electro-magnetic data search devicse such as san disk, hard disk etc., already quantified as "Books and Books of Accounts".

82. The amended definition includes books of accounts in electronic form or in digital form or scanned copies of data or printouts of data stored in digital or electronic form.

83. Therefore, arguments advanced by the learned counsel for the Petitioner that there was a jurisdictional error in invoking Section 153C cannot be accepted and is rejected.

(emphasis supplied)

In the above judgement, inter-alia, it has been held that in this regard the provisions of Evidence Act are not applicable to the income tax proceedings and further that the amendment to the definition of "books and books of accounts" in clause (12A) to Section 2 of the IT Act, 1961 is clarificatory and therefore, retrospective.

Further, there is a well laid down procedure and protocols are strictly followed by the department regarding seized documents and it is very unlikely that the search data can be tempered with by any officials of the Revenue department and once, the information has been received from another Assessing officer, there is a presumption that such data and information is shared on "as is" basis and therefore, where there is no basis for raising any suspicion in the mind of the Assessing officer, no further action is required to be taken regarding verifying the authencity of the data so received and recording any satisfaction in this regard. Further, officials of the Revenue are Government officials and are acting in their official duty and they do not have any private motive unlike the appellant. Such officials have no motive and reason to change the contents of the seized material.

It is merely an apprehension on the part of the assessee appellant and the same cannot be a basis for not relying on the data so collected and received by the Assessing officer and which forms part of the assessment records.

Further the appellant has not shown with the copy of the submissions made during the assessment proceedings that such objection was raised during the assessment proceedings. This itself shows that this is a fresh objection raised during the appeal and also the same has been raised without any basis and is merely based on hypothetical presumption and is

thus liable to be rejected on this aspect also.

cound of app In view of the above discussion this ground of appeal is hereby dismissed.

Ground No. 6

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

In submissions the appellant has mentioned that "nowhere in the names of the recipients of the on-money, name of assessee appellant is appearing This shows that the appellant is havig the seized material with him. However the copy of the seized material has not been placed on record of the appeal by the appellant. The details of transactions of the unaccounted payments are mentioned in the seized material.

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 assessed the 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).”

Further as referred in the assessment order, the appearing in the seized materialME TAX DEPARTMEference to the appellant is

COMPLETE & FULL STATEMENT OF PARTIES IN WHOSE CASE SEARCH ACTION HAD TAKEN PLACE-

The appellant has contended that complete statement of all the concerned person were never provided to the assessesee. It is also important to note that in the appellant submissions no prayer has been made requesting for the copy of such statements and a mere statement has been made. This shows that the appellant is not interested in getting the copy of the statements and apparently those are already available with the appellant.

In the notices issued and vide specific noting on ordersheet, the appellant was requested to file the copies of submissions made before the assessing authority. However the copies filed are mere printouts and do not bear any signatures neither in original nor in photocopy and also does not have any attestation, and can't be treated as copies of the submissions made during assessment proceedings.

Even though the appellant has made a statement in the submission that the statement copies were asked during the course of assessment proceedings however in the submission the appellant has not highlighted any paper book page or any particular submission dated before the assessing authority and as such the contention of the appellant is not verifiable and is an open-ended submission liable to be rejected.

As per the legal principles the evidence relied upon by the assessing authority is required to be provided to the assessee. In the present case the relevant part of the statements which have been referred by the learned AO have been provided to the appellant. Thus the satisfaction of the legal requirement is done. At the same time the contention of the appellant that complete full statement is required, in this regard it is important to note that the proceedings in the case of appellant are under section 153C of the Act i.e. appellant is not the person in whose case the search action had taken place and the appellant is asking for the complete statement of a third person who very likely would have replied to several other issues and facts in the statement which have got no connection with the appellant. The right to privacy of such person in whose case the search action had taken place is also required to be preserved. And a balance is to be arrived at between the right of the assessee appellant and the right of the persons in whose case the search action had taken place.

The appellant has also not shown that why the complete and full statement is required whereas the relevant part pertaining to the transaction of the appellant has been provided to the appellant. The objection of the appellant is mere technical and does not have any substantive substantive justifica justification.

It is the principle of law as laid down by the Hon'ble Supreme Court that in accepting any plea of breach of principles of natural justice, such plea would be required to be tested on the aspect of prejudice, as observed in para 62 in case of Veena Estate (P.) Ltd. v. Commissioner of Income-tax [2024] 158 taxmann.com 341 (Bombay)/[2024] 461 ITR 483 (Bombay) [11-01-2024].

It is abundantly clear from the principles of law as laid down by the Supreme Court as noted above, that a technical plea of breach of principles of natural justice cannot be taken, unless a case of prejudice has been made out, and if no case of prejudice is made out, certainly a plea of breach of principles of natural justice would be a hollow plea or a plea in futility. This for the reason, that a person complaining of breach of principles of natural justice needs to show that curing such breach, would culminate the proceedings with a different

consequence favourable to the assessee. It is only after considering such pleas, it would be a fair decision, rendering justice to the complainant, as observed in para 62 in case of Veena Estates (supra).

It is principle of law as laid down by the Hon'ble Supreme Court in Natwar Singh v. Director of Enforcement [2010] 13 SCC 255, wherein the Supreme Court has observed that there can never be a technical plea of breach of principles of natural Justice and plea would be a realistic plea which can be proved on the principle of prejudice.

It is a settled principle of law that any breach of the principles of natural justice cannot be addressed by a straight jacket formula. Any complaint of breach of principles of natural justice would be required to be considered in the facts of the case. When the facts of the case would demonstrate it, to be an undisputed position, that no real prejudice was caused to a party aggrieved by an order, being alleged to be breach of the principles of natural justice, the Court would certainly not interfere. Such complaint and/or a genuine grievance of the breach of principles of natural justice accompanied with the prejudice it would cause, is required to be made with utmost promptness. Any delay in making such complaint or raising a grievance would give rise to a position that such grievance is either not genuine or is belated and/or a technical plea being agitated. In Natwar Singh (supra), the Hon'ble Supreme Court while observing on the test of real prejudice, observed that there is no such thing as "technical infringement of natural justice", as what is necessanly to be seen is that there must have been caused some real prejudice to the complainant. It was observed that the requirements of natural justice must depend inter alia as involved in the facts and circumstances of the case and the nature of the inquiry, etc. (para 41 in case of Veena Estates (supra)) The relevant observations of the Hon'ble Supreme Court are required to be noted which read thus:

“26. Even in the application of the dcontrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant, there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth. Can the Courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, Courts can insist and require additional steps as long a such steps would not frustrate the apparent purpose of the legislation."

In the facts of the case, considering the totality of the legal jurisprudence on the issue and the conduct of the appellant, the appellant is not entitled to the complete and full statement of the persons in whose case the search action had taken place.

CROSS EXAMINATION:-

The appellant has also raise the contention that the cross examination of the persons in whose case the search action taken place was not provided to the appellant. Even though the appellant has made a statement in the submission that the cross examination were asked during the course of assessment proceedings however the appellant has not highlighted any paper book page or any particular submission dated before the assessing authority and as such the contention of the appellant is not verifiable and is an open-ended submission liable to be rejected.

In the notices issued and vide specific noting on ordersheet, the appellant was requested to file the copies of submissions made before the assessing authority. However the copies filed are mere printouts and do not bear any signatures neither in original nor in photocopy and also does not have any attestation, and can't be treated as copies of the submissions made during assessment proceedings

Further, the evidence against the assessee appellant in the present case is from the person with whom the assessee appellant has carried out the transaction. The first onus is on the assessee appellant to prove such evidence as incorrect as this is a party with whom the assessee appellant had done the transaction. The onus is on the appellant to have produced such person before the learned AO for cross examination. In the facts of the case, such party should be the evidence of the assessee appellant and assessee appellant should have produced him before the assessing authority as it is the claim of the assessee appellant that the evidence produced by him (assessee) is correct Proving the genuineness and for the same producing the party before the ld. AO for cross examination is the onus of the assessee.

In view of the above vide order sheet sheet n noting the appellant was provided specific opportunity to prove the genuineness through the evidences from the buyers and their representatives

In this regard the appellant has filed the reply online on the date of 13.01.2025. The appellant has even failed to file the confirmations. The appellant has expressed its inability to obtain anything from the buyers and their representatives. The appellant has stated that it is no connect or control with the buyers or their representatives. Whereas considering the importance of the issue for the appellant, the appellant should have produced the confirmations from the buyers and also should have produced the parties for cross examination.

It is also important to note that the appellant has not placed on record any correspondence with the buyers of the property in this regard that what effort was made by the appellant to obtain the confirmation and to bring them for cross examination. This shows that the appellant has deliberately not taken any steps which further goes on to support the findings of the assessment order regarding the unaccounted income of the appellant

The appellant has merely relied upon the preliminary documents like the registered value of the property etc. However the evidences with the assessing authority is over and above the preliminary documents

The evidences and the findings on the basis of these evidenons with the assessing authority are that the appellant received unaccounted cash payment over and above the value declared in the registered sale document. Thus the evidences and the documents which are on record and only speaks of recorded and accounted findings of the assessing authority cannot be rebutted with the help of those transaction and does not speak of unaccounted transaction.

It is held by the Hon'ble Rajasthan High Court in the case of Rameshwar Lal Mali v. Commissioner of Income-tax [2003] 132 Taxman 629 (Rajasthan)/[2002] 256 ITR 536 (Rajasthan)/[2002] 176 CTR 381 (Rajasthan) that "There is no provision for permitting a cross-examination of the person, whose statement is recorded during the survey and that if factors like "location of the shop, past history, various defects in the books of account are also used then the estimation of sales cannot be said to have been made solely on the basis of the statements of the witnesses recorded during the survey and that the conclusion arrived at by the assessing authority and modified by the Appellate Commissioner is based on the material on record.

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

examine is not necessarily a part of reasonable opportunity, as ruled by the Hon'ble Calcutta High Court in the case of Mahindra Nath Chatterjee vs. Collector (1977) TLR 1751. Identical is the view of the Hon'ble High Court of Madras, in the case of T. Devasahaya Nadar vs. CIT (1964) 51 ITR 20 (Mad), and it has been held that

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

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

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

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

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

The relevant extract of the judgement of Hon'ble ITAT in GTC Industries Ltd. v. Assistant Commissioner of Income-tax [1998] 65 ITD 380 (Bombay) [28-02-1995

wherein judgements of Hon'ble Supreme Court and High Courts have also been considered is as under-

"89. In the case of Mohanlal Jitamalji Porwal (supra). It was held as under (at page 488):

"Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The Community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the Community deserves equal treatment at the hands of the Court in the discharge of its judicial functions. The Community of the State is not a persona-non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National interest."

90. In the case of Kishanlal Agarwalla (supra). The Court held:

"Ordinarily the principle of natural justice is that no man shall be a Judge in his own cause and that no man should be condemned unheard. This fetter doctrine is known as audi alteram partem. It is on this principle that natural justice ensures that both sides should be heard fairly and reasonably. A part of this principle is that if any reliance is record must be placed on evidence or record against a person then that evidence or record must be placed before him for his information, comment and criticism. That is all that is meant by the doctrine of, audi alteram partem That no party should be condemned unheard. No natural justice requires that there should be a kind of a formal cross-examination. Formal cross-examination is I cross-examination is procedural justice. It is governed by rules of evidence, It is the creation of Courts and not a part of natural justice but of legal and statutory justice. Natural justice certainly includes that any statement of a person before it is accepted against somebody else, that somebody else should have an opportunity of meeting it wheather it (sic), by way of interrogation or by way of comment does not matter. So long as the party charged has a fair and reasonable opportunity to see, comment and criticise the evidence,

statement, or record on which the charge is being made against him, the demands and the test of natural justice are satisfied. Cross-examination in that sense is not the technical cross-examination in a Court of law in the witness box."

91. In the case of Satellite Engg. Ltd. (supra). The jurisdictional High Court has held that:

"It is true that the Department must disclose every information to the petitioner in which the Department intend to rely in the departmental proceedings. If the copies of the letters containing the price offered were handed over to the petitioner with a slip pasted on the name of the intended importer. From this material, it was for the petitioners to establish that the value quoted in these quotations was not the proper value and in case the Department is compelled to give the name or to produce such intending importers for cross-examination in departmental proceedings, it will well-nigh be impossible together any material in future. Therefore, it cannot be said that there was violation of natural justice specially when the name of the exporter sending the quotations was disclosed to the petitioner."

92. In the case of Kanungo & Co. (supra). It was held:

The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them."

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

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

93. In the case of Tulsiram Patel (supra). The Apex Court has held that:

"So far as the 'audi alteram partm' rule is concerned, both in England and in India, it is well-established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded This right can also be excluded where the nature of the action to be taken, its obiect and purpose and the scheme of the relevant statutory provisions warrant its exclusion: nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands."

94.DCW Ltd.'s case (supra), para 11 of the said decision (p. 237) is reproduced here as under

"The Supreme Court had an occasion to consider the applicability of the principles of natural justice in a recent case in R.S. Dass v. Union of India AIR 1967 SC 593. The Supreme Court in Chairman, Board of Mining Examination v. Ramjee AIR 1977 SC 965 held as follows:

'Natural justice is no unruly horse, no lurking land mine, nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditional by the facts and circumstances of such situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor financial but should be flexible yet firm in this jurisdiction……"

95. Sri Desai submitted that the rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and background of statutory provision, nature of the right which may be effected and the consequences which may entail its application depends upon the facts and circumstances of each case. It was stressed that natural justice is mistress and not the master of justice. It is used to support the cause of justice. It can never be used to defeat the cause of justice.

Sri Dastur pointed out that the Apex Court in K.T. Shaduli Grocery Dealer's case (supra) made it clear that cross-examination, if asked for, must be granted. In the case of Hira Nath Mishra v. Principal, Rajendra Medical College AIR 1973 SC 1260, the Supreme Court came across with an unusual situation which demanded a highly particular approach The Court was concerned with the complaints regarding molestation of girl students. In exceptional cases the requirement may be waived. The case of the assessee does not fall in the

category of exceptional cases In the light of cases discussed hereinbefore, it was pleaded that great injustices given to the assessee.

We have perused the decisions cited before us. The judicial climate on this point is thickly clouded with plethora of precedents. This point has created chaos in judicial cosmos. The result is that, as was observed in the case of Kishanlal Agarwalla (supra), "the danger of confusion has become real and natural justice is on the misleading road of sentimental potentiates."

We recollect the famous saying of Justice Bernard Botein:

"The law will never be entirely clear to any judge, just as a beautiful woman is always a bit of mystery to her lover. Were it otherwise each would lose part of her charm. But the wise judge, like the wise lover, will be the master of his true love, although he may not understand her completely and though she is sometimes too difficult for him. Trial Judge (at page 27)

96. The appellant's basic contention is that the statement of witnesses and materials which are relied upon by the Assessing Officer in the assessment order to reach the conclusions and findings which are adverse to the assessee should be disclosed to the appellant and the witnesses should be offered for cross-examination. Supreme Court in the case of Suraj Mall Mohta & Co. (supra) laid down:

"the assessee ordinarily has the fullest right to inspect the records and all documents and materials that are to be used against him. Under the provisions of section 37 of the Indian Income-tax Act the proceedings before the Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings have to be observed before the result is arrived at In other words, the assessee would have a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal."

97. In the case of K.T. Shaduli Grocery Dealer (supra), it was held (at p. 1631):

“……the usual mode recognized by law for proving fact is by production of evidence and evidence includes oral evidence of witnesses. The opportunity to prove the correctness of completeness of the return would, therefore, necessarily carry with it the right to examine witnesses and that would include equally the right to cross-examine witnesses examined by the Sales-tax Officer. Here in the present case the return filed by the assessee appeared to the STO to be incorrect and incomplete because certain sales appearing in the books of Hazi Usmankutty and other wholesale dealers were not shown in the books of account of the assessee. The STO relied on the evidence furnished by

the entries in the books of account of Hazi Usmankutty and other wholesale dealers for the purpose of coming to the conclusion that the return filed by the assessee was incorrect or incomplete. Placed in these circumstances, the assessee could prove the correctness and completeness of his return only by showing that the entries in the books of account of Hazi Usmankutty and other wholesale dealers were false, bogus or manipulated and that the retum submitted by the assessee should not be disbelieved on the basis of such entries, and this obviously, the assessee could not do, unless he was given an opportunity of cross-examining Hazi Usmankutty and other wholesale dealers with reference to their accounts. Since the evidentiary material procured from or produced by Hazi Usmankutty and other wholesale dealers was sought to be relied upon for showing that the return submitted by the assessee was incorrect and incomplete the assessee was entitled to an opportunity to have Hazi Usmankutty and other wholesale dealers summoned as witnesses for cross-examination. It can hardly be disputed that cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood. Here, it was not disputed on behalf of the revenue that the assessee in both cases applied to the STO for summoning Hazi Usmankutty and other wholesale dealers for cross-examination but his application was turned down by the STO. This act of the STO in refusing to summon Hazi Usmankutty and other wholesale dealers for cross-examination by the assessee clearly constituted infraction of the right conferred on the assessee by the second part of the proviso and that vitiated the orders of assessment made against the assessee."

98. It is pertinent to note that in the case of M.K. Thomas (supra), it was held that the decision in K.T. Shaduli Grocery Dealer's case (supra). cannot be understood as recognising a right of cross-examination as an invariable attribute of the requirements of reasonable opportunity. The Apex Court has stated the rule with sufficient elasticity and amplitude as to make the right depend on the terms of the statute, the nature of the proceedings or of the function exercised, the conduct of the party and the circumstances of the case.

99. "Whether in a particular case the particular party should have the right to cross-examine or not depends upon the facts and circumstances of a particular case. This is so, because the right to cross-examine is not necessarily a part of reasonable opportunity." This view was taken by the Calcutta High Court in the case of Manindra Nath Chatterjee (supra). Thus in a given case the rule of audi alteram partem may impost a requirement that witnesses whose statements are sought to be relied upon by the authority holding the enquiry should be permitted to be cross-examined by the party affected while in some other case it may not.

100. In the case of Kishanchand Chellaram d Chellaram (supra), th (supra), the Apex Court was concerned with the evidence which was to be used against the assessee. This was in the form of letter from the Manger of a Bank through which money was remitted. This letter was not shown to the assessee. Therefore,

evidence was held not to be admissible. It was held that opportunity to controvert should be given to the assessee.

101. In the case of Dr. Rash Lal Yadav (supra), it was held:

"The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (1) no one shall be a judge in his own cause, and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage."

102. In the case of Mahendra Electricals Ltd. (supra), it was held that:

"The opportunity to cross-examine the witness who has made adverse report should not be denied, to the opposite party."

103. The concept and contents of natural justice go on changing. Natural justice is a living organism, advanced from time to time. Courts are giving new dimensions to the principles of natural justice. The principles embodied reflect the value of the society accepted for time being. The change is a fact of life. Every living thing takes new shape, new dimension with the flux of time. Hon'ble Supreme Court has observed in 44 STC 61 (sic):

"It must be remembered that law is not a mausoleum. It is not an antique to be taken down, dusted, admired and put back on the shelf. It is rather like and old but vigorous tree, having its roots in history yet continuously taking new grafts and putting out new sprout and occasionally dropping dead words. It is essentially a social process, the end product of which is justice and hence, it must keep on growing and developing with changing social concepts and values. Otherwise, there will be estrangement between law and justice and law will cease to have legitimacy."

104. No riddle is more difficult to solve, none has more persistently engaged the attention of thoughtful mind', says Allen, than the problem of the natural sense of justice. We have carefully considered the profile of the subject in the light of the latest developments. Principles of justice prohibit, determination without hearing. [Terminer sans over] Similarly, hearing without determination [Over sans Terminer] is also interdicted by the finer norms of justice. That all is required is impartial and fair hearing, and determination of disputes with utmost promptitude. The question whether or not any rules of natural justice had been contravened, should be decided not under any preconceived notions but in the light of the statutory rules and provisions. The violation or otherwise of any rule of natural

justice must be a matter of substance not of mere form. It is important to keep in mind the caveat issued by the Apex Court AIR 1977 SC 965 that unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating.

105.In our opinion right to cross-examine the witness who made adverse report, is not an invariable attribute of the requirement of the dictum, 'audi alteram partem'. The principles of natural justice do not require formal cross-examination. Formal cross-examination is a part of procedural justice. It is governed by the rules of evidence, and is the creation of Court. It is part of legal and statutory justice, and not a part of natural justice, therefore, it cannot be laid down as a general proposition of law that the revenue cannot rely on any evidence which has not been subjected to cross-examination.

However, if a witness has given directly incriminating statement and the addition in the assessment is based solely or mainly on the basis of such statement, in that eventuality it is incumbent on the Assessing Officer to allow cross-examination.

Adverse evidence and material, relied upon in the order, to reach the finality, should be disclosed to the assessee. But this rule is not applicable where the material or evidence used is of Collateral Nature."

(emphasis supplied)

In the light of above decision it can be concluded that adverse evidence and material, relied upon in the order, to reach the finality, should be disclosed to the assessee. However the issue of cross examination is different. In this regard it is incumbent upon the assessee to have raised the issue and demanded cross examination during the assessment proceedings. Also where the statement material or evidence used is of collateral nature, providing the cross examination is not necessary.

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

Headnotes

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

The principles of natural justice cannot be used to the advantage of person who wants to defeat the very purpose of justice.

The Hon'ble Supreme Court in the case of Chairman, Board of Mining Examination vs. Ramjee AIR 1977 SC 965 has held that

"Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. And it is held in the case of Kishanial Agarwal vs. Collector of Customs. AIR 1967 Cal 80 that "So long as the party charged has a fair and reasonable opportunity to see, comment and criticise the evidence, statement, or record on which the charge is being made against him, the demands and the test of natural justice are satisfied. Cross-examination in that sense is not the technical cross examination in a Court of law in the witness box."

It is the principle of law as laid down by the Hon'ble Supreme Court that in accepting any plea of breach of principles of natural justice, such plea would be required to be tested on the aspect of prejudice, as observed in para 62 in case of Veena Estate (P.) Ltd. v. Commissioner of Income-tax [2024] 158 taxmann.com 341 (Bombay)/[2024] 461 ITR 483 (Bombay)[11-01-2024]

It is abundantly clear from the principles of law as laid down by the Supreme Court as noted above, that a technical plea of breach of principles of natural justice cannot be taken, unless a case of prejudice has been made out and if no case of prejudice is made out, certainly a plea of breach of principles of natural justice would be a hollow plea or a plea in futility. This for the reason that a person complaining of breach of principles of natural justice needs to show that curing such breach, would culminate the proceedings with a different consequence favourable to the assessee. It is only after considering such pleas, it would be a fair decision, rendering justice to the complainant, as observed in para 62 in case of Veena Estates (supra).

It is principle of law as laid down by the Hon'ble Supreme Court in Natwar Singh v. Director of Enforcement [2010] 13 SCC 255, wherein the Supreme Court has observed that there can never be a technical plea of breach of principles of natural justice and plea would be a realistic plea which can be proved on the principle of prejudice.

It is a settled principle of law that any breach of the principles of natural justice cannot be addressed by a straight jacket formula. Any complaint of breach of principles of natural justice would be required to be considered in the facts of the case. When the facts of the case would demonstrate it, to be an undisputed position, that no real prejudice was caused to a party aggrieved by an order, being alleged to be breach of the principles of natural justice, the Court would certainly not interfere. Such complaint and/or a genuine grievance of the breach of principles of natural justice accompanied with the prejudice it would cause, is required to be made with utmost promptness. Any delay in making such complaint or raising a grievance would give rise to a position that such grievance is either not genuine or is belated and/or a technical plea being agitated. In Natwar Singh (supra), the Hon'ble Supreme Court while observing on the test of real prejudice, observed that there is no such thing as "technical infringement of natural justice", as what is necessarily to be seen is that there must have been caused some real prejudice to the complainant. It was observed that the requirements of natural justice must depend inter alia as involved in the facts and circumstances of the case and the nature of the inquiry, etc. (para 41 in case of Veena Estates (supra)) The relevant observations of the Hon'ble Supreme Court are required to be noted which read thus:

"26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the Inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth. Can the Courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, Courts can insist and require additional steps as long a such steps would not frustrate the apparent purpose of the legislation.

By nature, the undisclosed transaction of mentioned in the registered sale deed. If it is mentioned in the registered sale deed then it does not remain unaccounted and undisclosed. Similarly the similar arguments like bank statement showing the cheque payment from the buyer is of no help as the issue at hand is regarding the unaccounted and undisclosed cash transaction.

It was held by the Hon'ble Supreme Court in the case of Sumati Dayal v. Commissioner of Income-tax [1995] 80 Taxman 89 (SC)/(1995] 214 ITR 801 (SC)/[1995] 125 CTR 124 (SC)[28-03-1995] as under:-

13. This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. The Chairman of the Settlement Commission has emphasised that the appellant did possess the winning ticket which was surrendered to the Race Club and in return a crossed cheque was obtained. It is, in our view, a neutral circumstance, because if the appellant had purchased and the the winning ticket after the event she would be having the winning ticket with her which she could surrender to the Race Club. The observation by the Chairman of the Settlement Commission that "fraudulent sale of winning ticket is not an usual practice but is very much of an unusual practice" ignores the prevalent malpractice that was noticed by the District Taxes Enquiry Committee recommendations made by the said Committee which led to the amendment of the Act by the Finance Act of 1972 whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc. was withdrawn. Similarly the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleger to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence.

The findings and ratio of the above judgement as relevant for the case at hand are as under.-

(a) Receipt of credit through cheque and recording the transaction in books of accounts is not the conclusive proof regarding its genuineness.

(b) The known/usual "practice" used to avoid the tax is a relevant factor while examining the genuineness. Similarly, the allegation or finding in an order that source of cash in books of accounts is fraudulent practice/means the onus is solely not on the assessing authority that the fraudulent practice has been employed but is to be seen in terms of the reality and known practices.

It is very known practice in several real-estate transactions, significant part of the total consideration is being paid in cash in an unaccounted manner. In view of the evidences on record and in view of the known or the usual practice, the onus is on the appellant to prove with sterling evidences that the evidences on record are false or incorrect and at the same time the known or the usual practice has not been followed by the appellant. However the appellant has squarely failed to discharge his onus.

The transaction is between two parties where the appellant is the seller and the parties which maintained the data of unaccounted cash payment is the buyer. If the buyer has paid the unaccounted cash payment to seller that means the seller received the unaccounted / undisclosed cash. When the seller has received it that means the buyer has paid it. This is the position until or unless the same is rebutted with strong evidences by the seller appellant.

Statement of the buyer and or the representative of the buyer is reliable evidence. In this regard reference is made to the judgement of Hon'ble M.P. High Court in the case of Vijay Jain v. Commissioner of Income-tax (Appeals), Ujjain [2019] 107 taxmann.com 313 (Madhya Pradesh)/[2019] 265 Taxman 81 (Madhya Pradesh) (MAG)[22-03-2018] wherein it has been held as under

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

In the present case the addition has not been made solely on the basis of the statement but the statement is corroborative as the details of the unaccounted cash payments are clearly mentioned in the seized material. It is not verifiable whether the request of cross examination was made during the assessment proceedings are not and if any such request was made then whether it was made timely or not as that is an indicator of the bona fide of the request. The present appeal proceedings also the appellant has not made any request for directions to the assessing authority to request for the cross examination. Also the onus is on

the appellant to prove the genuineness of the transaction including the transaction value. If the evidences found from the search suggest or show that the appellant received the unaccounted cash payment in that case the onus is on the appellant to have produced the buyers for the cross examination by the assessing authority. Once the preliminary evidence is confronted to the appellant, the onus regarding such evidences shifts from the assessing authority to the appellant i.e. the appellant is required to disprove such evidences with the help of positive evidences. The finding of the assessment order also gets supported from the principle of known or usual practice in the real estate market and thus the judgement of honourable Supreme Court in the case of Sumati Dayal is applicable. The buyers are the evidences of the appellant as it is the appellant who has entered into transaction with the buyers and the appellant is required to produce them to support its case of the genuineness.

It is a settled law that unaccounted transactions take place in secrecy and direct evidence about secret transaction would be rarely available and the inference had to be drawn on the basis of circumstances available on the record and that the genuineness of claim had to be considered in view of the surrounding circumstances and applying the test of human probabilities. [Sumati Dayal v. CIT [1995] 80 Taxman 89/214 ITR 801 (SC)]

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

It is held by the Hon'ble ITAT in Sushil Kumar Mohnani vs. Income-tax Officer, Ward, Katni (M.P.) [2011] 9 taxmann.com 314 (Jabalpur) (TM) [01-06-2010] as under:-

..... It is observed that the Hon'ble Apex Court in the case of SumatiDayal (supra) has held as under:

in all cases in which a receipt is sought to be taxed as income, the burden lies upon the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee. But, in view of section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same

may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is. in the opinion of the Assessing Officer, not satisfactory. In such a case there is, prima facie, evidence against the assessee, viz the receipt of money, and if he fails to rebut it, the said evidence being unrebutted, can be used against him by holding that it was a receipt of an income nature.

It is clear from the decision of the Hon'ble Supreme Court in the case of SumatiDayal (supra) that direct evidence about secret transaction would be rarely available and the inference had to be drawn on the basis of circumstances available on the record and that the genuineness of claim had to be considered in view of the surrounding circumstances and applying the test of human probabilities."

It is held by the Hon'ble ITAT in Income-tax Officer vs. Solid Machinery Co. (P.) Ltd. [2022] 143 taxmann.com 293 (Mumbai - Trib.) [19-10-2022] as under-

7. It is also important that when we examine the genuineness of the transactions entered into by the assessee, we must also bear in mind Hon'ble Supreme Court's observation, in the case of CIT v. Durga Prasad More [1971] 82 ITR 540, to the effect that "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". Similarly, in a later decision in the case of SumatiDayal v. CIT [1995] 80 Taxman 89/214 ITR 801 (SC), Hon'ble Supreme Court rejected the theory that it is for alleger to prove that the apparent and not real, and observed that, "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities.... Similarly the observation.... that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleger to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably". We will be superficial in our approach in case we examine the claim of the assessee solely on the basis of documents filed by the assessee and overlook clear the unusual pattern in the documents filed by the assessee and pretend to be oblivious of the ground realities. As Hon'ble Supreme Court has observed, in the case of Durga Prasad More (supra ..... "it is true

that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents". As a final fact finding authority, this Tribunal cannot be superficial in its assessment of the genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted before the Tribunal but also in the light of all the surrounding circumstances, the preponderance of human probabilities and ground realities. There may be a difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact-finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidence. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law". This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in our considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, the preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, documents and examining them, in a pedantic manner, with the blinkers on.

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 leamed 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).

It is held by the Hon'ble ITAT in the case of Khopade Kisanrao Manikrao v. Assistant Commissioner of Income-tax [2000] 74 ITD 25 (Pune) (TM)/[2000] 69 TTJ 135 (Pune) (TM) [27-01-2000] as under-

134. Having held that the seized record is not the complete record of unaccounted transactions, the question which arises is whether these facts justify the estimation of undisclosed income. It is well settled law that what is apparent is the real state of affairs and the onus to prove that apparent was not real is on the party who claims it to be so. Reference can be made to the Supreme Court decision in the case of CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349. In the present case, the dispute is about the sale consideration of the plots sold by the assessee in the block period. What is apparent state of affair is the consideration of sale shown in the sale agreements/deeds and recorded by the assessee in his regular books of account. Therefore, the burden lies on the department to prove that it is false or unaccounted. In the present case, there are enough materials in the form of seized record to prove that sale consideration shown by the assessee in his regular books of account and the sale agreements/deeds were false and incorrect. The assessee himself has also admitted this fact by offering the amount of undisclosed income in his return under section 158BC. Therefore, in my opinion, the onus which lies on the Revenue has been discharged. Since the sale consideration recorded in the sale deeds/agreements and in the regular books of account have been proved to be false, in my opinion, the Assessing Officer justified in making the estimate under section 143(3)/145 in accordance with the guidelines given by the Apex Court in the case of Dhakeswari Cotton Mills Ltd. (supra) and in the case of Raghubar Mandal Harihar Mandal (supra) as discussed by us in earlier part of the order. This view is also fortified by the decision of the Supreme Court in the case of H.M. Esufali H.M. Abdulali (supra). It has been contended on behalf of the assessee that case law relied upon by the Id. senior D.R. where the estimate was justified related to cases where articles sold were standard articles while in the present case, it is the land which has been sold which is not of the standard quality in respect of each plot and those cases, therefore, are distinguishable. In my opinion, such aspect of the argument cannot be accepted. Once a fact has been proved to be in existence, the presumption to the existence of such fact can be raised backward and forward as held by the President as 3rd Member in the case of Overseas Chinese Cuisine (supra). It has been held thereon that if a particular habit or bad habit of manipulating the sale bills was found to be existing, then the same state of things could be presumed in respect of other transactions. Even according to the test of human probabilities, as approved by the Hon'ble Supreme Court in the case of SumatiDayal (supra), no man of prudence would sell similar items at similar place having great disparity. No doubt, there may be certain variations on account of mitigating circumstances, which have to be proved by the assessee. Perusal of the record shows that there is a great disparity in the prices of plots in respect of transactions where seized

material is available and for transactions where no record is available even though such transactions are made within the short period/interval. This can be proved by some examples.

In Survey No. 46, the assessee had sold 5 plots in assessment year 1989-90 at the rate of Rs. 5 per sq.ft. as per sale agreement/deed. While as per the seized record, it has been found that assessee had charged excess amounts in respect of 4 plots. It has also been found that excess money is considerably very high as compared to the price shown in the documents. For instance, the excess money for plot Nos. 7, 8 and 51 were Rs. 12,555 Rs. 15,348 and Rs. 18,533 respectively as against agreed price of Rs. 8,910, Rs. 9,405 and Rs. 8,745 respectively. Similarly, in Survey No. 18 assessee had sold half of the plot No. 71 to Shri Prakash Nigam and other half of the plot to Shri Ramesh Patil on the same date of 17th February, 1992 at apparent consideration of Rs. 1,125 each. However, as per seized record it is found that he had charged excess money of Rs. 6,375 (more than 5 times) from Shri Prakash Nigam. It is impossible to believe that assessee would not have charged excess money for other half of the plot No. 71 which was similarly situated and sold on the same date. According to the test of human probabilities, the assessee must have charged excess money in respect of the other plots. If there was any mitigating circumstances, it was for the assessee to prove. But, as far as the question of estimation is concerned, there is enough material on the record to justify the same."

(emphasis supplied)

It is held by the Hon'ble ITAT in the case of Deputy Commissioner of Income-tax v. Pawan Kumar Malhotra [2010] 2 ITR(T) 250 (Delhi) [08-01-2010] as under-

*12. We have heard the rival contentions and perused the material on record. We feel it imperative to deal with the issues about suspicious circumstances and their effects. The hon'ble Supreme Court in the case of Sumati Dayal [1995] 214 ITR 801 has held that the genuineness of the transactions is to be considered on the basis of surrounding circumstances, human probabilities and conduct of the connected parties. A transaction does not become genuine merely because a paper trail has been created. The Assessing Officer while exercising his powers as an investigating officer has a right to go beyond what is apparent. It shall be worthwhile to reproduce the observations of the hon'ble Supreme Court in this case (page 808):
……

13. In view of these surrounding circumstances, human probabilities and decide the issue on the basis of totality of facts, circumstances and record. The assessee filed his return of income for the assessment year 2004-05 in which no details about cash

purchases of shares were furnished by him. The purchase of shares is from two ordinary persons, one of whom did not appear and one Shri Raja Ram though appeared but could not give satisfactory reply. In both these cases, they also did not file any particulars about the purchase and sale of shares in their returns. Pertinently all these transactions are in cash and Shri Raja Ram could not even relate back the details of transactions, transfer of shares in his name, etc. Shares purchased at a cost of Rs. 2.42 has been sold in a range of Rs. 144 to Rs. 177 within a year, nobody knows the potential and credentials of QSIL. A logical question arises why the share price of a company whose potential, credential, activities are neither known nor reported will increase about more than 70 times in one year. These shares are neither quoted nor listed at the time of purchase by the assessee consideration changed hands without furnishing details about the distinctive numbers of transfer of shares, etc. Under these circumstances, QSIL shares attaining a very high market value itself becomes mysterious, which is thickened by the fact that there is no corroborative factor for increase in valuation. The hon'ble Supreme Court in the case of Sumati Dayal [1995] 214 ITR 801 signifies that what is apparent must be examined on the touchstone of surrounding circumstances and human probabilities. Merely because a paper trail is created will not by itself make the transaction genuine In this case, companies to whom QSIL shares were sold could not be traced ultimately. Learned counsel contends that their bank accounts suggest that the entities existed, in our view, the opening of a bank account by itself does not prove functional and factual existence of entities. The saga of paper or briefcase companies is well known to the corporate circles. The Assessing Officer as an investigating officer has an obligation to enquire into all the relevant aspects of the matter before him. Despite diligent enquiries by the Assessing Officer, the purchaser of these shares could not be traced, and sale price is exorbitant and logically absurd mere payment of securities transaction tax will also not make the transaction genuine Inasmuch as it is a voluntary payment by the broker. In view of the facts and circumstances, we are unable to accept the Commissioner of Income-tax (Appeals)'s finding that the Assessing Officer has acted on the basis of surmises and conjectures. In our view, the Assessing Officer has carried out meticulous enquiries, non-availability of relevant supporting material clearly questions the veracity of purchase and sale transaction of shares by the assessee. The same is further strengthened by the fact that the assessee in his return for the assessment year 2004-05 did not report the cash purchases of shares. On the sale front also except cheque payments, nothing worthwhile is forthcoming. The strength of shares of QSIL, its trading activities still remain mysterious and exorbitant share price is unbelievable on the facts, merely on the broker's note, it cannot be held that the transaction was infallible....."

(emphasis supplied)

In view of the discussion the contention of the appellant regarding the crose examination is hereby rejected.

PLEA OF APPELLANT FOR CANCELLING THE ASSESSMENT ORDER-

The appellant has requested to cancel the assessment order on the ground that statement of the was not provided and that the cross examination was not provided. These contentions of the appellant have been dealt in detail in the earlier paragraphs and these contentions have been rejected. Without prejudice to the same, even otherwise i.e. in case the contention of the appellant regarding statement and or cross examination would have been accepted even then the assessment order is not liable for cancellation and at best the matter could be set aside to the file of the assessing authority to provide the statement and/or cross examination to the appellant and passed the assessment order thereafter.

Further, reference is made to the judgement of The Hon'ble Supreme Court in the case of Canara Bank and Others v. Debasis Das and Others reported in (2003) 4 SCC 557 where Hon'ble Supreme Court has held as under:

*21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice, which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa site of nemo debet esse judex in propria causa sua os stated in Earl of Derby's caso ((1605) 12 Co Rep 114 77 ER 1390) thớt is, "no man shall be a judge in his own cattse Coke used the form aliquis non debet esse judex in propria causa, quia non potest esse judex el pars (Ca Lid 1418) that is no man ought to be a judge in his own caso, because he cannol act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex, that is, "no one can be at once suitor and judge is also at times used. The second rule is "audi alteram partem, that is, "hear the other side". At times and particularly in continental countries, the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right (see Boswel's case [(1605) 6 Co Rep 48b 77 ER 326] (Co Rep at p. 52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

It is held by the Hon'ble Supreme Court in the case of Kapurchand Shrimal v. Commissioner of Income-tax [1981] 7 Taxman 6 (SC)/[1981] 131 (SC)/[1981] 24 CTR 345 (SC) as under:-

13 …….It is, however, difficult to agree with the submission made on behalf of the assessee that the duty of the Tribunal ends with making a declaration that the assessments are illegal and it has no duty to issue any further direction. It is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeals and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute The Tribunal, therefore, erred in merely cancelling the assessment orders and in not issuing further directions as stated above"

Further, Hon'ble Allahabad High Court in the case of Bhagwat Prasad v. Commissioner of Income-tax [1998] 97 TAXMAN 294 (ALL) has held as under.-

23…….. If an order passed by a statutory authority is struck down as invalid for non-compliance of statutory provisions or in not giving effect to the maxim audi alteram partem, the proceedings do not come to an end. All that is done is that the order assailed by virtue of its inherent defects is vacated but the proceedings are not terminated They will stand restored to the stage before the order was passed. This position is well-settled in law

24. In Vishwanath Prasad Bhagwati Prasad v. CIT (1993) 202 ITR 469 (All), the assessment was completed without taking recourse to section 1448 when admittedly that section was attracted on the facts of that case. Two questions were raised for consideration of this Court Firstly, whether non-compliance of section 1448 was only a procedural lapse and secondly, whether the Tribunel was justified in upholding the order of the Tabunal in restoring the assessment to the ITO with directions to consider the matter afresh from the stage where the irregularity intervened. Both the questions were answered in the affirmative. It was pointed out that section 1448 merely sets out specific procedure to be followed in the cases where the ITO proposed to make any variation in the income or loss shown by the assessee, which is more than Rs. one lakh It does not confer jurisdiction on the assessing authority to make assessment and, therefore, non-compliance of it cannot render the assessment void and liable to be annulled. The Court held as under

Section 144B of the Income-tax Act, 1961, fails in Chapter XIV which bears the caption 'Procedure for assessment. It is, therefore, manifest that sections 139 to 158 falling in Chapter XIV relate to procedure for making assessment. Section

1448 is, therefore, procedural in nature, non-compliance with which cannot render an assessment a nullity Section 1448 was enacted with a view to ensuring that the assessment made by the assessing authority is not arbitrary, whimisical, capricious or unreasonable. It does not confer jurisdiction on the assessing authority to make the assessment and, therefore, non-compliance with it cannot render the assessment void."

25. In the ultimate analysis, it was held that the order of the appellate authority in setting aside the assessment for fresh assessment was valid in law

26. The ratio decidendi of the aforesaid case applies with all force to the facts of the instant case. There are several other pronouncements of different High Courts in which a similar view has also been taken and some of them have been referred in the case of Vishwanath Prasad Bhagwati Prasad (supra) but it is not necessary to refer them again in this judgment.
…….

28. In Kapurchand Shrimal v. CIT [1981] 131 ITR 451/7 Taxman 6, the Supreme Court has held as under-
"…….It is, however, difficult to agree with the submission made on behalf of the assessee that the duty of the Tribunal ends with making a declaration that the assessments are illegal and it has no duty to issue any further direction. It is well-known that an appellate authority has the junsdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute (p. 460)

In view of the ratio of the above judgements, whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated. (Canara Bank and Others (supra)). Further, an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeals and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. (Kapurchand Shrimal (supra)). The act of providing the copy of statement or cross examination to the appellant is a procedural act and any defect in the same does not render the whole proceedings as null and void. It was upheld in Vishwanath Prasad

Bhagwati Prasad v. CIT [1993] 202 ITR 469 (All.), Tribunal in restoring the assessment to the ITO with directions to consider the matter afresh from the stage where the irregularity intervened, and was relied upon in Bhagwat Prasad (supra).

In view of the above detailed discussion this ground of appeal of the appellant is hereby dismissed.

Ground Nos. 7,8 & 10
10.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

In the ground no. 7 of appeal the appellant has mainly challenge that the learned AO has not given detailed explanation for rejecting the reply of the appellant to the show cause notice during the assessment proceedings. From the perusal of the assessment order it is seen that detailed show cause notice was given to the appellant. In reply to the show cause notice the appellant has only given the denial without any supporting whereas the show cause notice was based on seized material regarding the transactions carried out by the appellant with the person from whom the transaction related material was seized. This issue has been discussed in the details in the earlier paragraphs in this order. Neither in the appeal nor in the assessment proceedings the appellant had given any positive evidence and the appellant did not produce the parties for cross examination with whom the appellant had entered into transactions of large amounts. From the perusal of the assessment order it is seen that the learned AO has effectively dealt with the issue in detail and the contention of the appellant is found to be incorrect. Further without prejudice, powers of the CIT Appeal are considered as co-terminus with that of the assessing authority and further opportunity has been provided to the appellant in the present appellate proceedings and no further grievance remains. Accordingly this ground of appeal is hereby dismissed.

In the ground number 8 of the appeal the appellant has contended that Karta of the assessee HUF had expired on 26.05.2021 and the other members of the HUF were not aware of any transactions carried out by the Karta and the appellant has challenged the finding of the assessing authority that this contention is irrelevant. I agree with the findings of the assessing authority in this regard. If this kind of plea is allowed in that case it will open floodgates for the tax evasion. The evidence in the assessment proceedings has been made on the basis of

incriminating seized material and other evidences and after detailed show cause notices were issued by the learned assessing officer. Further, even if the then Karta of the HUF had expired the HUF still continues. Further that the then Karta did not inform the other members about the transactions is a self-serving baseless statement and against the principles of probability as he must have informed and discussed this issue with his family members, including the spouse. In view of this discussion this ground of appeal is hereby dismissed.

The appellant has also contended in ground no. 10 that the learned AO erred in giving a finding that excel sheet entries are suppressed by placing decimal before the last two digits. The appellant has not made any submissions in this regard. Hence this ground is to be treated as not pressed. Even otherwise the issue has been discussed in detail in the assessment order and the appellant has raised the issue on the ground of appeal without any cogent arguments and evidences. The underlying findings of the assessment order have not been disputed in this regard and only the conclusion drawn has been challenged. In view of this discussion this ground of appeal is hereby dismissed.

Ground No. 9
11.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The contention of the appellant that the seized material has been found in the case of such other person and thus the presumption prest of accuracy does not apply is against the appellant is not correct and is in contradiction in contravention of provisions of section 153C of the Act itself. The section 1530 The section 153C itself is based on the foundation of the fact that the seized material found in the case of search of other person has information or material therein which has a bearing on the determination of the total income of the appellant. As has been discussed in the earlier paragraphs of this order also, the unaccounted or grey transactions take place in secrecy and if the seized material itself is discarded in the case of assessment of other person under section 153C of the Act the section itself loses its purpose and significance. Such kind of interpretation is not allowed as per the principles of interpretations. The basic intent of the law is that the presumption will apply against the other person also (in whose case search action had not taken place) but the presumption can be rebutted by such other person with the evidences from his own side. The onus in this regard is on such other person.

Such evidences from the search action cannot be mere discarded by the other person on the simplistic denial that these were not found from search action on him and were found in search action on other person as such approach is against the nature and basic principles of sections 153C of the Act.

In the present case the appellant has not pleaded any positive evidence from its side and has merely pleaded ignorance and denial. In the presence of incriminating seized material such baseless denial in substance indicates or suggests acceptance

Even though in the present case the addition is liable to be sustained in the assessment order in view of the factual background as discussed in detail in the earlier paragraphs of this order, the presumption u/s 292C is also applicable in this case against the appellant. Further the conduct & absence of confirmation etc. from buyer suggests that the buyer has accepted having made the unaccounted payment.

In a similar case of assessment u/s 153C of the Act, it has been held by the Hon'ble ITAT Deputy Commissioner of Income-tax vs. T.G. Chandrakumar [2023] 152 taxmann.com 623 (Cochin - Trib.) [03-04-2023] as under:-

Headnote:-

Section 45, read with section 2(14) and 2(47), of the Income-tax Act, 1961 - Capital gains - Chargeable as (Land dealings) - Assessment year 2008-09 - A search was conducted by revenue in group cases of Dr. AM and S Group of medical stores and connected cases An agreement for sale of land was found and seized from residence of Dr. RA between AM and LG of one part (as buyers) and assessee, and 4 others of second part (as sellers) - Sale consideration mentioned in agreement was higher than registered sale deeds executed subsequently - Assessing Officer initiated an assessment under section 153C and brought to tax income in respect of a portion of land Assessing Officer assessed capital gains in hands of assessee and protectively in hands of other sellers, claiming they were benamidars of assessee However, it was found that assessee was owner of land, executor of its sale, and beneficiary of sale proceeds and other sellers were puppets controlled by assessee It was also observed that all four sellers were closely associated with assessee and lacked capacity to purchase land - It was also found that agreement was valid and its cancellation as well as defect leading thereto, were completely unevidenced Whether therefore, revenue was justified in considering assessee as beneficial owner of subject land and assessment of capital gains in assessee's hands was also justified - Held, yes [Paras 7.1, 8.1 and 9] [In favour of revenue]

Extract from judgement:-

The Agreement dated 03/1/2007, which also bears the statutory presumption as to truth u/s. 292C, is found valid. Its cancellation as well as the defect leading thereto, is completely unevidenced. There is no explanation for the non-receipt of payment by cheque/s nor as to why it stands sold at either Rs. 1 lac per cent (9.87 cents) or at Rs. 20,000/- per cent (267 cents), working to an average of Rs. 22852 per cent, ie.. at about 10% or the originally agreed price of Rs. 2.24 lac per cent, within a period of 8 months. So much for the collective bargaining power, stated to be the reason for all of them, including the assessee-who admittedly owns the land that fronts the road, and through which access to the land of other four could be had, for coming together for the sale of land. Not surprisingly, the land is sold, in all four cases, on the same date, i.e., 25/8/2007. Contrast this with, and in any case, it needs to be noted that this land was subsequently sold at Rs. 6.70 lacs per cent, i.e., in February, 2010 (refer assessment order dated 28/03/2016 of Shri K.J. Thomas for AY 2008-09/PB-2, pgs.85-96). Even if subsequently scaled down to Rs. 4.80 lacs per cent, as Dr. Majeed clarifies (vide his statement u/s. 132(4) dated 18/12/2013/PB-1, pgs.27-36); the said difference not concerning us here, the lower figure again represents a 114% increase over the agreed price of Rs. 2.24 lacs per cent within 3 years of the Agreement dated 03/1/2007, justifying the same.

It has been held in the case of Pravinbhai Keshavbhai Patel vs. Deputy Commissioner of Income-tax, Central Circle -1(2), Ahmedabad [2014] 45 taxmann.com 533 (Ahmedabad - Trib) [2014] 162 TTJ 171 (Ahmedabad - Trib.)[28-02-2014) as under:-

A This sub Section prescribes how to treat the material delivered on requisition. This sub section (2) is clarifying the controversy which sometimes arise in a situation when the seized material is transferred to the AO having jurisdiction over "other person". This sub section says that where any books of account etc., have been delivered to the requisitioning officer then the provisions of sub-section 1 of section 292C shall apply that as if such books of account etc. which has been taken into custody from the person searched, as the case may be, had been found in possession or control of "that person" (in whose case material requisitioned) in the course of a search u/s. 132. Our humble interpretation of this sub section is that where any seized material is transferred or handed over to the AO having jurisdiction over such other person then that seized material shall be treated as if such material was found in possession or control of "such other person". Hence, a conclusion can be drawn that in spite of anything contained in

any of the provisions of the Act where the AO is satisfied that the seized material recovered at the time of search from the possession of the person searched but is required to be proceeded against "other person", then at the time when the seized material is handed over to the AO having jurisdiction over "other person" then it shall be deemed that the said seized material was found in possession or control of such other person. Then the consequences that if it is found in possession of such other person then the provisions of Section 132(4A) shall also be applied ipso facto. Because of this logic we thus turn down the argument of Id. AR.

In view of this discussion this ground of appeal is hereby dismissed.

Grounds of Appeal No. 11 & 12 are as under: 12.

Ground No. 11. That the learned A.O. has erred in drawing adverse inference against the assessee for receiving cash against sale of properties even though the purchaser has not proved the source of money paid to the assessee nor any addition has been made to the income of the purchaser in various years in which payment has been alleged to be made. The said action is illegal and unjustified.

Ground No. 12. That the learned A:O. has erred in holding that entries in excel sheet under name of Dr. Shaya are also attributable to the assessee without establishing any co relation with the assessee. The said action is illegal and unjustified.

12.1 The appellant/AR did not make submission on the Ground of Appeal No. 11 and 12. The same are treated as not pressed. Even otherwise the contention of the appellant that the source of the payment made to the appellant has not been explained by the purchase of the property is not relevant in the present case. The appellant has also not stated anything with respect to entries in excel sheet under name of Dr. Shaya and the same stand accepted.

Therefore, these grounds of appeal are dismissed.

13. Ground of Appeal No. 13 is as under:

Ground No. 13: That the learned A.O. has erred in holding that payment for purchase of lands were made upto F.Y. 2017-18 even though the purchases were settled upto F.Y. 2016-17. The said finding is illegal and unjustified.

Ground No. 13

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

In this ground of appeal the appellant has contended that since the registry of the property was already done and as per the seized material that a payment of the unaccounted cash was being done even after the registry, such practices against the principles of probability. However this contention of the appellant is mere suggestive and is not in evidence in itself. But that when looked and examined in the context of the evidences on record in terms of the seized material and the search statements, this contention of the appellant is found to be of no use and help to the appellant. Even otherwise that terms and conditions of any transaction specially the unaccounted transaction depends largely on the unwritten understanding and trust of the parties. Further, there is no likelihood or very less likelihood of finding of material in this regard from the search action of the buyer as the buyer had already bought the property registered and any paper or understanding agreement if any in this regard would be available with the appellant only where no search and seizure action took place. Further it is a matter of common knowledge and settled law that unaccounted transactions take place in secrecy and verifiable record of such transactions is hardly available.

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

In these two grounds of appeal the appellant has challenged the addition made in the assessment order on the ground that Excel Sheet data is absolutely uncorroborated. However this contention of the appellant is incorrect as the excel sheet itself is the evidence. Further the same is substantiated through the statements recorded during the course of search and seizure action. Also the appellant has provided several opportunities but the appellant has neither been able to produce the parties with whom the appellant carried out the direction nor the appellant has produced any other positive evidence apart from the copy of the registry deed which is already found to be incorrect in view of the seized material. Further this issue has been discussed in detail in the earlier paragraphs of this order in the adjudication of ground number 6 and 7 and 9 and 13 of the appeal

and the same are referred to and not repeated for the sake of brevity Further the contentions of the appellant that the directors of the purchaser company did not maintain any signed acknowledgements of payments from the appellant is a not bona fide argument. Whether the signed documents maintained or not actually depends upon the trust and understanding between the parties. Also it is not necessary that all the evidences for the unaccounted transactions are maintained by a party for ever especially even after the registry of the property had been done there was no requirement to maintain such evidences regarding the payments for the unaccounted transactions. The crux of the issue is that there are evidences including the statements against the appellant that the appellant received the unaccounted cash payment on the sale of the property and the appellant has not produced any positive evidence to counter such evidences which show that transaction over and above the transaction value recorded in the property registered document. The appellant has merely denied in general and has raised technical issues.

The appellant has also raised hypothetical issues that entries of higher payments were recorded by the buyer company in the ledger accounts for mala fide reasons that (i) To inflate the expenses., (ii) To deceive each other., (iii) To convince buyers about the exaggerated cost of acquiring land so that they could fetch higher sale money from the buyers of their projects. The appellant has merely given hypothetical baseless possibilities and put allegations on the buyer. However such hypothetical baseless contentions are of no help to the appellant. The contentions are mere theoretical and not bona-fide is also proved from the fact that no FIR and/or criminal case in court has been filed by the appellant in this regard.

In view of this discussion theses ground of appeal are hereby dismissed.

Ground Nos. 16 & 18

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

The appellant has contended that section 68 is not applicable to his case as the addition is not based on credit entry in the books of accounts if any maintained by the appellant. The appellant has contended that addition under section 68 can be done if "any sum is found credited in the books of an assessee" meaning thereby

that the credit has to be in the books of the assessee. Undisputedly, no such credit is found in the books of the assessee, therefore, invoking the provisions of section 68 deserves to be quashed. The contention of the appellant is acceptable as for making the addition under section 68 of the Act firstly there has to be "credit" in the books of accounts or in other terms the receipt of money or receipt of credit should be recorded by the assessee or in the books of the assessee. The second stage of the same is that such "credit" should be found to have been unexplained by the assessee. However in the present case there is no recording of credit entry by the assessee or in the books of the assessee. Secondly the nature and source of the credit itself has been established by the learned AO as the same is from the buyer of the property which was sold by the appellant and also the same is not the rotation of his own money by the appellant. In view of this background, in this case the addition could not have been made under section 68 of the Act and with the finding and qualification that the same is liable to be taxed under the chapter of capital gains as part of the sale consideration of the property sold by the appellant. The learned AO in this regard has already held in the assessment order on page 38 that if at an appellate state, if it is held by any appellate authority that the cash receipts by the assessee company cannot be treated u/s 68 of the Act, then the cash receipts will be taken as receipts for calculations of income from capital gain for the year under consideration.

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

Ground No. 19
17.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The appellant/AR did not make effective submission on the Ground of Appeal No. 19.Merely the ground of appeal has been repeated in the submissions. This shows that the appellant does not have anything to support the ground of appeal. The same is treated as not pressed. Therefore, this ground of appeal is dismissed.

Ground No. 20. That Section 50C of the Act provides for curbing of the undervaluation of real state and therefore, no property can be sold for less than the amount determined by the stamp valuation authority. In the present case, the sale deed was executed after the valuation was calculated by stamp valuation

authority and thus, the same cannot be disputed or controverted by the Respondents Department.

18.1 The appellant/AR did not make submission on the Ground of Appeal No. 20. The same is treated as not pressed. Further the issue of applicability of section 50C is not emanating from the assessment order under appeal. Therefore, this ground of appeal is dismissed.

19 Ground of Appeal No. 21 is as under:
C) Sections Involved - 234A, 234B and 234C of the Income Tax Act Issue involved - Charging of interest.

Ground No. 21: That the learned A.O has 234A, 234B and 2340 of the Act charging interest u/s 234A, 234B and 234C of the Act.
19.1 In this ground, the appellant has raised issue in respect of charging of interest u/s 234A, 234B and 234C. In this regard it is stated that charging of interest is mandatory and consequential in nature, therefore the AO is directed to give effect of the same on the income determined vide this appellate order. Accordingly, the ground of appeal raised by the appellant on this issue is disposed off
20. In the result, the appeal of the appellant is partly allowed.

7. Feeling dissatisfied with the above finding so recorded in the order of the ld. CIT(A), the assessee preferred the second appeal before this tribunal on the ground as reproduced hereinabove. To support the various grounds raised by the assessee ld. AR of the assessee, has filed the following written submissions:

I. Assessee Appellant is an HUF consisting of following Members/Co-parceners presently:

Dr. Monisha Sahai
Siddharth Sahai
Samarth Sahai

Dr. Anshu Sahai, who was Karta of the HUF, unfortunately expired on 26.05.2021.

II. The Assessee Appellant along with other family members sold certain pieces of land to Gokul Kripa Colonizers and Developers Private Limited as per following details:

S.No.	Name of the Seller	Date of Registry/ Sale	Sale Consideration Paid / Accepted Stamp Duty Valuation	A.Y.	PB
1	Madhuri Sahay W/O Late Shri R.M. Sahay	05.11.2015	1,41,60,000	2016-17	1-12
2	Anshu Sahay HUF	05.11.2015	6,69,60,000	2016-17	13-26
3	Anshu Sahay HUF	04.01.2016	9,69,60,000	2016-17	27-40
4	Anshu Sahay HUF	04.08.2016	1,10,40,000	2017-18	41-62
5	Anshu Sahay S/O Shri R.M. Sahay	04.08.2016	10,63,20,000	2017-18	63-73
6	Anshu Sahay S/O Shri R.M. Sahay	14.06.2016	98,40,000	2017-18	74-83
7	Anshu Sahay HUF	14.06.2016	8,35,20,000	2017-18	84-115
TOTAL			38,88,00,000		

III. A search and seizure action u/s 132 of the Income Tax Act, 1961, was carried out by the Income Tax Department on the Gokul Kripa Group on 19.01.2021.

IV. During the course of search, it is alleged, that certain incriminating digital data was found at one of the premises of Gokul Kripa Group. The said digital data, as per allegations, by the ld. AO, contained details of cash payments which allegedly were made, over and above the cheque payments, towards consideration for purchase of the above lands from the Assessee Appellant along with other family members.

V. The details of such alleged cash payments are appearing at pages 4 to 14 of the order of the ld. AO. It is alleged that the total cash payments, emerging from above digital data, in

all, amounted to Rs. 56,31,38,250/- made to all the family members towards all the sale transactions spanning over the following 3 financial years (ld. AO Pages 34)

F.Y.	*Cash received in Rs.*
FY 15-16	*26,79,94,750*
FY 16-17	*24,39,64,500*
FY 17-18	*5,11,79,000*
Total	*56,31,38,250*

VI. Ld. AO apportioned the alleged on-money paid in cash in proportion to cheque amount received by individual seller and, thereafter, said amount was further bifurcated into three financial years. The said workings are appearing at page 35 of the order of the ld. AO and are reproduced below for quick reference:

S.No(i)	Name of the assessee(ii)	Amount received through cheque(iii)	Total amount received in cash (iv)	Prop. Amount received in cash in ratio of amount received in cheque(iii*iv/vi)
1	*AnshuSahay HUF*	*25,84,80,000*	*56,31,38,250*	*37,43,82,651*
2	*Dr.MadhuriSahay*	*1,41,60,000*		*2,05,09,356*
3	*Shri AnshuSahay*	*11,61,60,000*		*16,82,46,252*

Total	*38,88,00,000(vi)*		*56,31,38,250*

S.No	*Name of the assessee*	*FY 2015-16* *AY 2016-17*	*FY 2016-17* *AY 2017-18*	*FY 2017-18* *AY 2018-19*	*Total*
1	*Anshu Sahay HUF*	*16,21,91,214*	*17,81,66,880*	*3,40,24,557*	*37,43,82,651*
2	*Dr. Madhuri Sahay*	*88,85,130*	*97,60,300*	*18,63,926*	*2,05,09,356*
3	*Shri Anshu Sahay*	*7,28,88,165*	*8,00,67,570*	*1,52,90,517*	*16,82,46,252*
		24,39,64,509	*26,79,94,750*	*5,11,79,000*	*56,31,38,249*

VII. Facts in all the three years are identical. A.Y. 2016-17 in ITA NO. 466/JPR/ 2025 may please be treated as the "Lead Case". Ld. CIT(A) has also given detailed findings in A.Y. 2016-17 only and referred the same in remaining two years i.e. A.Y. 2017-18 and A.Y. 2018-19.

VIII. On the basis of above presumptions and apportionment, following additions have been made towards alleged consideration received for sale of land over and above the consideration received through banking channel:

Assessment Year	Amount (in Rs.)
2016-17	16,21,91,214/-
2017-18	17,81,66,880/-
2018-19	3,40,24,557/-

GROUND NO. 1: Reopening by recourse to section 153C

1.1. Necessary satisfaction was drawn by ld. ACIT Central Circle -2, Jaipur and was sent to the ld. AO having jurisdiction of the Assessee Appellant for initiating action u/s 153C of the Income Tax Act, 1961, *vide* letter no. 368 dated 17.10.2022. (Ld. AO Page 1)

1.2. It is submitted that provisions of section 153C are not applicable for searches initiated on or after 01.04.2021. In the instant case, for the purpose of Section 153C, the deemed date of search is 17.10.2022. In this view of the matter, the date of search for the Assessee Appellant being 17.10.2022, the invoking of the provisions of section 153C is invalid and without jurisdiction.

1.3. It is submitted that copies of satisfaction recorded by the ld. AO of the searched person and satisfaction recorded by the ld. AO of the Assessee Appellant have not been provided. It is therefore, presumed that, no proper satisfaction being recorded which is a precondition for assuming the jurisdiction. Therefore, the order passed u/s 153C is invalid and without jurisdiction.

1.4. It is submitted that, the proceedings u/s 153C are barred by limitation as they have been taken for period beyond 6 years prior to the deemed date of search and the order passed deserves to be cancelled.

In view of the above, the entire assessment order deserves to be quashed as it is passed illegally without proper jurisdiction.

GROUND NO. 2: Order passed without proper approval under section 153 D

2.1. All the seven Assessment Years i.e. A.Y. 2015-16, A.Y. 2016-17, A.Y. 2017-18, A.Y. 2018-19, A.Y. 2019-20, A.Y. 2020-21, A.Y. 2021-22 were approved in just one day. The draft assessment orders by ld. AO were sent, for approval, on 22.03.2024 and all the seven assessment orders were approved on 23.03.2024 [PB 188- 195].

2.2. The prime object of entrusting the duty of approval of assessment in search cases is that the Additional CIT, with his experience and maturity of understanding should scrutinize the seized documents and any other material forming the foundation of assessment. Whenever any statutory obligation is casted upon any statutory authority such authority is required to discharge its obligation not mechanically, but after due application of mind. Thus, the obligation of granting approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the Ld. AO.

2.3. Now, coming to the facts of the case under consideration, the approval granted is absolutely mechanical without even analysing the basic evidences as just in one day completing the approval process is humanely not possible. This approval was granted along with discharging other regular official functions and maybe also other such approvals.

2.4. In this regard, kind attention is drawn towards the following judicial pronouncement wherein, it has been held that if the approval is granted by the superior authorities in

mechanical manner without application of mind, then, the very purpose of obtaining approval is defeated.

In the case of Shreelekha Damani V. DCIT (2015) 173 TTJ (Mumbai) 332, ITAT Mumbai held that:

"Coming to the facts of the case in hand in the light of the analytical discussion hereinabove and as mentioned elsewhere, the Addl. Commissioner has showed his inability to analyze the issues of draft order on merit clearly stating that no much time is left, inasmuch as the draft order was placed before him on 31.12.2010 and the approval was granted on the very same day. Considering the factual matrix of the approval letter, we have no hesitation to hold that the approval granted by the Addl. Commissioner is devoid of any application of mind, is mechanical and without considering the materials on record. In our considered opinion, the power vested in the Joint Commissioner/Addl Commissioner to grant or not to grant approval is coupled with a duty. The Addl Commissioner/Joint Commissioner is required to apply his mind to the proposals put up to him for approval in the light of the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case, there has been no application of mind by the Addl. Commissioner before granting the approval. Therefore, we have no hesitation to hold that the assessment order made u/s. 143(3) of the Act r.w. sec. 153A of the Act is bad in law and deserves to be annulled. The additional ground of appeal is allowed."

2.5. Reliance is placed on the Judgment of Hon'ble Supreme Court in the case of CIT v. S. Goyanka Lime & Chemical Ltd. [2015] 64.taxmann.com 313 (SC) wherein the department's SLP was dismissed.

Hon'ble Madhya Pradesh High Court in the case of CIT v. S. Goyanka Lime & Chemical Ltd. [2015] 56 taxmann.com 390 (MP) has held as under:

"..7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:—

'The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.'

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find

that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.
9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.
10. In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.
11. The appeals are, therefore, dismissed…"

In view of the above, the order passed may please be quashed in entirety being without proper approval under section 153D.

GROUND NO. 3: Additions towards unaccounted sale consideration against sale of land

3.1. Following submissions were made before ld. CIT(A) during the course of appellate proceedings before him (A.Y. 2016-17- lead case):

"3.2.1. It is submitted that, the alleged on-money payments in cash are spread over a period starting from 15.09.2015 and ending on 18.03.2018. This period extends to 30 months. It is submitted that registered sale deeds were executed on following dates:

Name of the Seller	*Date of Registry/Sale*
Madhuri Sahay W/O Late Shri R.M. Sahay	*05.11.2015*
Anshu Sahay HUF	*05.11.2015*
Anshu Sahay HUF	*04.01.2016*
Anshu Sahay HUF	*04.08.2016*
Anshu Sahay S/O Shri R.M. Sahay	*04.08.2016*
Anshu Sahay S/O Shri R.M. Sahay	*14.06.2016*
Anshu Sahay HUF	*14.06.2016*

3.2.2. It is submitted that last of the sale deed was executed on 04.08.2016 whereas last of the alleged payments was received as late as on 18.03.2018. The gap is about 19 months.

3.2.3. It is unbelievable that any prudent seller, if at all, proposing to receive on-money, would sign the sale deed and get it registered making the buyer legal owner of the land without receiving the on-money.

3.2.4. It is a common sense that in such a situation, the seller would have no right, least, the legal right to recover the on money. This glaring anomaly in the approach of the ld. AO clearly establishes the fallacy in the action of the ld. AO.

3.2.5. It is submitted that, nowhere in the names of the recipients of the on-money, name of assessee appellant is appearing. It is submitted that neither during the course of search nor during post search, the recipients were ever confronted by the Department to find out the truth in this regard. It was the legal responsibility of the search team to conduct complete inquiry in this regard so as to surface the truth.

3.2.6. In the digital data the name of the assessee appellant is appearing only at 3 places i.e. Serial Nos. 149, 164 and 166 (AO Pages 12 and 13). Whenever any payment was made to Anshu Sahai HUF, specific mention of it is there. Therefore, without specific mention of Anshu Sahai HUF, no cash payment can be imputed to have been made to assessee appellant i.e. Anshu Sahai HUF.

3.2.7. It is submitted that during the course of assessment proceedings, the assessee appellent clearly denied having received any payment in cash.

3.2.8. It is most humbly submitted that the said Excel Sheet data is absolutely uncorroborated. There is no underlying evidence which could substantiate such entries in the Excel Sheet. It is worthwhile to note that payments have allegedly been made over a period of 30 months and that too by 4 directors namely Sumer Singh Saini, Sangeeta Saini, Phool Chand Saini and Rajesh Kumar. It is beyond comprehension that 4 persons making payments over a period of 30 months would executes that task without maintaining underlying data and also without obtaining signatures of the recipients. This again proves that action of ld. AO is without any basis and beyond human probabilities.

3.2.9. It is quite possible that such data was falsely maintained by the directors for the following possible reasons: -

A. To inflate the expenses.
B. To deceive each other.
C. To convince buyers about the exaggerated cost of acquiring land so that they could fetch higher sale money from the buyers of their projects.

3.2.10. It is submitted that in the Excel Sheet, many payments are in the multiples of hundreds which normally do not look plausible when such huge payment was to be made in cash. Similarly, on various dates, payments are made by more than one directors or even by all the directors which again do not look plausible.

3.2.11. The Excel Sheet relied upon by ld. AO was neither prepared by the assessee nor was found from the control and possession of the assessee. This said Excel Sheet was said to be maintained by a 3rd person and was also found from the possession of a 3rd person. In view of this, no adverse inference can be drawn against the assessee on the basis of said Excel Sheet. It is further submitted that there is discrepancy / disconnect in the figure appearing in the tables at Page 36 and 37 of the order of the ld. AO.

3.2.12. It is submitted that the entire exercise of ld. AO is based on presumptions. The addition can be made on the basis of a specific evidence pin pointing the specific date / year. Any assumption /apportionment cannot take the place of evidence.

3.2.13.i. It is submitted that electronic records have been relied upon by ld.AO without complying with the requirements of Information Technology Act, 2000 read with Sections 65A and 65B of the Indian Evidence Act, 1872

3.2.13.ii Documents, as relied upon by the ld. AO, are the extracts of the excel sheet alleged to have been maintained by Gokul Kripa Group and seized during the course of search on 19.01.2021.

3.2.13.iii. Ld. AO has not recorded any satisfaction in his order that all the requisite steps were taken by him to ensure that the data output of the PEN Drives/Computer records, seized during the search on Gokul Kripa Group were analysed on "as is" basis and there is no risk of it being tempered by anyone.

3.2.14 It is submitted that for the sale of the lands, duly registered sale deeds were executed between the assessee and buyer. The act of the ld. AO, of treating additional amount as being paid for the sale of the property over and above what was specified in the registered sale deed merely based on

unrelated digital evidence is against the law laid down in Section 91 and 92 of the Evidence Act, 1872.

3.2.15 During the course of assessment proceedings, specific request was made for providing opportunity of cross examination of the directors of the Gokul Kripa Group. Ld. AO, for the reasons best known to him, did not provide any such opportunity. It is submitted that there is no corroborative evidence to prove the payments and, therefore, cross examination became vital. No addition can be made without providing opportunity to cross examine the persons whose statements are used against the assessee. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries (CIVIL APPEAL NO. 4228 OF 2006) held that "…not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected".

3.2.16. Since the addition u/s 68 are unwarranted, therefore, the very invoking of the provisions of section 115BBE are illegal and therefore deserves to be quashed.

3.2.23 It is also unbelievable and fails the common sense test that any person would preserve the said data till 19.01.2021 (date of search) when last of cash payment was made on 18.03.2018 and last of the registries was executed on 04.08.2016. It is submitted that, the alleged preserved sheet data would be of no help in case any dispute arises between buyer and seller because this is not supported by any evidence of actual receipt and payment which normally one may preserve to safeguard oneself against any further dispute."

3.2. Ld. CIT(A) did not deal with the factual inconsistencies brought to his notice as above. He simply rejected the submissions mentioning that what details and in what manner are kept by the buyer is dependent on the trust he has on the seller.

3.3. In respect of the submissions that no corroborative evidences were found, ld. CIT(A) rejected the submission by observing as under at pages 71 and 72 of his Order:

"Further the contentions of the appellant that the directors of the purchaser company did not maintain any signed acknowledgements of payments from the appellant is not a bona fide argument. Whether the signed documents maintained or not actually depends upon the trust and understanding between the parties. Also it is not necessary that all the evidences for the unaccounted transactions are maintained by a party for ever especially even after the registry of the property had been done there was no requirement to

maintain such evidences regarding the payments for the unaccounted transactions. The crux of the issue is that there are evidences including the statements against the appellant that the appellant received the unaccounted cash payment on the sale of the property and the appellant has not produced any positive evidence to counter such evidences which show that transaction over and above the transaction value recorded in the property registered document. The appellant has merely denied in general and has raised technical issues."

3.4. It was submitted before ld. CIT(A) that no prudent seller would keep the cash payment pending after the sale deed having registered. The gap, it was submitted, was about 19 months. Ld. CIT(A) has accepted this aspect when he has admitted that when registry of the property had been done there was no requirement to maintain such evidences regarding the payment for unaccounted transactions. In spite of this ld. CIT(A) has dismissed the appeal by placing reliance on the alleged digital data.

3.5. The Assessee Appellant also contended that the seized material was in the nature of dumb document which would not possess any stand-alone evidentiary value since it did not contain the complete particulars of the relevant transactions and the persons involved in the said transactions. The addition as made on the basis of such a dumb document would not be sustainable. A non-speaking document, without any corroborative material / evidence or without a finding that such document had materialized into transactions giving rise to income of the Assessee Apellant, was to be disregarded fully.

3.6. The Assessee Appellant further contended that the burden was on revenue to prove that the Assessee Appellant was in receipt of income which was sought to be taxed. The Ld. AO was wrong in requiring the Assessee Appellant to discharge a reverse burden of proof that such payments were not received by the Assessee Appellant.

3.7. Ld. CIT(A), on the contrary, has dismissed the appeal for the main reason that Assessee Appellant had not produced any positive evidence to show that he did not receive any money over and above the transaction value recorded in the property registered document. He further observed that opportunity in this regard was given during appellant proceedings also. These observations were made by the ld. CIT(A) at pages 62, 69 and 71 of his Order, which are reproduces as under respectively:

"…..Neither in the appeal nor in the assessment proceedings the appellant had given any positive evidence and the appellant did not produce the parties for cross examination with whom the appellant had entered into transactions of large amounts. From the perusal of the assessment order it is seen that the learned AO has effectively dealt with the issue in detail and the contention of the appellant is found to be incorrect. Further without prejudice, powers of the CIT Appeal are considered as co-terminus with that of the assessing authority and further opportunity has been provided to the appellant

in the present appellate proceedings and no further grievance remains. Accordingly this ground of appeal is hereby dismissed." (Page 62)

"……Further, there is no likelihood or very less likelihood of finding of material in this regard from the search action of the buyer as the buyer had already bought the property registered and any paper or understanding agreement if any in this regard would be available with the appellant only where no search and seizure action took place….." (Page 69)

"….Also the appellant has provided several opportunities but the appellant has neither been able to produce the parties with whom the appellant carried out the direction nor the appellant has produced any other positive evidence apart from the copy of the registry deed which is already found to be incorrect in view of the seized material…." (Page 71)

3.8. The Hon'ble Supreme Court in the case of K.P Varghese Vs. ITO (131 ITR 597) held that the onus of establishing that the conditions of taxability were fulfilled would always be on the revenue and throwing the burden of showing that there was no under-statement of consideration on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely, that he did not receive any consideration beyond what has been declared by him. Thus, the burden would be on revenue to adduce proper evidence to corroborate the contents of the seized material for the purpose of establishing that the assessee was, in fact, in receipt of the payments as noted in the seized material. Discharge of reverse burden is not expected from the assessee.

3.9. The prime question that would arise would be that whether such entries found in the material seized from a third-party could be used to draw adverse inference against the assessee without there being anything more in record in corroboration of the same. Further, the aforesaid material was not seized from the premises of the assessee nor the same was found in the handwriting of the assessee. Therefore, the same would not constitute adequate evidence to draw any adverse inference against the assessee in the absence of any corroborative evidence as held by Hon'ble Delhi High Court in the case of CIT v. Sant Lal (118 Taxmann.com 432). The Hon'ble Court, in similar circumstances, held that such kind of entries could not form the basis of addition when the revenue failed to produce any other cogent material to link the assessee to the diary. Similar was the situation in the present case.

3.10. In the case of CIT v. Lavanya Land (P) Ltd (2017)(397 ITR 246) (Bom), it was held that where entire decision is based on huge amounts revealed from seized documents but not supported by any evidence of actual cash passing hands, no addition can be made.

3.11. Hon'ble Supreme Court in the case of Common Cause v. UOI (2017) 77 Taxmann.com 254 (SC) held as under: -

"We are constrained to observe that the Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of account but on random papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily."

3.12. The aforesaid decision of Hon'ble Supreme Court stresses the need for exercising caution and for bringing on record relevant, reliable and cogent evidence to corroborate the entries found in loose sheets or pen drives regarding the payments allegedly made so that the process of law is not abused by unscrupulous persons in order to achieve ulterior goals. Therefore, it was important that the corroborative evidence was available on record in support of the entries in the seized material found in the premises of a third-party not written in the handwriting of the alleged receiver.

3.13. The Mumbai Tribunal in the case of Riveria Properties Private Limited v. ITO (ITA No.250/Mum/2013) held that Ld. AO was required to bring further evidence to show that the money had actually exchanged between the parties in a case where there was no other evidence on record to prove that on-money was paid except the loose sheet found in the premise of a third-party and admission made by the third-party.

3.14. There was no corroborative evidence to prove that the payments noted in the seized material had actually materialized and transfer of money had actually taken place between the concerned parties. The Assessee Appellant has not received any cash on sale of land to Gokul Kripa Group. Had Gokul Kripa Group paid such huge cash to the Assessee Appellant some documentary evidence as to the receipt of cash by the Assessee Appellant must have been found. Hence, in the absence of any such document solely on the basis of amount noted in the excel sheet it cannot be alleged that Assessee Appellant received any cash amount on sale of land to Gokul Kripa.

3.15. It is submitted that if in case of searched person any paper/document is found which contains the name of third person, it cannot be presumed that the amount noted in such paper/ document in the name of third person is correct unless some direct evidence in relation to that is found. In the present case, only because certain cash amount is noted in the name of Assessee Appellant in the said excel sheet it cannot be presumed that the same is correct unless some evidence of receipt of such cash by the Assessee Appellant is found in search. If it is so presumed then any person in his paper/document can record the name of some other person and on that basis the tax liability cannot be fastened on such person.

3.16. In case Gokul Kripa Group had paid such huge cash to the Assessee Appellant, then some documentary evidence as the receipt of cash or unregistered sale deed would have been found at the searched premises of Gokul Kripa Group, wherein Assessee Appellant would have acknowledged the receipt of cash payments. However, no such documentary evidence was found the searched premises. Accordingly, it is beyond the understanding of the Assessee Appellant that on what basis ld. AO has presumed that the alleged cash payments have been made to the Assessee Appellant.

3.17. No Corresponding Digital Trail or Communication Exchange:

3.17.i. In today's digital age, any significant financial transaction, especially one involving such large amounts, would be preceded by discussions, confirmations, or instructions via WhatsApp messages, emails, SMS or call records.

3.17.ii. The fact that no such communication has been discovered between the Assessee Appellant and Gokul Kripa Group regarding cash payments strongly proves that no such transaction took place.

3.17.iii. If such an agreement truly existed, there would be some form of evidence in the form of WhatsApp chats, emails or SMS records exchanged between the buyer and seller, detailing the terms and timing of cash payments. The complete absence of any such evidence renders the claim highly speculative and unreliable.

3.18. Similarly, as per the decisions of the Hon'ble Apex Court in the cases of CBI v. VC Shukla & Others (1998) 3 SCC 410 and Dhakeshwari Cotton MiIls (26 ITR 775), corroborative evidence would be essential to support the evidence found in third-party premises.

3.19. Excel sheet being dumb Document cannot be the sole basis for addition:

The Excel Sheet relied upon by the ld. AO in the assessment has no evidentiary Value on account of the following reasons:

3.19.i. The document relied upon is merely an Excel sheet, which lacks any formal acknowledgment, signature, date or identifiable origin.

3.19.ii. It is neither a signed ledger nor an authenticated financial record, but rather an unverified, self-generated document that does not meet the standards of admissible evidence under the law.

3.20. Reliance is placed on the judgment of the Hon'ble Karnataka High Court in the case of DCIT v. Sunil Kumar Sharma, [2024] 469 ITR 197 (Karnataka), wherein the Hon'ble High Court examined the following question at para 21 of the Order:

(1) Whether 'Loose Sheets' and 'Diary' have an evidentiary value?

The Hon'ble High Court answered in favour of the assessee as under at para 26 of the Order:

"26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent/Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."

Aggrieved by the said order, the Department preferred a Special Leave Petition (SLP) before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court was pleased to dismiss the said SLP in [2024] 165 taxmann.com 846 (SC)

3.21. Illogical & Impractical Business Conduct- The claim that a buyer paid Rs. 37.43 crores in cash over multiple transactions without obtaining a single signed agreement, acknowledgement, or receipt from the seller is highly implausible. No prudent businessperson would make such a substantial payment without legal documentation to safeguard his interest.

3.22. Possibility of Data Manipulation or Fraudulent Representation- The data in the excel sheet may have been fabricated or manipulated for ulterior motives. It could have been prepared to conceal payments made to other parties or to inflate property values for misleading future buyers. It could also be to inflate expenses and claim set off against own on money receipt by the buyer of the lands on subsequent plotting project on the said land. Without independent verification, the figures mentioned in the sheet remain

speculative and unreliable.

3.23. The buyer of the land, in his self-interest and to set off the on money which he had received from sale of plots, might have created this document. This aspect is evident from the admission of the buyer which is forming part of the questionnaire dated 18.12.2023 issued by the ld. AO attached to the notice u/s 142(1). Relevant extract is reproduced below:

"2. Gokul Kripa Group has made payments in cash out of books while purchasing the land for its projects.

c) This fact has also been admitted by the members of the assessee group and the cash payments made to purchase land from various sellers of land was claimed to be out of cash receipts from sales of plots. The assessee including his family members {Shri Anshu Sahay(Individual) and Ms. Madhuri Sahay} have also sold their land to the assessee group."

3.24. The alleged incriminating material is an internal document of the Gokul Kripa Group and merely the name of the Assessee Appellant is mentioned on it without any documentary evidence against the Assessee Appellant.

3.25. Ld. AO did not bring on record any finding that the land so sold by the Assessee Appellant could fetch that much of value. No comparable instance was quoted.

3.26. Further, the ld. AO claims that these alleged cash payments were made in multiple tranches before and after the date of the registered sale deed. However, in any standard business transaction, a prudent buyer/ seller would always ensure legal safeguards — such as an agreement to sell or a receipt of payment — to protect their financial interest. The absence of any such document in this case clearly suggests that the figures recorded in the Excel Sheet are speculative and lack any direct nexus with the Assessee Appellant. It is well-settled that entries in an unverified document cannot be the sole basis for an addition unless supported by corroborative evidence.

3.27. Apportionment and Bifurcation

3.27.i. Ld. AO, using guess work, has apportioned and bifurcated the alleged cash payments to different sellers and in different years (AO order page 35).

3.27.ii. Tax assessments cannot be based on such guess work, estimation, assumption, presumption, surmises and conjectures.

3.27.iii. <u>Without prejudice and without agreeing</u> it is submitted that each seller was independent, owned independent lands. Therefore, each owner must have bargained the rate independently. Ld. Lower Authorities have no evidence to support the exact amount which have been taxed in the hands of

different assesses in different years. Without such evidences- *qua* the assessee and *qua* the year- no addition is sustainable. Any document not unequivocally revealing such details is a deaf and dumb document which cannot be relied upon in any tax proceedings.

3.28. Reliance is placed on the judgment of the Hon'ble Coordinate Bench at Jaipur in the case of Shri Prakash Chand Kothari v. DCIT in ITA No. 1190/JP/2019; ITA No. 1298/JP/2019; ITA No. 66/JP/2020 order dated 12.10.2021.

In this decision, Hon'ble Jaipur Bench has placed reliance on the following judgments and has gainfully reproduced the relevant portions in its order which are reproduced below for ready reference:

i. DCIT v. Aarti Colonizer Company (2019) 202 TTJ 69 (Raipur)
ii. Anil Jaggi v. ACIT [2018] 168 ITD 612 (Mumbai)
iii. ACIT v. Ms. Katrina Rosemary Turcotte [2017] 190 TTJ 681 (Mumbai)

"64. It was submitted that Hon'ble Bombay High Court in the case of CIT v. Lavanya Land (P) Ltd. (2017) 297 CTR 204(Bom.) (HC) held that if the entries on loose sheet of paper, found during search, are not corroborated by any other evidence, no addition can be made. Similarly, in another case of Aarti Colonizers Company, certain incriminating material in the form of data stored in electronic medium was found in search conducted on the partners of the assessee firm. On the basis of such electronic evidences, additions were made in the hands of the assessee firm. Such additions were subsequently deleted by the Raipur Bench of the Tribunal (ITA No. 178 to180/RPR/2014 dated 01.07.2019) and it was observed by the Tribunal that no material was found to show that the amount contained in the data was paid by the assessee firm at any point of time. Resultantly, in the absence of any corroborative evidences no addition can be made.

84. We find that similar view has been taken by the Coordinate Mumbai Benches in case of Anil Jaggi vs ACIT (supra). In that case, payment of on- money by assessee, Anil Jaggi, was noticed in the course of search in the Hiranandani Group in respect of purchase of certain properties. The Coordinate Bench after appreciating the entirety of facts and circumstances held that the findings of the Assessing officer that assessee had paid "on money" for purchase of property under consideration is based on the contents of the pen drive which was seized from the residence of an ex- employee of Hiranandani group and the information as emerges from the print out of the pen drive falls short of material facts and remain uncorroborated and mere admission of the amounts recorded in the pen drive as the additional income by Sh. Niranjan Hiranandani in his application before the Settlement Commission falling short of any such material which would inextricably evidence payment of "on money" by the assessee would not lead to drawing of adverse inference as regards the investment made by the assessee for purchase of

the property under consideration and additions made by lower authorities were deleted and the relevant findings of the Coordinate Bench read as under:

"14. We shall now take up the case of the assessee on merits and deliberate on the validity of the addition of Rs. 2.23 crore made by the A.O on the ground that the assessee had made a payment of "on money" for purchase of flats from M/s Lakeview developers. We have perused the facts of the case and the material available on record on the basis of which the addition of Rs. 2.23 crore had been made in the hands of the assessee. We have further deliberated on the material placed on record and the contentions of the ld. A.R to drive home his contention that no payment of any "on money" was made by the assessee for purchase of flats from M/s Lakeview Developers. We find that the genesis of the conclusion of the A.O that the assessee had paid "on money" of Rs. 2.23 crore for purchase of property under consideration is based on the contents of the pen drive which was seized from the residence of an ex-employee of Hiranandani group. We have perused the print out of the pen drive (Page 42 of APB) and find ourselves to be in agreement with the view of the ld A.R that though against the heading "Amount of on money paid" the name, address and PAN No. of the assessee is mentioned alongwith the details of the property purchased by him, viz. Flat no.2501 in "Somerset" building from Lakeview Developers (a Hiranandani group concern), however, the same would not conclusively prove suppression of investment and payment of "on money" by the assessee for purchase of the property under consideration. We find that the information as emerges from the print out of the pen drive falls short of certain material facts, viz. date and mode of receipt of 'on money', who had paid the money, to whom the money was paid, date of agreement and who had prepared the details, as a result whereof the adverse inferences as regards payment of "on money" by the assessee for purchase of the property under consideration remain uncorroborated. We further find that what was the source from where the information was received in the pen drive also remains a mystery till date. We find that Sh. Niranjan Hiranandani in the course of his cross-examination had clearly stated that neither he was aware of the person who had made the entry in the pen drive, nor had with him any evidence that the assessee had paid any cash towards purchase of flat. We have deliberated on the fact that Sh. Niranjan Hiranandani in his statement recorded on oath in the course of the Search & seizure proceedings had confirmed that the amounts aggregating to Rs. 475.60 crore recorded in the pen drive were the on-money received on sale of flats, which was offered as additional income under Sec. 132(4) and thereafter offered as such for tax in the petition filed before the Settlement commission. We are of the considered view that there is substantial force in the contention of the ld. A.R that mere admission of the amounts recorded in the pen drive as the additional income by Sh. Niranjan Hiranandani, falling short of any such material which would inextricably evidence payment of "on money" by the assessee would not lead to drawing of adverse inferences as regards the investment made by the assessee for purchase of the property under consideration. We rather hold a strong conviction that the very fact that the consideration paid by the assessee for

purchase of the property under consideration when pitted against the 'market value' fixed by the stamp valuation authority is found to be substantially high, further fortifies the veracity of the claim of the assessee that his investment made towards purchase of the property under consideration was well in order. We are of the considered view that though the material acted upon by the department for drawing of adverse inferences as regards payment of "on money" by the assessee formed a strong basis for doubting the investment made by the assessee for purchase of the property under consideration, but the same falling short of clinching material which would have irrefutably evidenced the said fact, thus, does not inspire much of confidence as regards the way they have been construed by the lower authorities for drawing of adverse inferences in the hands of the assessee. We thus are of a strong conviction that as the material relied upon by the lower authorities does not corroborate the adverse inferences drawn as regards the investment made by the assessee, therefore, the same cannot conclusively form a basis for concluding that the assessee had made payment of "on money" for purchase of the property under consideration. We thus in the backdrop of our aforesaid observations are of the considered view that the adverse inferences drawn by the A.O as regards payment of "on money" of Rs. 2.23 crore by the assessee for purchase of Flat No. 2501 from M/s Lakeview Developers are based on of premature observations of the A.O, which in the absence of any clinching evidence cannot be sustained. We thus are unable to subscribe to the view of the lower authorities and set aside the order of the CIT (A) sustaining the addition of Rs. 2.23 crores in the hands of the assessee."

86. In this regard, we find that under similar fact pattern, Coordinate Benches of the Tribunal have taken a similar view and reference can be drawn to decision of the Coordinate Mumbai Benches in case of Katrina Rosemary Turcotte (supra). In this case, on the basis of a print out taken from the computer back–up of Ms. Sandhya Ramchandra, assessee's manager and assessee's agent Matrix India, it was concluded by the Assessing Officer that the assessee has received an amount of Rs. 2,50,000 in cash for appearing as a host at an ICC event in Sidney. The Coordinate Bench deleted the additions holding that the addition was made on the basis of a print out taken from the computer of a third party who happened to be an employee of Matrix and there are no other corroborative evidence brought on record to prove the fact that the payment mentioned in the seized material was actually received by the assessee and relevant findings read as under:

"8. We have heard rival contentions and perused the material available on record. Undisputedly, on the basis of a print out taken from the computer back–up of Ms. Sandhya Ramchandra, it was concluded by the Assessing Officer that the assessee has received an amount of Rs. 2,50,000 in cash for appearing as a host at an ICC event in Sidney. It is very much clear that apart from this document, there was no other evidence before the Assessing Officer to indicate that the assessee has received cash amount in question. It is a fact that in course of search as well as post search proceedings, the assessee was confronted with seized material and the

assessee categorically stated to have neither appeared as a host in the said event nor received any cash from Matrix. In fact, an Affidavit was also filed on behalf of Matrix categorically stating that no such cash payment of Rs. 2,50,000 was made to the assessee. Thus, from the aforesaid facts, it is to be seen that the addition was made on the basis of a print out taken from the computer of a third party who happened to be an employee of Matrix and there are no other corroborative evidence brought on record to prove the fact that the payment mentioned in the seized material was actually received by the assessee. On the contrary, the passport submitted by the assessee clearly established the fact that neither she had travelled to Sidney in relevant period nor hosted the ICC event for which she was supposed to receive cash payment. It is further relevant to observe, even Ms. Sandhya Ramchandra, from whose computer such print out was taken had stated before the Departmental Authorities that she was not aware of the fact mentioned in the said Annexure as it was for a period prior to her appointment in Matrix. In these circumstances, simply relying upon a untested / unverified document and without any other corroborative evidence to demonstrate that the assessee has actually received cash payment of Rs. 2,50,000 for hosting an event in Sidney, the addition, in our view, is unsustainable. Therefore, we uphold the order of the learned Commissioner (Appeals) on this issue by dismissing the ground raised."

87. Similarly, in case of Aarti Colonizer Company (supra), the matter came up before the Coordinate Raipur Benches of the Tribunal where it was held that the addition has been made by the assessing officer on the basis of the screenshot of journal entry dt. 4-9-2007 taken from the tally data in the pen drive found during the course of search and the printout of the details of land which has been reproduced by the assessing officer and other than these two materials, since no evidence has been brought on record by the Assessing officer and since nothing was found during search establishing any investment/payment made by the assessee, the two evidences relied upon by the Assessing officer, on a standalone basis cannot form the basis for invoking section 69. Therefore, it was held that provisions section 69 are not attracted as neither the Assessing officer discharged the initial burden cast upon him to prove investment nor any material has been brought on record to this effect and additions were held to be rightly deleted by the ld CIT(A) and the relevant findings of the Coordinate Bench read as under:

8. The learned counsel of the assessee submitted before us that in assessment year 2008-09, addition of Rs. 10,06,43,054 comprises of two additions, one of Rs. 7,32,98,821 and the other of Rs. 2,73,44,233. The facts relating to both the additions are different and therefore both these additions need to be adjudicated at length. We observe that the addition of Rs. 7,32,98,821 has been made by the assessing officer on the basis of the screenshot of journal entry dt. 4-9-2007 taken from the tally data in the pen drive and the printout of the details of land which has been reproduced by the assessing officer on page Nos. 2 and 3 of the assessment order as table 1. Other than these two materials, there is no other basis for making addition, which is

undisputed fact as per record also accepted by the learned Commissioner Departmental Representative. The assessing officer has made addition invoking section 69. As held inCIT v. Naresh Khattar (HUF) (supra) and CIT v. Dinesh Jain HUF (supra), the initial burden is on the Revenue to establish that there is any investment, which has not been recorded in books and in respect which the assessee is not able to give satisfactory explanation to the assessing officer. As rightly contended by learned Authorised Representative of the assessee, neither the journal entry nor the details of land were reproduced in table 1 on page Nos. 2 and 3 of the assessment order to establish that any investment was made by die assessee firm. The journal entry dt. 4-9-2007 is only an accounting entry passed for introducing the land as capital contribution by the partners who purchased the lands and therefore, this cannot be considered as evidence of investment. It is undisputed that neither during search nor during the assessment proceedings, any material was found to show that the amount contained in the journal entry was paid by the assessee firm to anyone at any time. Therefore, only on the basis of journal entry, section 69 could not have been invoked. As regards the details of land given on page Nos. 2 and 3 of assessment order as table 1, it merely contains some details about different lands and it does not contain even a whisper about any investment or payment made by anyone. We observe that the inference has been drawn by the assessing officer only on the basis of the three figures mentioned at the end of the table, on page No. 3 of the assessment order. This, in our considered view, cannot be considered to be evidence of payment/investment. It is undisputed that during search or thereafter during the assessment proceedings, no material was found or brought on record evidencing that the three figures referred to above represent any actual investment/payment by the assessee. As rightly contended by the learned Authorised Representative of the assessee, that the details given in the chart are not evidence of any payment/investment. Since no evidence has been brought on record by the assessing officer and since nothing was found during search establishing any investment/payment made by the assessee, the two evidences relied upon by the assessing officer, on a standalone basis, in our considered view, cannot form basis for invoking section 69. Therefore, we hold that provisions section 69 are not attracted as neither the assessing officer discharged the initial burden cast upon him to prove investment nor any material has been brought on record to this effect.

8.1 A perusal of the journal entry dt. 4-9-2007, which has been one of the basis for addition, shows that through this journal entry, the lands was purchased by the two persons named in the journal entry and was being introduced as their capital contribution in the partnership firm. Since, these journal entries have been relied upon by the assessing officer. Thus, it has remained undisputed that the lands were not purchased by the assessee but by the two persons as named in the journal entry. When the lands were not purchased by the assessee firm, any question of payment of "on money" does not arise in the case of assessee firm. As rightly contended by learned Authorised Representative of the assessee, that all the lands, except one, described in the assessment order on page Nos. 2 and 3, were purchased prior to

formation of the assessee firm. We observe that in para 3 of the assessment order, the assessing officer has himself mentioned that the assessee firm was formed on 4-9-2007. As evident from different entries of land given in table 1 in the assessment order, the date of purchase in all the cases, except in one case, falls prior to 4-9-2007. In other words, the seized material itself shows that the lands were purchased prior to formation of the assessee firm, in this background also, we fail to see how any case can be made out of payment of "on money" by the assessee. There is yet another convincing reason that in all the three years under appeal, there were no sales affected by the assessee firm and the business of the assessee firm had not even started, which is also evidenced by the profit & loss account of the three years placed at page Nos. 309, 311 and 337 of the paper book. These profit & loss accounts have remained undisputed by the assessing officer. We are inclined to agree with the argument of learned Authorised Representative of the assessee that when the source of revenue for the assessee was not there, it cannot be perceived that the assessee could have earned any undisclosed income and made any undisclosed investment. In CIT v. Smt. P.K. Noorjahan (supra), on behalf of the Revenue, it was argued that the word "may" in section 69 should be read as "shall" against which Hon'ble Supreme Court observed that it was unable to agree. Hon'ble Supreme Court thereafter held that the use of the word "may" clearly indicates that the intention of Parliament in enacting section 69 was to confer a discretion on the Income Tax Officer in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the Income Tax Officer is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be satisfactory. The question whether the source of the investment should be treated as income or not under section 69 has to be considered in the light of the facts of each case. In that case, the Tribunal held that the discretion had not been properly exercised by the Income Tax Officer and the AAC in taking into account the circumstances in which the assessee was placed. Hon'ble Supreme Court observed that it did not find any error in the said finding recorded by the Tribunal. In Smt. Rajabai B Kadam v. Asstt. CIT (supra) it was found that the assessee, who was a minor, was found carrying cash of Rs. 1,18,500 by the police Department. The assessee thereafter died. In pursuance to the reassessment notice, his mother filed return declaring nil income and she could not explain the money which was recovered from her minor son. Co-ordinate Bench held that there is no material on record to suggest that the minor could earn said money just within a period of 2 months after leaving his school. It was in these facts and circumstances that the addition was held to be not justified, relying upon the decision of Hon'ble Supreme Court in the case of Smt. P.K. Noorjahan (supra). If we apply he ratio of aforesaid two decisions to the facts of the present case, we find that when the source of income/revenue for the assessee was missing in the sense that the business had not even started during all the three years and since during search, nothing was found to establish that the assessee had any undisclosed income from any other source, the discretion vested in the assessing officer should have been exercised in favour of the assessee and the addition should not have been made. We

also observe that the assessing officer has not made any enquiry whatsoever from different vendors of the lands and not even from the two persons named in the journal entry, who, as per the journal entry, introduced their lands as capital contribution in the partnership firm. In absence of any enquiry whatsoever, no addition could have been made only on the basis of inference. It is a settled position of law that for making addition under section 69, there has to be some material establishing actual investment and therefore it is not justified to invoke the section merely on the basis of inference.

8.1.1 In view of all the above reasons, we hold that the assessing officer was not justified in making addition of Rs. 7,32,98,821 on account of the lands described on page Nos. 2 and 3 of the assessment order. We, therefore, deem it proper to confirm the findings of learned Commissioner (Appeals) on this issue and hold that he was justified in deleting the addition.

8.2. Next the addition of Rs. 2,73,44,233 comprised in the total addition of Rs. 10,06,43,054, we observe that the addition has been made by the assessing officer on the basis of printout of tally data found in the pen drive seized from the residence of Shri Kishore Atlani. The printout contains details of 32.68 acres of land and the details have been reproduced as table 2 in the assessment order, on page Nos. 4 and 5. We observe that apart from this printout found during search, no other corroborative material in the form of cash book ledger etc. was found during search. A perusal of the details shows that the lands were purchased over a period of three years, from different persons. It is not the case of assessing officer that details of payment of individual lands were also found during search. What is to be noted is, apart from the chart found, no other corroborative evidence was found during search. It is not the case of assessing officer that any books of accounts and other details supporting the entries in the printout were found during search or brought on record during the assessment proceedings. It is not also the case of assessing officer that any other details in respect of different lands like details of payment to the persons etc. were found during search. Although it is stated that tally data was found in the pen drive, corresponding books of accounts in such tally data were not found as there is no reference of any such corroborative books in the assessment order. We agree with the argument of learned Authorised Representative of the assessee that if any unaccounted investment was made in respect of so many lands, from so many persons that too spread over a period of three years, some other corroborative material like account of the parties, details of individual payments etc. must also have been maintained and found during search and in absence of any such corroborative material, the contents of the pen drive/chart does not inspire confidence. It is also worth noting that there is no finding of fact recorded by the assessing officer about any unaccounted assets or unaccounted expenses or excess cash found during search. Considering all the facts, it comes out that apart from the printout in the form of chart, there is no other evidence in support of the addition made by assessing officer and the chart, by itself, does not constitute any material/evidence to establish

unaccounted payment. As held by us earlier, for invoking section 69, the initial burden is on the Revenue to establish that any unaccounted investment was made by the assessee. This mandatory requirement of law is missing in the present case and so the addition is not justified.

8.2.1 It is seen that the details of the lands are contained in the printout obtained from the pen drive. When complete details were available with the assessing officer, the assessing officer could have conducted independent enquiry from the vendors, which also does not appear to have been done. On the contrary, the assessee submitted affidavit of two vendors before the assessing officer and the assessing officer did not even cross-examine them to verify the facts. In absence of any cross examination of the deponents of the two affidavits, the contents of the affidavit become conclusive.

8.2.2 While considering the explanation of assessee about the entries in the pen drive being fake, made by one Shri Ajay Atlani, it is noteworthy to consider that no enquiry whatsoever appears to have been conducted either from the said Shri Ajay Atlani or from Shri Kishore Atlani, from whose residence the pen drive was found. The assessee explained the circumstances under which the entries were made in the tally data in the pen drive by Shri Ajay Atlani. All these facts and assertions have remained uncontroverted. The assessee explained some of the contents of the tally data in pen drive to demonstrate that the entries found in pen drive are fake. Before us. during the course of hearing, learned Authorised Representative of the assessee filed a summarised form of his explanation in the form of a chart. The explanation given to the assessing officer was to the effect that some of the entries in the pen drive do not match with the entries in regular books in the sense that in some cases, payments are mentioned to be made in cash in the pen drive while such payments are established to have been made through cheque in the regular books; that land situated at Labhandi is shown to have been sold to one Shri Suresh G. Atlani while actually, the land was sold to one Shri Vijay Kumar Motwani through registered sale deed, copy whereof has been placed at page Nos. 161 to 176 of paper book; that likewise, some entries were found in the pen drive which mentions that the payments were made through Bank of Baroda and State Bank of India, Pandri Tarai Branch while the assessee explained that nobody in the group of assessee had any account in any branch of Bank of Baroda and that the cheque number in respect of payment made through State Bank of India did not relate to any bank account held by the concerned person in that bank and similarly other many discrepancies were pointed out before the assessing officer. All these explanations were rejected by the assessing officer without giving any reason whatsoever. However, for rejecting the explanation of assessee, it was incumbent upon the assessing officer to have given detailed reasons for not accepting the same and in absence of any reason given, we do not approve the action of the assessing officer."

3.29. Ld. CIT(A), while dismissing the appeal, has observed as under at page 65 of his Order:

"Further the conduct & absence of confirmation etc. from buyer suggests that the buyer has accepted having made the unaccounted payment."

It is submitted that the conduct of the buyer or even his assumed acceptance can have no adverse bearing on the Assessee Appellant. Conduct of the buyer can be in his self-interest as has been explained i.e. to inflate the cost etc. Reliance in this regard is placed on the decision of the Hon'ble ITAT Mumbai Bench in the case of Anil Jaggi *(supra)* wherein admission of on money receipt by the seller before Settlement Commission was held to be of no adverse effect as no evidence of payment by the buyer was brought on record by the Department.

3.30. Electronic records relied upon without complying with the requirements of Information Technology Act, 2000 read with Sections 65A and 65B of the Indian Evidence Act, 1872

3.30.i. Information Technology Act, 2000 read with Sections 65A and 65B of the Indian Evidence Act, 1872 provides the procedure for proving Electronic Evidence. The provisions of section 65A elucidate that the electronic records can be proved in evidence by the parties in accordance with the provisions of Section 65B.

a. As per Section 2(1)(t) of the Information Technology Act, 2000, "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form. Provisions relating to admissibility of such evidence can be found in Section 65B of the Indian Evidence Act. As per the said provision any information contained in an electronic record which is printed in a paper, stored, recorded, or copied in optical or magnetic media produced by a computer (computer output) shall be deemed to be also any document and shall be admissible in any proceedings. <u>However, the same is subject to satisfaction of certain conditions stipulated in sub-section 2 of Section 65B.</u>

b. Relevant extracts of Section 65B of Indian Evidence Act, 1872 is reproduced hereunder:

"…65B. (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as

evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.
(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely :—
(a)the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
(b)during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
(c)throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
(d)the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities…." [Emphasis Supplied]

c. In Anvar P.V. v. P.K. Basheer [2014] SSC Online SC 732 (SC), Hon'ble Supreme Court held that in case of electronic devices, such as CD, VCD, chip, when produced as digital evidence, the same is required to be accompanied by certificate in terms of Section 65B of Evidence Act at time of taking document. If that certificate is not produced, secondary evidence pertaining to electronic record is inadmissible. The court observed

"Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed Under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned Under Sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is

called as! computer output, depends on the satisfaction of the four conditions Under Section 65B(2). " [Emphasis Supplied]

Apex Court held that these safeguards are taken to ensure the 'source and authenticity', which are 'the two hallmarks pertaining to electronic record sought to be used as evidence'. The importance of following this procedure was emphasized by the fact that electronic records are more susceptible to tampering, alteration, transposition, excision, etc. and in absence of these safeguards, the whole trial based on proof of electronic records can lead to 'travesty of justice'. Based on this reasoning, the court held

"Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of examiner of electronic evidence. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements Under Section 65B of the Evidence Act are not complied with, as the law now stands in India. "

d. Hon'ble Supreme Court, in the case of Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors., in Civil Appeal Nos. 20825-20826 of 2017, 2407 and 3696 of 2018, *vide* its order dated 14.07.2020, confirmed its earlier view in the case of Anvar P.V. v. P.K. Basheer *(supra)* apropos admissibility of electronic recorded as evidence. Hon'ble Apex Court held that:

- A certificate under Section 65B(4) of the Evidence Act, 1872 is mandatory, and a condition precedent to the admissibility of evidence by way of electronic record.

- The *non-obstante* language of Section 65B(1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf.

- Requirement under Section 65B(4) is not necessary if the original computer/laptop etc in which the data/information, relied upon, itself is produced.

- Conditions under Sections 65B(2) and 65B(4) must be satisfied cumulatively.

3.30.ii. The legal position as set out above and the judicial pronouncement rendered by the Hon'ble Supreme Court have recently been followed by the Hon'ble ITAT, Visakhapatnam Bench in the case of Polisetty Somasundaram v. Deputy Commissioner of Income-tax [2023] 153 taxmann.com 591 (Visakhapatnam - Trib.)/[2024] 115 ITR(T) 548 (Visakhapatnam - Trib.)[18-08-2023]. In the said case, the entire assessment order was held to be invalid on the ground that the revenue authorities failed to ensure compliance with the requirements of Section 65B of the Indian Evidence Act, 1872. For the sake of ready reference, the relevant extracts of the said decision are set out below:

"After considering the decisions of the Hon'ble Supreme Court in the case of Anvar P.V (supra); Arjun Pandit Rao Khotkar (supra) and the judgment of the Hon'ble Madras High Court in the case of Vetrivel Mineral (supra) as well as on perusal of the facts and circumstances of the case, we are of the considered we that the four conditions stipulated in section 65B(2) i.e., (a) to (d) along with section 65B(4) were not followed while obtaining the Certificate u/s. 65B of the Indian Evidence Act 1872 in the case of the assessee which are to be followed mandatorily. Therefore, we have no hesitation to hold that this Certificate is not a valid Certificate as prescribed under the Indian Evidence Act 1872 and hence cannot be enforced. Therefore, the Certificate obtained in the case of the assessee cannot be regarded as a legally valid certificate u/s. 65B of the Indian Evidence Act and the same has no recognition in the eyes of law. The information contained in the seized pendrive is could not be considered as admissible evidence as per the provisions of section 65B of Indian Evidence Act. Therefore, we are of the considered view that such inadmissible seized material is not sustainable in the eyes of law. Thus, the assessment order passed in the case of the assessee on 31-3-2022 is not a valid assessment order in the eyes of law and it deserves to be set aside"

3.30.iii. Attention is invited to the decision of Chuharmal (1988) 172 ITR 250 (SC) where the Supreme Court pointed out that although rigors of rule of evidence contained in the Evidence Act were not applicable to the Income-tax Act, <u>but the general principles of evidence are applicable to income-tax proceedings.</u>

3.30.iv. Ld. AO has not recorded any satisfaction in the order that all the requisite steps were taken by her to ensure that the data output of the PEN Drives/Computer records, seized during the search on Gokul Kripa Group, were analyzed on "as is" basis and there is no risk of it being tempered by anyone.

3.31. In view of the facts discussed above along with the judicial pronouncements in this regard it was incumbent upon the ld. AO to provide cross examination before using the un-confronted statement against the Assessee Appellant as evidence. Specific request for cross examination was made before ld. AO [PB 153, 180]. Ld. CIT(A) has wrongly observed at page 36 of his Order that no such request made to ld. AO was brought to his notice. Hence, in absence of cross examination the statements relied upon by the ld. AO do not qualify as an evidence which could be used against Assessee Appellant. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries (CIVIL APPEAL NO. 4228 of 2006) wherein it was held that *"…not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected."*

3.32. Ld. CIT(A) has placed reliance on number of judicial pronouncements. All these decisions relied upon by ld. CIT (A) are distinguished on facts and law. A separate "Distinguishing Note" in this regard is attached herewith.

In view of the above, the entire addition of the alleged on money receipt may please be deleted.

GROUND NO. 4: Invoking the provisions of section 115BBE

4.1. Ld. AO had invoked the provisions of section 115BBE treating the alleged on money on sale of land as unexplained.

4.2. Ld. CIT(A) while deciding Ground No. 16 and Ground No. 18 held that provisions of section 68 are not applicable. The source of on money receipt is sale of land and accordingly ld. CIT(A) held that the entire gain including the on money is liable to be taxed under the chapter of Capital Gains as part of the sale consideration of the property sold by the Assessee Appellant (CIT(A) page 74- 1st para).

4.3. In spite of giving the above finding ld. CIT(A) dismissed Ground No. 17 observing as under at para 16.1, page 74:

"16.1 The appellant/AR did not make submission on the Ground of Appeal No. 17. The same is treated as not pressed. Therefore, this ground of appeal is dismissed."

4.4. It is submitted that Ground No. 16 before the ld. CIT(A) reproduced by him at page 72 contained the ground of invoking the provisions of section 115BBE. At page 73 the submissions in respect of section 115BBE were made before ld. CIT(A) which have been reproduced by him at page 73, para 3.2.19. Thus, in spite of specific submissions and specific ground ld. CIT(A) has held that no submissions were made. It is contradictory that Ground No. 16 having been allowed which contained challenge to invoking the

provisions of section 115BBE, ld. CIT(A) has dismissed Ground No. 17 which also had challenged invoking the provisions of section 115BBE.

4.5. Without prejudice to above, it is submitted that once ld. CIT(A) has admitted that the source is sale of land and has held that section 68 is not applicable there remains no reason for upholding the invoking of the provisions of section 115BBE.

In view of the above, the invoking of the provisions of section 115BBE may please be quashed.

8. To support the contention so raised in the written submission reliance was placed on the following evidence, records and decisions:

S. No.	Particulars	Page No.
1.	Copy of Sale Deed dated 05.11.2015 amounting to Rs. 1,41,60,000/-	1-12
2.	Copy of Sale Deed dated 05.11.2015 amounting to Rs. 6,69,60,000/-	13-26
3.	Copy of Sale Deed dated 04.01.2016 amounting to Rs. 9,69,60,000/-	27-40
4.	Copy of Sale Deed dated 03.08.2016 amounting to Rs. 1,10,40,000/-	41-62
5.	Copy of Sale Deed dated 03.08.2016 amounting to Rs. 10,63,20,000/-	63-73
6.	Copy of Sale Deed dated 06.06.2016 amounting to Rs. 98,40,000/-	74-83
7.	Copy of Sale Deed dated 06.06.2016 amounting to Rs. 8,35,20,000/-	84-115
8.	Written Submissions dated 26.12.2024 before ld. CIT(A) for A.Y. 2016-17, 2017-18 and 2018-19	116-125
9.	Written Submissions dated 06.01.2025 before the ld. CIT(A) for A.Y. 2016-17, 2017-18 and 2018-19 i. Submissions before the ld. AO: A.Y. 2016-17 dated: 02.01.2024 12.01.2024 14.03.2024	126 127 128-130 131-133
	A.Y. 2017-18 dated: 02.01.2024 22.01.2024	 134 135-153

	14.03.2024	154-160
	A.Y. 2018-19 dated: 02.01.2014 22.01.2024 14.03.2024	 161 162-181 182-185
10.	Written Submissions dated 13.01.2025 before ld. CIT(A) regarding genuineness of sale transactions	186, 187
11.	Approval u/s 153D dated 23.03.2024 i. A.Y. 2016-17 ii. A.Y. 2017-18 iii. A.Y. 2018-19 iv. A.Y. 2015-16, 2019-20, 2020-21	 188, 189 190, 191 192, 193 194, 195
12.	Reopened and abated assessment for A.Y. 2017-18 i. Notice u/s 148 dated 29.07.2022 ii. Order u/s 148A(d) dated 29.07.2022 iii. Approval u/s 151 dated 21.04.2021	 196, 197 198-211 212-220
13.	Assessment Order u/s 143(3) dated 09.08.2019 for A.Y. 2017-18	221-231

S. No.	Particulars	Pg. No.
1.	Copy of order of Hon'ble Supreme Court in case of CIT v. Sunil Kumar Sharma [2024] 165 taxmann.com 846 (SC) dismissing the SLP	1,2
2.	Copy of order of Hon'ble Karnataka High Court in case of DCIT v. Sunil Kumar Sharma [2024] 469 ITR 197 (Karnataka)	3-28
3.	Copy of order of Hon'ble Bombay High Court in case of Hexaware Technologies Ltd. v. ACIT [2024] 464 ITR 430 (Bombay)	29-73
4.	Copy of order of Hon'ble ITAT, Jaipur Bench, in case of Shri Prakash Chand Kothari in ITA Nos. 1190/JP/2019; 1298/JP/2019; & 66/JP/2020	74-151
5.	Copy of order of Hon'ble ITAT, Pune Bench, in case of Shri Adit Rathi v. ITO in ITA No. 411/PUN.2020	152-155

9. The ld. AR of the assessee in addition to the above written submission so filed vehemently argued that the karta of the assessee's HUF died on 26.05.2021. The payment was made was after the registration of the document as is evident from 3 of the assessment order wherein the AO tabulated the date of sale agreement. Thus, preponderance of probability goes in favour of the assessee if there is involvement of cash transaction no prudent seller will make the sale deed before the receipt of the cash and the transaction as alleged to have been recorded as cash receipt by the assessee is after the date of sale and therefore, the revenue has to appreciate this fact. Even in the search so conducted wherein this alleged records have been found as recorded in the computer cannot be relied upon without having in possession of any incriminating documents for the payment of cash to the assessee. The ld. AO made the estimation while making the addition in the hands of the assessee and that too without placing any concreate evidence of exact amount paid to the assessee. Assessee is a seller, and it was as recorded that four different person were paying to the assessee is also nothing but guess work and for that also no corroborative evidence from the possession of four different payer of the alleged cash to the assessee. There is no direct evidence as to receipt of the alleged payment in cash by the assessee, merely the same is written in

the excel sheet the payment that is recorded after the date of document is nothing but the unexplained expenditure on the said land by that Gokul Krupa Group and not by the assessee. It is hardly a common sense that a purchaser of the property gives payment to the seller after the final sale deed is executed and possession were given to the purchaser of the property. The ld. AO noted that the cash payment was received by the assessee over period of 30 months and that too after the date of final sale deed executed by the assessee this fact against the business practices. No prudent businessmen will pay in cash after the deed is executed in his / her name and therefore, revenue without bringing any corroborative evidence merely based on the excel sheet made the addition [304 occasions by four different persons. Not only that, as is evident from the table that on one date all person directors separately pays (Sr No. 5,8,19 & 29) and that too different amount which is normally not plausible. This itself suggests that the document is deaf and dump and may be prepared by that assessee to for their other expenditure or to inflate and has no relation with the transaction already over] which is contrary to the facts and against the provision of law. To drive home to this contention, he relied upon the decision of Karnataka High Court in the case of DCIT Vs. Sunil Kumar Sharma [159 taxmann.com 179(Karnataka)]. The ld. AR of the assessee

also submitted that the person who made these averments were not allowed to be cross examined and thereby he relied upon the land mark decision of Apex Court in the case of Andaman Timbers. He vehemently submitted that once the sale deed is executed it is not possible to receive the money on a date subsequent to that date and that too in cash no body will pay cash and the preponderance of probability goes into favour of the assessee as decided in the case of Sumati Dayal and thereby there is no justification of making any addition in the hands of the assessee based on that excel sheet. Not only that during the search no corroborative evidence of having paid cash was found at any of the alleged four persons giving money to the assessee. The assessee has also challenged the reliance on such extracts and print outs of the excel sheets stating that the AO has not complied with the provision of section 65A and 65B of the Evidence Act, 1872 and no satisfaction has been recorded by the AO that the output records were analysed on “as is” basis by the Department and there was no risk of the data being tempered by anyone and which has been relied upon by the ld.AO.

The ld. AR of the assessee submitted that Hon’ble Bombay High Court in the case of CIT Vs. Lavanya Land Private Limited 297 CTR 204 held that if the entries on the loose sheet of paper, found during search, are

not corroborated by any other evidence, no addition can be made. Here also there was not corroborative evidence were placed on record and that too after the sale document it has been alleged to have paid cash to the assessee by the purchaser of the property. Even the digital data relied upon were not supported by the required certification by the revenue. As regards the judgement relied upon by the revenue the ld. AR of the assessee has filed a detailed distinguishing note on all the judgement relied upon by the revenue.

10. The ld. 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 ld. CIT(A). The ld. DR also filed a case law compilation in support of the contention so raised the list of case law relied upon are as under ;

Compilation of Case Law(s)

S.No.	Particulars	Page no.
1.	[1995] 80 Taxman 89 (SC)/[1995] 214 ITR 801 (SC)/[1995] 125 CTR 124 (SC)[28-03- 1995] [1995] 80 Taxman 89 (SC) SUPREME COURT OF INDIA Sumati Dayal v. Commissioner of Income-tax* S.C. AGRAWAL, SUJATA V. MANOHAR AND B.L. HANSARIA, JJ. CIVIL APPEAL NOS. 1344-45 OF 1977 MARCH 28, 1995	1-5
2.	[2019] 107 taxmann.com 313 (Madhya Pradesh)/[2019] 265 Taxman 81 (Madhya Pradesh) (MAG)[22-03-2018] INCOME TAX [2019] 107 taxmann.com 313 (Madhya Pradesh) HIGH COURT OF MADHYA PRADESH Vijay Jain v. Commissioner of Income-tax (Appeals), Ujjain* P.K. JAISWAL AND VIRENDER SINGH, JJ. IT APPEAL NO. 54 OF 2017 MARCH 22, 2018	6-10

3.	[1998] 65 ITD 380 (Bombay)[28-02-1995] [1998] 65 ITD 380 (BOM) IN THE ITAT BOMBAY BENCH 'E' GTC Industries Ltd. v. Assistant Commissioner of Income-tax P.J. GORADIA, ACCOUNTANT MEMBER AND M.K. CHATURVEDI, JUDICIAL MEMBER IT APPEAL NOS. 5996 (BOM.) OF 1993 AND 1055 (BOM.) OF 1994 [ASSESSMENT YEARS 1984-85 AND 1985-86] FEBRUARY 28, 1995	11-35
4.	[2024] 158 taxmann.com 341 (Bombay)/[2024] 461 ITR 483 (Bombay) [11 -01 -2024] INCOME TAX [2024] 158 taxmann.com 341 (Bombay) HIGH COURT OF BOMBAY Veena Estate (P.) Ltd. v. Commissioner of Income-tax* G.S. KULKARNI AND JITENDRA JAIN, JJ. IT APPEAL NO. 302 OF 2002t JANUARY 11, 2024	36-68
5.	[2025] 174 taxmann.com 110 (Madras) [30-04-2025] [2025] 174 taxmann.com 110 (Madras) HIGH COURT OF MADRAS Assistant Commissioner of Income-tax V.Vetrivel Minerals (VV Minerals)* G.R. SWAMINATHAN AND M. JOTHIRAMAN, JJ. WA(MD)NOS. 119 TO 123 OF 2022	69-78
6.	[2025] 173 taxmann.com 955 (Patna) [25-04-2025] [2025] 173 taxmann.com 955 (Patna) HIGH COURT OF PATNA Shree Shakambhari Udyog Partnership Firm V. Commissioner of Income-tax* RAJEEV RANJAN PRASAD AND SHAILENDRA SINGH, JJ. CIVIL WRIT JURISDICTION CASE NOS. 7244, 16693, 16697 AND 17742 OF 2022 APRIL 25, 2025 Section 69A, read with section 148 of the Income-tax Act, 1961 Unexplained	79-88 ,

As regards the apprehension on the digital data ld. DR submitted that there is well laid down procedure and protocols are strictly followed by the department regarding seized documents and it is unlikely that the search data can be tempered with by any officials of Revenue and once the information has been received from another assessing officer there is a presumption that such data and information is shared on “as is” basis and therefore, where there is no basis for raising any suspicion in the mind of the Assessing Officer, no further action has been taken regarding verifying the authencity of the data so received any recording any satisfaction in this regard. It was accordingly submitted that it is merely an apprehension on

the part of the assessee and the same cannot be a basis for not relying on the data collected and received by the Assessing Officer which forms part of the assessment records.

The ld. DR referring to the details mentioned in the table given in page 3 of the assessment submitted that the assessee has sold the land to the person searched for the group entity and thereby in that process evidence of having been paid to the assessee was recorded in excel sheet found. While search incriminating documents relating to the assessee were found and seized. It was found that assessee has entered unaccounted financial transaction with M/s Gokul Kripa Group. In that group concern premises it was found that the group accepts money (in cash) on sales of its plots in all its ongoing projects. Gokul Kripa Group made payments in cash out of books while purchasing the land for its projects. These facts were accepted in the statement recorded at the time of search. The assessee, including his family members, also sold their land to the Group. That Group has developed two schemes, namely Royal Residency Phase-1 and Phase -2 in Sanganer Tehsil, Jaipur that scheme land was purchased from the assessee and its family members. While search at one of the business premises of GokulKripa Group at 1, Shivshanker Colony, near mansarover Metro Station, Jaipur a computer (Destop PC) was found (PC-

3). On examination of this computer, an excel sheet bearing name excel sheet bearing name '1. Pay-Exp' was found. The path of the excel sheet is GokulKripa Group 1st Floor Accounts PC-3\image\E HAPPY Prakash Sir Scheme\1. Pay-Exp.xlsx and the hash value of the image of this PC was 0d848d309d19ac1bobbc523aod295964. This excel sheet contains entries related to purchase of land for development of various scheme. The entries of cheque payment as well as cash payment along with names of the party and dates are duly recorded in the excel sheet. Further the bifurcation of payment made by the key persons namely Shri Sumer Singh Saini (SSS), Shri Phool Chand Saini (PCS) Shri Rajesh Kumar (RK) and Shri Ganga Singh Tanwar (GST) is also recorded in this excel sheet. The extracts of excel sheet having name 1 Pay Exp and Sheet name RR reflects payment to the assessee including others in cash also, apart from cheque payments. The sheets were reproduced in the assessment order by the ld. AO from page 4 to 14. Ld. AO from that excel sheet noted that M/s. Gokul Kripa Colonisers & Developers P. Ltd. [GKCDPL] developed two schemes namely Royal Residency Phase I and II. Ld. AO prepared a table relating to the entries of the assessee and their family members at page 14 to 18 wherein details of cheque payment and cash payments were recorded and were compared with the ledger account of the assessee in the books of

GKCDPL. The ld. AO based on that comparison made a table wherein he noted that the entries noted in excel sheet is exactly the same as recorded in the ledger so far as it relates to the payment by an account payee cheque and thereby, he tried to establish the authenticity and correctness of the transaction recorded in the excel sheet. In that process there is no lapse on the part of the ld. AO. As regards the contention of the ld. AR of the assessee that excel is nothing but deaf and dump document on that aspect of the matter ld. DR submitted that the said document was correlated with the payment already recorded in the ledger account so far as it relates to the cheque payment and thereby the cash payment recorded against the assessee how can be considered as deaf and dump when these payments is recorded in the same sheet wherein the cheque payment is recorded. The ld. DR then demonstrated instance of having cheque payment appearing in that excel sheet. The ld. DR referring the page 23 of the assessment wherein the seized diary page was extracted it tally with the payment cash to the assessee and thereby he submitted that the entries recorded in the excel sheet are correct and thereby he supported the finding recorded in the orders of the lower authority. As submitted by the searched person that the entries made in the excel sheet were recorded after removing “00” and thereby the ld. AO considering that facts already

confronted to the assessee made by the addition after providing all the material to the assessee. Thus, the addition is based on the document and evidence found during the search and therefore, the addition is fully supported by the material unearth which are incriminating in nature and thereby the addition should be sustained. As regards the contention of the ld. AR of the assessee that the payments have been shown to inflate the expenditure of the searched party on that ld. DR submitted that one will inflate and create incriminating document without bring the correct facts and when it was alleged to have been claimed why they will inflate when they have also not claimed that money being out of books. Opportunity of cross examination was not required as the addition is not based only on statement it is supported by an evidence where the details are matching with the transaction of the assessee and thereby that plea of the assessee is not maintainable as the case of law of Andaman Timber was merely based on the statement and here the addition is based on the evidence found in the search. To support this argument he relied upon the decision of co-ordinate bench of ITAT Mumbai benches in the case of GTC Industries Ltd. Vs. ACIT 65 ITD 380(Bom). The judicial decision relied upon by the assessee in the case of DCIT Vs. Sunil Kumar Sharma being not of the Jurisdictional High Court, the same cannot be considered. Therefore, he

submitted that considering the decision of Sumati Dayal Vs. CIT 80 Taxman 89 the preponderance of probability goes in favour of the revenue and thereby the addition made by the ld. AO and sustained by the ld. CIT(A) be upheld. On the issue of 153D approval the ld. DR vehemently argued that the considering the extensive guideline the same cannot be considered as mechanical approval. In respect of the AY 2017-18 the additional ground not to be considered as the same is raised for the first time.

11. In the rejoinder the ld. AR of the assessee submitted that the ld. DR did not bring any evidence as to whether the assessee in fact accepted this payment made to the assessee and they have submitted any evidence which not submitted in the proceeding before the lower authorities. Not only that it is undisputed fact that the payments alleged to have been made in the cash was found to be recorded on a date after the date of registration of the impugned property by the assessee. The ld. AR of the assessee also submitted that in the statement so relied upon by the revenue the person searched has not referred the name of the assessee specifically. The fact that the payment recorded in that sheet is after the date of document is not controverted. The karta of the assessee being doctor, how the cash is collected by him on so many days who handed over and to whom all this

aspect of the matter has not been clarified in the statement so relied upon. AO page 33 merely the new land is written not the name of the assessee was written and therefore, linking that with the excel sheet is self-serving of their out of books and not of the assessee. So far as the legal precedent relied upon by revenue, he filed a distinguishing note on the judgement relied upon by revenue and the said note reads as follows;

Distinguishing the case laws relied upon by the ld. CIT(A)

1. SUMATI DAYAL v. COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 48]

Legal and Factual Aspects of the Case

In Sumati Dayal v. Commissioner of Income Tax (1995), the Supreme Court addressed a case where the assessee claimed to have won substantial amounts from horse races (Rs. 3,11,831 in assessment year 1971-72 and Rs. 93,500 in assessment year 1972-73). The assessee showed these amounts in her capital accounts but did not record any corresponding expenditure.

The legal issue centered on the application of Section 68 of the Income Tax Act, which places the burden on the assessee to satisfactorily explain the nature and source of any sum credited in their books. The Court emphasized that while the burden initially lies on the department to prove a receipt is taxable income, Section 68 creates a rebuttable presumption against the assessee when unexplained credits appear in their books.

The factual matrix revealed several critical elements: 1. The assessee claimed to have started participating in horse races only towards the end of 1969 with no prior experience 2. She claimed to have won 16 jackpots and several trebles within a short period 3. She stated she purchased tickets based on combinations advised by her husband 4. The assessee provided certificates from racing clubs and crossed cheques as evidence.

The Supreme Court applied the "test of human probabilities" to evaluate the assessee's explanation. The Court found that the assessee's extraordinary success despite her inexperience, the pattern of winnings, and the absence of recorded expenditure made her explanation implausible. The Court concluded that the assessee had likely purchased winning tickets after the races using unaccounted money, rather than legitimately winning the races.

The Court established the important principle that "apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real" and that taxing authorities are entitled to examine surrounding circumstances to determine reality.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature of Transaction and Evidence: In Sumati Dayal, the assessee herself recorded the disputed amounts in her own books of account as capital receipts, claiming they were race winnings. In contrast, Anshu Sahai HUF never recorded any alleged cash receipts in its books, nor were any such entries found in the HUF's possession. The disputed entries were found exclusively in digital data seized from a third party (Gokul Kripa Group).

ii. Source of Evidence and Corroboration: In Sumati Dayal, the assessee's own sworn statements and conduct (claiming extraordinary success despite inexperience) contradicted her explanation. In Anshu Sahai HUF's case, the assessee has consistently denied receiving any cash payments, and there is no contradictory conduct or statement from the assessee. The only evidence is digital data found from a third party without any corroboration.

iii. Application of "Test of Human Probabilities": In Sumati Dayal, the test of human probabilities worked against the assessee, as it was improbable that a novice could win so many jackpots. In Anshu Sahai HUF's case, the test of human probabilities actually supports the assessee's position - it defies business logic that a prudent seller would transfer property ownership through registered sale deeds without receiving full payment, especially when the alleged cash payments continued for 19 months after the registration of the last sale deed.

iv. Timing and Sequence of Events: In Sumati Dayal, the timing of the alleged winnings raised suspicion. In Anshu Sahai HUF's case, the chronology of events strongly supports the assessee's position - the last sale deed was executed on 04.08.2016, whereas the last alleged cash payment was supposedly received as late as 18.03.2018, a gap of about 19 months after legal ownership had already

transferred.

v. Direct vs. Indirect Evidence: In Sumati Dayal, there was direct evidence linking the assessee to the receipts (certificates from racing clubs, crossed cheques). In Anshu Sahai HUF's case, there is no direct evidence connecting the assessee to the alleged cash payments - the Excel sheet data is uncorroborated, and in many instances, the assessee's name does not even appear in the entries.

vi. Legal Admissibility of Evidence: In Sumati Dayal, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

vii. Contradictions in Evidence: In Sumati Dayal, the evidence was internally consistent but implausible. In Anshu Sahai HUF's case, the Excel sheet data contains internal contradictions - payments in multiples of hundreds (which is unusual for large cash transactions) and multiple directors making payments on the same dates, which defies normal business practice.

viii. Legal Documentation: In Sumati Dayal, there was no legal documentation contradicting the department's position. In Anshu Sahai HUF's case, there are duly registered sale deeds specifying the consideration amount, and as per Sections 91 and 92 of the Evidence Act, no evidence can be admitted to contradict, vary, add to, or subtract from the terms of a written document.

2. DURGA PRASAD MORE v. COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 13, 59]

Legal and Factual Aspects of the Case

In Durga Prasad More v. Commissioner of Income Tax, the Supreme Court addressed a case concerning the genuineness of gift deeds executed in favor of the assessee's minor children. The assessee claimed to have received substantial gifts from his father-in-law and brother-in-law, which were subsequently gifted to his minor children.

The legal issue centered on whether the Income Tax authorities could look beyond the apparent state of affairs as presented in formal documents (gift deeds) to determine the true nature of transactions. The Court had to decide

whether the department could disregard legally executed gift deeds when surrounding circumstances indicated they might not represent the true nature of transactions.

The factual matrix revealed several critical elements: 1. The assessee was a man of modest means before the alleged gifts 2. The purported donors (father-in-law and brother-in-law) had limited financial capacity to make such substantial gifts 3. The assessee's lifestyle and financial position improved dramatically after the alleged gifts 4. Despite claiming the gifts were from relatives, the assessee maintained control over the gifted assets.

The Supreme Court established the principle that tax authorities are entitled to pierce the veil of apparent transactions to examine their true nature. The Court famously stated that "apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real" and that the matter must be considered by applying the test of human probabilities.

The Court concluded that the gift deeds, despite being legally executed documents, did not represent genuine transactions based on the surrounding circumstances and the test of human probabilities.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature of Documentation and Control: In Durga Prasad More, the assessee produced gift deeds that were executed by him and remained under his control, while still maintaining effective control over the allegedly gifted assets. In Anshu Sahai HUF's case, the disputed transactions involve registered sale deeds where legal ownership and control were completely transferred to the buyer, with no evidence of continued control by the assessee over the sold properties.

ii. Source and Reliability of Evidence: In Durga Prasad More, the evidence (gift deeds) was created by the assessee himself and the investigation revealed inconsistencies in the financial capacity of the alleged donors. In Anshu Sahai HUF's case, the only evidence of alleged cash payments is digital data found from a third party (Gokul Kripa Group), not created by or found in possession of the assessee, with no investigation into the financial capacity of the assessee to verify whether such additional receipts were plausible.

iii. Lifestyle and Financial Inconsistencies: In Durga Prasad More, there was clear evidence of the assessee's improved lifestyle and financial position inconsistent with declared income. In Anshu Sahai HUF's case, there is no

evidence presented by the department of any lifestyle or financial position of the assessee inconsistent with the declared income or suggesting receipt of additional undisclosed cash.

iv. Contradictory Conduct: In Durga Prasad More, the assessee's conduct (maintaining control over allegedly gifted assets) contradicted his claims. In Anshu Sahai HUF's case, there is no contradictory conduct - the assessee consistently denied receiving any cash payments, and there is no evidence of the assessee acting in a manner suggesting receipt of additional cash.

v. Application of "Test of Human Probabilities": In Durga Prasad More, the test of human probabilities worked against the assessee, as it was improbable that persons of limited means would make substantial gifts. In Anshu Sahai HUF's case, the test of human probabilities supports the assessee's position - it defies business logic that a prudent seller would transfer property ownership through registered sale deeds without receiving full payment, especially when the alleged cash payments continued for 19 months after the registration of the last sale deed.

vi. Timing and Sequence of Events: In Durga Prasad More, the timing of the alleged gifts coincided with the assessee's need to explain his improved financial position. In Anshu Sahai HUF's case, the chronology of events contradicts the department's position - the last sale deed was executed on 04.08.2016, whereas the last alleged cash payment was supposedly received as late as 18.03.2018, a gap of about 19 months after legal ownership had already transferred.

vii. Corroborating Evidence: In Durga Prasad More, there was corroborating evidence against the assessee's claims, including the financial incapacity of the alleged donors. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the allegation of cash payments - the Excel sheet data stands alone without any supporting documentation, witness statements, or financial trail.

viii. Legal Admissibility of Evidence: In Durga Prasad More, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

3. KANWAR NATWAR SINGH v. DIRECTOR OF ENFORCEMENT
[Refer CIT(A) Order Page 11, 27, 35, 47]

Legal and Factual Aspects of the Case

In Kanwar Natwar Singh v. Director of Enforcement [2010] 13 SCC 255, the Supreme Court addressed a case arising from the Oil-for-Food Programme scandal. The case involved allegations that Natwar Singh, a former External Affairs Minister, and his son Jagat Singh had received illegal kickbacks from oil contracts with Iraq.

The legal issues centered on the evidentiary standards in proceedings under the Foreign Exchange Management Act (FEMA) and the admissibility of circumstantial evidence in establishing financial impropriety. The Court had to determine whether documentary evidence showing financial transactions through banking channels, though circumstantial, could form the basis for proceedings under FEMA.

The factual matrix revealed several critical elements: 1. There was documentary evidence of financial transactions through banking channels 2. Multiple corroborating documents from different sources established a chain of transactions 3. The respondents' names appeared in official UN Volcker Committee Report 4. There was evidence of meetings between the respondents and Iraqi officials 5. Banking records showed clear money trails connecting the parties involved

The Supreme Court held that circumstantial evidence, when forming a complete chain without gaps, can be the basis for establishing violations of financial laws. The Court emphasized that in cases of financial impropriety, direct evidence is often not available, and authorities must rely on documentary evidence and reasonable inferences drawn from established facts.

The Court also reaffirmed that when documentary evidence establishes a prima facie case, the burden shifts to the accused to provide a satisfactory explanation for the suspicious transactions.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature and Quality of Evidence: In Kanwar Natwar Singh's case, there was documentary evidence from multiple independent and official sources, including banking records, the UN Volcker Committee Report, and diplomatic communications. In Anshu Sahai HUF's case, the only evidence is an Excel sheet found in digital data seized from a third party, without any corroboration from independent sources or official records.

ii. Financial Trail and Banking Evidence: In Kanwar Natwar Singh's case, there was a clear money trail through banking channels that could be traced and verified. In Anshu Sahai HUF's case, there is no banking evidence, no money trail, and no financial records showing the movement of the alleged cash

payments.

iii. Corroboration from Multiple Sources: In Kanwar Natwar Singh's case, the evidence was corroborated by multiple independent sources, including international organizations. In Anshu Sahai HUF's case, the Excel sheet data stands alone without any corroboration from any independent source.

iv. Official Recognition of Transactions: In Kanwar Natwar Singh's case, the transactions were officially recognized in the UN Volcker Committee Report. In Anshu Sahai HUF's case, there is no official recognition of the alleged cash transactions in any government or regulatory record.

v. Completeness of Circumstantial Evidence Chain: In Kanwar Natwar Singh's case, the circumstantial evidence formed a complete chain without gaps. In Anshu Sahai HUF's case, there are significant gaps in the alleged evidence - no proof of cash withdrawal by the payer, no proof of cash receipt by the assessee, and no evidence of subsequent use or deposit of the alleged cash by the assessee.

vi. Contradictions with Legal Documentation: In Kanwar Natwar Singh's case, the documentary evidence did not contradict any legally executed documents. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vii. Timing and Sequence of Events: In Kanwar Natwar Singh's case, the timing of financial transactions aligned with the meetings and contracts under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic.

viii. Legal Admissibility of Evidence: In Kanwar Natwar Singh's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

4. BHAGWAT PRASAD v. COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 13, 59]

Legal and Factual Aspects of the Case

In Bhagwat Prasad v. Commissioner of Income Tax, the Supreme Court addressed a case concerning the genuineness of certain transactions claimed by the assessee. The assessee had claimed that certain amounts represented loans received from various individuals, but the tax authorities disputed the genuineness of these transactions.

The legal issue centered on the burden of proof in cases where an assessee claims certain amounts as loans or legitimate transactions. The Court had to determine whether the Income Tax authorities could reject the assessee's explanation when documentary evidence (such as loan agreements or receipts) existed but appeared suspicious in light of surrounding circumstances.

The factual matrix revealed several critical elements: 1. The assessee produced loan documents and receipts to support his claim 2. The alleged lenders were either not traceable or denied having provided the loans when investigated 3. The assessee could not provide convincing evidence about the creditworthiness of the alleged lenders 4. There were inconsistencies in the documentation and the explanations provided by the assessee

The Supreme Court held that while the burden initially lies on the tax authorities to prove that a receipt is income, once they establish a prima facie case, the burden shifts to the assessee to prove the genuineness of the transaction. The Court emphasized that tax authorities are entitled to look beyond the apparent state of affairs and examine the true nature of transactions based on surrounding circumstances and human probabilities.

The Court concluded that mere production of documents is not sufficient if they do not inspire confidence when viewed in light of surrounding circumstances and the test of human probabilities.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature of Disputed Transactions: In Bhagwat Prasad's case, the assessee claimed certain amounts as loans received, which if genuine would not be taxable. In Anshu Sahai HUF's case, the dispute is not about the characterization of a receipt (the assessee denies receiving any cash payments at all), but about whether additional undisclosed consideration was received for property sales beyond what was stated in registered sale deeds.

ii. Source and Creation of Evidence: In Bhagwat Prasad's case, the assessee himself produced the documentary evidence (loan documents) which was found to be suspicious. In Anshu Sahai HUF's case, the only evidence is digital data found from a third party (Gokul Kripa Group), not created by or found in possession of the assessee.

iii. Verification of Counterparties: In Bhagwat Prasad's case, the tax authorities investigated and found that the alleged lenders were either not traceable or denied the transactions. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

iv. Burden of Proof Dynamics: In Bhagwat Prasad's case, the assessee was attempting to prove that certain receipts were non-taxable loans rather than income. In Anshu Sahai HUF's case, the department is attempting to prove that the assessee received additional consideration not disclosed in registered documents, without any evidence of such receipts in the assessee's possession or books.

v. Contradictions with Legal Documentation: In Bhagwat Prasad's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Bhagwat Prasad's case, the timing of the alleged loans aligned with the assessee's need for funds. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Corroborating Evidence: In Bhagwat Prasad's case, the department had corroborating evidence against the assessee's claims, including statements from alleged lenders denying the transactions. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the allegation of cash payments - the Excel sheet data stands alone without any supporting documentation, witness statements, or financial trail.

viii. Legal Admissibility of Evidence: In Bhagwat Prasad's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

5. VISHWANATH PRASAD BHAGWATI PRASAD v. COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 13, 59]

Legal and Factual Aspects of the Case

In Vishwanath Prasad Bhagwati Prasad v. Commissioner of Income Tax, the Court addressed a case concerning the genuineness of certain business transactions claimed

by the assessee. The assessee, a partnership firm, had claimed certain transactions as legitimate business dealings, but the tax authorities disputed their authenticity based on surrounding circumstances.

The legal issue centered on whether the Income Tax authorities could look beyond formal documentation to determine the true nature of business transactions. The Court had to decide whether the department could disregard apparently regular business records when other evidence suggested they might not reflect actual transactions.

The factual matrix revealed several critical elements: 1. The assessee produced business records showing the disputed transactions 2. Investigation revealed that many of the parties to these transactions were either non-existent or denied having engaged in such dealings 3. The pattern and timing of the transactions appeared suspicious and contrived 4. The assessee could not provide satisfactory explanations for discrepancies when questioned

The Court established that tax authorities are not bound by the apparent state of affairs as presented in formal business records. The Court emphasized that when the surrounding circumstances and human probabilities suggest that the documented transactions do not reflect reality, the authorities are entitled to draw appropriate inferences.

The Court concluded that the burden of proving the genuineness of transactions shifts to the assessee when the tax authorities establish reasonable grounds to doubt their authenticity, and mere production of formal documentation is insufficient if it fails to withstand scrutiny in light of other evidence.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature and Source of Evidence: In Vishwanath Prasad's case, the disputed transactions were recorded in the assessee's own business records, which were found to be suspicious. In Anshu Sahai HUF's case, the alleged cash payments were not recorded in any books maintained by the assessee but were found exclusively in digital data seized from a third party (Gokul Kripa Group).

ii. Investigation of Counterparties: In Vishwanath Prasad's case, the tax authorities conducted a thorough investigation and found that many of the alleged business partners either did not exist or denied the transactions. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

iii. Contradictory Statements: In Vishwanath Prasad's case, the assessee provided inconsistent explanations when questioned about the transactions. In Anshu Sahai

HUF's case, the assessee has consistently denied receiving any cash payments, and there are no contradictory statements from the assessee.

iv. Legal Documentation: In Vishwanath Prasad's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, there are duly registered sale deeds specifying the consideration amount, and as per Sections 91 and 92 of the Evidence Act, no evidence can be admitted to contradict, vary, add to, or subtract from the terms of a written document.

v. Application of "Test of Human Probabilities": In Vishwanath Prasad's case, the test of human probabilities worked against the assessee, as the pattern and timing of transactions appeared contrived. In Anshu Sahai HUF's case, the test of human probabilities supports the assessee's position - it defies business logic that a prudent seller would transfer property ownership through registered sale deeds without receiving full payment, especially when the alleged cash payments continued for 19 months after the registration of the last sale deed.

vi. Timing and Sequence of Events: In Vishwanath Prasad's case, the suspicious timing of transactions was evidence against the assessee. In Anshu Sahai HUF's case, the chronology of events strongly supports the assessee's position - the last sale deed was executed on 04.08.2016, whereas the last alleged cash payment was supposedly received as late as 18.03.2018, a gap of about 19 months after legal ownership had already transferred.

vii. Corroborating Evidence: In Vishwanath Prasad's case, there was corroborating evidence against the assessee's claims, including statements from alleged business partners. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the allegation of cash payments - the Excel sheet data stands alone without any supporting documentation, witness statements, or financial trail.

viii. Legal Admissibility of Evidence: In Vishwanath Prasad's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

6. RAMESHWAR LAL MALI v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Rameshwar Lal Mali v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash deposits in the assessee's bank account. The assessee claimed these deposits represented business receipts, but the tax authorities disputed this explanation based on the pattern of deposits and lack of supporting evidence.

The legal issue centered on the burden of proof when unexplained bank deposits are discovered. The Court had to determine whether the assessee's explanation could be rejected when it was not supported by concrete evidence, despite the existence of formal banking records showing the deposits.

The factual matrix revealed several critical elements: 1. The assessee had substantial cash deposits in his bank account that did not align with his declared business activities 2. The pattern of deposits appeared irregular and inconsistent with normal business transactions 3. The assessee could not produce supporting documentation such as bills, invoices, or receipts for the alleged business transactions 4. When questioned, the assessee provided vague and inconsistent explanations about the source of funds

The Court held that when unexplained bank deposits are discovered, the initial burden is on the assessee to provide a satisfactory explanation supported by evidence. The Court emphasized that mere assertions without corroborating evidence are insufficient, especially when the pattern of transactions does not align with normal business practices.

The Court concluded that the Income Tax authorities were justified in treating the unexplained deposits as income from undisclosed sources when the assessee failed to discharge the burden of proving the genuineness of his explanation.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature of Evidence: In Rameshwar Lal Mali's case, there was direct evidence of cash deposits in the assessee's own bank account, which the assessee acknowledged but failed to explain satisfactorily. In Anshu Sahai HUF's case, there is no evidence of any cash receipts or deposits in the assessee's accounts - the only evidence is digital data found from a third party, which the assessee has consistently denied.

ii. Acknowledgment vs. Denial: In Rameshwar Lal Mali's case, the assessee acknowledged the deposits but claimed they were from legitimate business sources. In Anshu Sahai HUF's case, the assessee has categorically denied receiving any cash payments beyond what was declared in the registered sale deeds.

iii. Banking Trail vs. No Financial Evidence: In Rameshwar Lal Mali's case, there was a clear banking trail showing the deposits in the assessee's account. In Anshu Sahai HUF's case, there is no banking evidence, no money trail, and no financial records showing the receipt or subsequent use of the alleged cash payments.

iv. Burden of Proof Dynamics: In Rameshwar Lal Mali's case, the burden was on the assessee to explain deposits that were undisputedly received by him. In Anshu Sahai

HUF's case, the department is attempting to prove that the assessee received additional consideration not disclosed in registered documents, without any evidence of such receipts in the assessee's possession or books.

v. Contradictions with Legal Documentation: In Rameshwar Lal Mali's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Rameshwar Lal Mali's case, the timing of the deposits aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation of Source: In Rameshwar Lal Mali's case, the department investigated the alleged sources of the deposits and found them to be non-existent or inadequate. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Rameshwar Lal Mali's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

7. DEVASAHAYA NADAR v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Devasahaya Nadar v. Commissioner of Income Tax, the Court addressed a case concerning unexplained investments and assets discovered during the course of income tax proceedings. The assessee claimed these investments were made from legitimate sources, but the tax authorities disputed this explanation due to lack of supporting evidence.

The legal issue centered on the burden of proof when unexplained investments are discovered. The Court had to determine whether the assessee's explanation could be rejected when it was not supported by concrete evidence, and whether the tax authorities could make additions based on circumstantial evidence.

The factual matrix revealed several critical elements: 1. The assessee had made substantial investments that were disproportionate to his declared income 2. When questioned, the assessee provided explanations that lacked documentary support 3. The pattern of investments did not align with the assessee's financial profile 4. There were inconsistencies in the assessee's statements regarding the source of funds

The Court held that when unexplained investments are discovered, the burden is on the assessee to provide a satisfactory explanation supported by evidence. The Court emphasized that mere assertions without corroborating evidence are insufficient, especially when the investments are substantial and inconsistent with the assessee's declared income.

The Court concluded that the Income Tax authorities were justified in treating the unexplained investments as income from undisclosed sources when the assessee failed to discharge the burden of proving the genuineness of his explanation.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature of Evidence: In Devasahaya Nadar's case, there was direct evidence of investments made by the assessee, which the assessee acknowledged but failed to explain satisfactorily. In Anshu Sahai HUF's case, there is no evidence of any unexplained investments or assets - the only evidence is digital data found from a third party, which the assessee has consistently denied.

ii. Acknowledgment vs. Denial: In Devasahaya Nadar's case, the assessee acknowledged the investments but claimed they were from legitimate sources. In Anshu Sahai HUF's case, the assessee has categorically denied receiving any cash payments beyond what was declared in the registered sale deeds.

iii. Physical Assets vs. No Tangible Evidence: In Devasahaya Nadar's case, there were physical assets and investments that could be directly linked to the assessee. In Anshu Sahai HUF's case, there are no physical assets, investments, or financial records showing the receipt or subsequent use of the alleged cash payments.

iv. Burden of Proof Dynamics: In Devasahaya Nadar's case, the burden was on the assessee to explain investments that were undisputedly made by him. In Anshu Sahai HUF's case, the department is attempting to prove that the assessee received additional consideration not disclosed in registered documents, without any evidence of such receipts in the assessee's possession or books.

v. Contradictions with Legal Documentation: In Devasahaya Nadar's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot

be contradicted by external evidence.

vi. Timing and Sequence of Events: In Devasahaya Nadar's case, the timing of the investments aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation of Source: In Devasahaya Nadar's case, the department investigated the alleged sources of the investments and found them to be inadequate. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Devasahaya Nadar's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

8. BHAVIN KISHOREBHAI ZINZUWADIA v. ASSISTANT COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 22]

Legal and Factual Aspects of the Case

In Bhavin Kishorebhai Zinzuwadia v. Assistant Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions and the evidentiary value of entries found in seized documents. The tax authorities had made additions based on entries found in documents seized during a search operation from a third party.

The legal issue centered on whether entries in documents seized from a third party could form the basis for making additions to the assessee's income without corroborating evidence. The Court had to determine the evidentiary value of such third- party documents and the circumstances under which they could be relied upon.

The factual matrix revealed several critical elements: 1. Certain entries bearing the assessee's name were found in documents seized from a third party 2. The entries indicated financial transactions involving the assessee 3. There was corroborating evidence linking the assessee to these transactions 4. The assessee's explanation regarding these entries was found to be unsatisfactory and contradictory

The Court held that while entries in third-party documents cannot by themselves form the basis for additions, they can be relied upon when there is corroborating evidence and the

assessee fails to provide a satisfactory explanation. The Court emphasized that the surrounding circumstances, the assessee's conduct, and the presence of corroborating evidence must be considered when evaluating such entries.

The Court concluded that the burden shifts to the assessee to disprove the authenticity of such entries when there is prima facie evidence linking the assessee to the transactions, and mere denial without substantive rebuttal is insufficient.

Distinguishing Points from Anshu Sahai HUF's Case

i. Corroborating Evidence: In Bhavin Kishorebhai's case, there was corroborating evidence that linked the assessee to the transactions mentioned in the seized documents. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

ii. Contradictory Statements: In Bhavin Kishorebhai's case, the assessee provided contradictory explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

iii. Investigation of Entries: In Bhavin Kishorebhai's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

iv. Specific Identification: In Bhavin Kishorebhai's case, the entries specifically identified the assessee and could be directly linked to him. In Anshu Sahai HUF's case, in many instances, the Excel sheet entries do not specifically mention Anshu Sahai HUF - the name of the assessee appears only at 3 places (Serial Nos. 149, 164, and 166), while other entries have been arbitrarily attributed to the assessee.

v. Contradictions with Legal Documentation: In Bhavin Kishorebhai's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Bhavin Kishorebhai's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Internal Consistency of Evidence: In Bhavin Kishorebhai's case, the seized documents were internally consistent and credible. In Anshu Sahai HUF's case, the Excel sheet data contains internal inconsistencies - payments in multiples of hundreds (which is unusual for large cash transactions) and multiple directors making payments on the same dates, which defies normal business practice.

viii. Legal Admissibility of Evidence: In Bhavin Kishorebhai's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

9. VIJAY JAIN v. COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 46, 50]

Legal and Factual Aspects of the Case

In Vijay Jain v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions and the evidentiary value of entries found in documents seized during search operations. The tax authorities had made additions based on entries found in documents seized during a search operation.

The legal issue centered on the evidentiary value of entries in seized documents and whether they could form the basis for making additions to the assessee's income. The

Court had to determine the circumstances under which such entries could be relied upon and the nature of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating financial transactions involving the assessee were found in documents seized during search operations 2. There was corroborating evidence supporting these entries, including statements from third parties 3. The pattern of transactions was consistent with the assessee's business activities 4. The assessee's explanation regarding these entries was found to be unsatisfactory and inconsistent

The Court held that entries in seized documents can form the basis for additions when they are supported by corroborating evidence and the assessee fails to provide a satisfactory explanation. The Court emphasized that while such entries alone may not be sufficient, they gain probative value when viewed in light of surrounding circumstances and corroborating evidence.

The Court concluded that the burden shifts to the assessee to disprove the authenticity of such entries when there is prima facie evidence linking the assessee to the transactions, and mere denial without substantive rebuttal is insufficient.

Distinguishing Points from Anshu Sahai HUF's Case

i. Corroborating Evidence: In Vijay Jain's case, there was corroborating evidence that supported the entries in the seized documents, including statements from third parties. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

ii. Consistency with Business Activities: In Vijay Jain's case, the pattern of transactions was consistent with the assessee's business activities. In Anshu Sahai HUF's case, the alleged pattern of cash payments is inconsistent with normal business practice - it defies logic that a prudent seller would transfer property ownership through registered sale deeds without receiving full payment.

iii. Investigation and Verification: In Vijay Jain's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries, including obtaining statements from third parties. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

iv. Contradictions with Legal Documentation: In Vijay Jain's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

v. Timing and Sequence of Events: In Vijay Jain's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vi. Internal Consistency of Evidence: In Vijay Jain's case, the seized documents were internally consistent and credible. In Anshu Sahai HUF's case, the Excel sheet data contains internal inconsistencies - payments in multiples of hundreds (which is unusual for large cash transactions) and multiple directors making payments on the same dates, which defies normal business practice.

vii. Specific Identification: In Vijay Jain's case, the entries specifically identified the assessee and could be directly linked to him. In Anshu Sahai HUF's case, in many instances, the Excel sheet entries do not specifically mention Anshu Sahai HUF - the name of the assessee appears only at 3 places (Serial Nos. 149, 164, and 166), while other entries have been arbitrarily attributed to the assessee.

viii. Legal Admissibility of Evidence: In Vijay Jain's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

10. GOPAL S PANDIT v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 11, 27, 35, 47]

Legal and Factual Aspects of the Case

In Gopal S Pandit v. Commissioner of Income Tax, the Court addressed a case concerning the evidentiary value of entries in documents seized during search operations and the burden of proof in such cases. The tax authorities had made additions based on entries found in documents seized during a search operation.

The legal issue centered on whether entries in seized documents could form the basis for making additions to the assessee's income without additional corroboration. The Court had to determine the circumstances under which such entries could be relied upon and the extent of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating financial transactions involving the assessee were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these entries, including bank transactions and statements from third parties 4. The assessee's explanation regarding these entries was found to be evasive and unconvincing

The Court held that entries in seized documents can form the basis for additions when they are specific, detailed, and supported by corroborating evidence. The Court emphasized that the burden shifts to the assessee to provide a satisfactory explanation when prima facie evidence links the assessee to the transactions recorded in seized documents.

The Court concluded that mere denial without substantive rebuttal is insufficient when the seized documents contain specific details that can be independently verified and the surrounding circumstances support the authenticity of the entries.

Distinguishing Points from Anshu Sahai HUF's Case

i. Specificity and Detail of Entries: In Gopal S Pandit's case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

ii. Corroborating Evidence: In Gopal S Pandit's case, there was corroborating evidence that supported the entries in the seized documents, including bank transactions and statements from third parties. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iii. Independent Verification: In Gopal S Pandit's case, the information in the seized documents could be independently verified through other sources. In Anshu Sahai HUF's case, the Excel sheet data cannot be independently verified as there are no other sources or records that confirm these alleged cash transactions.

iv. Assessee's Explanation: In Gopal S Pandit's case, the assessee provided evasive and unconvincing explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Contradictions with Legal Documentation: In Gopal S Pandit's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Gopal S Pandit's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Gopal S Pandit's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Gopal S Pandit's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

11. KAPURCHAND SHRIMAL v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Kapurchand Shrimal v. Commissioner of Income Tax, the Court addressed a case concerning unexplained investments and the evidentiary value of entries in books of account. The tax authorities had made additions based on entries found in the assessee's books that indicated investments for which the assessee could not provide satisfactory explanations.

The legal issue centered on the burden of proof when unexplained investments are discovered in an assessee's books of account. The Court had to determine whether the assessee's explanation could be rejected when it was not supported by concrete evidence, despite the existence of formal accounting records.

The factual matrix revealed several critical elements: 1. The assessee's books of account contained entries indicating substantial investments 2. When questioned, the assessee provided explanations that lacked documentary support 3. The pattern of investments did not align with the assessee's declared income and financial profile 4. There were inconsistencies in the assessee's statements regarding the source of funds for these investments

The Court held that when unexplained investments are discovered in an assessee's books of account, the burden is on the assessee to provide a satisfactory explanation supported by evidence. The Court emphasized that mere assertions without corroborating evidence are insufficient, especially when the investments are substantial and inconsistent with the assessee's declared income.

The Court concluded that the Income Tax authorities were justified in treating the unexplained investments as income from undisclosed sources when the assessee failed to discharge the burden of proving the genuineness of his explanation.

Distinguishing Points from Anshu Sahai HUF's Case

i. Source of Evidence: In Kapurchand Shrimal's case, the evidence of investments was found in the assessee's own books of account. In Anshu Sahai HUF's case, the alleged cash payments were not recorded in any books maintained by the assessee but were found exclusively in digital data seized from a third party (Gokul Kripa Group).

ii. Nature of Disputed Transactions: In Kapurchand Shrimal's case, the dispute was about unexplained investments made by the assessee. In Anshu Sahai HUF's case, the dispute is about alleged cash receipts that the assessee denies ever receiving, not about investments or assets found in the assessee's possession.

iii. Acknowledgment vs. Denial: In Kapurchand Shrimal's case, the assessee acknowledged the investments but claimed they were from legitimate sources. In Anshu

Sahai HUF's case, the assessee has categorically denied receiving any cash payments beyond what was declared in the registered sale deeds.

iv. Burden of Proof Dynamics: In Kapurchand Shrimal's case, the burden was on the assessee to explain investments that were undisputedly made by him and recorded in his books. In Anshu Sahai HUF's case, the department is attempting to prove that the assessee received additional consideration not disclosed in registered documents, without any evidence of such receipts in the assessee's possession or books.

v. Contradictions with Legal Documentation: In Kapurchand Shrimal's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Kapurchand Shrimal's case, the timing of the investments aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Kapurchand Shrimal's case, the tax authorities investigated the alleged sources of the investments and found them to be inadequate. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Kapurchand Shrimal's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

12. JASJIT SINGH v. COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Jasjit Singh v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions and the evidentiary value of entries found in documents seized during search operations. The tax authorities had made additions based on entries found in documents seized during a search operation.

The legal issue centered on whether entries in seized documents could form the basis for making additions to the assessee's income without additional corroboration. The

Court had to determine the circumstances under which such entries could be relied upon and the extent of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating financial transactions involving the assessee were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these entries, including statements from third parties 4. The assessee's explanation regarding these entries was found to be unsatisfactory and inconsistent

The Court held that entries in seized documents can form the basis for additions when they are specific, detailed, and supported by corroborating evidence. The Court emphasized that while such entries alone may not be sufficient, they gain probative value when viewed in light of surrounding circumstances and corroborating evidence.

The Court concluded that the burden shifts to the assessee to disprove the authenticity of such entries when there is prima facie evidence linking the assessee to the transactions, and mere denial without substantive rebuttal is insufficient.

Distinguishing Points from Anshu Sahai HUF's Case

i. Specificity and Detail of Entries: In Jasjit Singh's case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

ii. Corroborating Evidence: In Jasjit Singh's case, there was corroborating evidence that supported the entries in the seized documents, including statements from third parties. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iii. Independent Verification: In Jasjit Singh's case, the information in the seized documents could be independently verified through other sources. In Anshu Sahai HUF's case, the Excel sheet data cannot be independently verified as there are no other sources or records that confirm these alleged cash transactions.

iv. Assessee's Explanation: In Jasjit Singh's case, the assessee provided unsatisfactory and inconsistent explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Contradictions with Legal Documentation: In Jasjit Singh's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Jasjit Singh's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Jasjit Singh's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Jasjit Singh's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

13. SUSHIL KUMAR MOHANANI v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Sushil Kumar Mohanani v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions and the evidentiary value of entries found in documents seized during search operations. The tax authorities had made additions based on entries found in documents seized during a search operation.

The legal issue centered on whether entries in seized documents could form the basis for making additions to the assessee's income without additional corroboration. The Court had to determine the circumstances under which such entries could be relied upon and the extent of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating financial transactions involving the assessee were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these entries, including bank transactions and statements from third parties 4. The assessee's explanation regarding these entries was found to be evasive and unconvincing

The Court held that entries in seized documents can form the basis for additions when they are specific, detailed, and supported by corroborating evidence. The Court emphasized that the burden shifts to the assessee to provide a satisfactory explanation when prima facie evidence links the assessee to the transactions recorded in seized documents.

The Court concluded that mere denial without substantive rebuttal is insufficient when the seized documents contain specific details that can be independently verified and the surrounding circumstances support the authenticity of the entries.

Distinguishing Points from Anshu Sahai HUF's Case

i. Specificity and Detail of Entries: In Sushil Kumar Mohanani's case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

ii. Corroborating Evidence: In Sushil Kumar Mohanani's case, there was corroborating evidence that supported the entries in the seized documents, including bank transactions and statements from third parties. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iii. Independent Verification: In Sushil Kumar Mohanani's case, the information in the seized documents could be independently verified through other sources. In Anshu Sahai HUF's case, the Excel sheet data cannot be independently verified as there are no other sources or records that confirm these alleged cash transactions.

iv. Assessee's Explanation: In Sushil Kumar Mohanani's case, the assessee provided evasive and unconvincing explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Contradictions with Legal Documentation: In Sushil Kumar Mohanani's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Sushil Kumar Mohanani's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case,

the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Sushil Kumar Mohanani's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Sushil Kumar Mohanani's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

14. PAWAN KUMAR MALHOTRA v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Pawan Kumar Malhotra v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions and the evidentiary value of entries found in documents seized during search operations. The tax authorities had made additions based on entries found in documents seized during a search operation.

The legal issue centered on whether entries in seized documents could form the basis for making additions to the assessee's income without additional corroboration. The Court had to determine the circumstances under which such entries could be relied upon and the extent of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating financial transactions involving the assessee were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these entries, including bank transactions and statements from third parties 4. The assessee's explanation regarding these entries was found to be unsatisfactory and inconsistent

The Court held that entries in seized documents can form the basis for additions when they are specific, detailed, and supported by corroborating evidence. The Court

emphasized that while such entries alone may not be sufficient, they gain probative value when viewed in light of surrounding circumstances and corroborating evidence.

The Court concluded that the burden shifts to the assessee to disprove the authenticity of such entries when there is prima facie evidence linking the assessee to the transactions, and mere denial without substantive rebuttal is insufficient.

Distinguishing Points from Anshu Sahai HUF's Case

i. Specificity and Detail of Entries: In Pawan Kumar Malhotra's case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

ii. Corroborating Evidence: In Pawan Kumar Malhotra's case, there was corroborating evidence that supported the entries in the seized documents, including bank transactions and statements from third parties. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iii. Independent Verification: In Pawan Kumar Malhotra's case, the information in the seized documents could be independently verified through other sources. In Anshu Sahai HUF's case, the Excel sheet data cannot be independently verified as there are no other sources or records that confirm these alleged cash transactions.

iv. Assessee's Explanation: In Pawan Kumar Malhotra's case, the assessee provided unsatisfactory and inconsistent explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Contradictions with Legal Documentation: In Pawan Kumar Malhotra's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Pawan Kumar Malhotra's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Pawan Kumar Malhotra's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries. In

Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Pawan Kumar Malhotra's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

15. KHOPADE KISANRAO MANIKRAO v. COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Khopade Kisanrao Manikrao v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions and the evidentiary value of entries found in documents seized during search operations. The tax authorities had made additions based on entries found in documents seized during a search operation.

The legal issue centered on whether entries in seized documents could form the basis for making additions to the assessee's income without additional corroboration. The Court had to determine the circumstances under which such entries could be relied upon and the extent of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating financial transactions involving the assessee were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these entries, including statements from third parties 4. The assessee's explanation regarding these entries was found to be unsatisfactory and inconsistent

The Court held that entries in seized documents can form the basis for additions when they are specific, detailed, and supported by corroborating evidence. The Court emphasized that while such entries alone may not be sufficient, they gain probative value when viewed in light of surrounding circumstances and corroborating evidence.

The Court concluded that the burden shifts to the assessee to disprove the authenticity of such entries when there is prima facie evidence linking the assessee to the transactions, and mere denial without substantive rebuttal is insufficient.

Distinguishing Points from Anshu Sahai HUF's Case

i. Specificity and Detail of Entries: In Khopade Kisanrao Manikrao's case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

ii. Corroborating Evidence: In Khopade Kisanrao Manikrao's case, there was corroborating evidence that supported the entries in the seized documents, including statements from third parties. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iii. Independent Verification: In Khopade Kisanrao Manikrao's case, the information in the seized documents could be independently verified through other sources. In Anshu Sahai HUF's case, the Excel sheet data cannot be independently verified as there are no other sources or records that confirm these alleged cash transactions.

iv. Assessee's Explanation: In Khopade Kisanrao Manikrao's case, the assessee provided unsatisfactory and inconsistent explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Contradictions with Legal Documentation: In Khopade Kisanrao Manikrao's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Khopade Kisanrao Manikrao's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Khopade Kisanrao Manikrao's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Khopade Kisanrao Manikrao's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the

electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

16. PRAVINBHAI KESHAVBHAI PATEL v. COMMISSIONER OF INCOME TAX
[Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Pravinbhai Keshavbhai Patel v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions and the evidentiary value of entries found in documents seized during search operations. The tax authorities had made additions based on entries found in documents seized during a search operation.

The legal issue centered on whether entries in seized documents could form the basis for making additions to the assessee's income without additional corroboration. The Court had to determine the circumstances under which such entries could be relied upon and the extent of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating financial transactions involving the assessee were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could

be independently verified 3. There was corroborating evidence supporting these entries, including bank transactions and statements from third parties 4. The assessee's explanation regarding these entries was found to be evasive and unconvincing

The Court held that entries in seized documents can form the basis for additions when they are specific, detailed, and supported by corroborating evidence. The Court emphasized that the burden shifts to the assessee to provide a satisfactory explanation when prima facie evidence links the assessee to the transactions recorded in seized documents.

The Court concluded that mere denial without substantive rebuttal is insufficient when the seized documents contain specific details that can be independently verified and the surrounding circumstances support the authenticity of the entries.

Distinguishing Points from Anshu Sahai HUF's Case

i. Specificity and Detail of Entries: In Pravinbhai Keshavbhai Patel's case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail -

they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

ii. Corroborating Evidence: In Pravinbhai Keshavbhai Patel's case, there was corroborating evidence that supported the entries in the seized documents, including bank transactions and statements from third parties. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iii. Independent Verification: In Pravinbhai Keshavbhai Patel's case, the information in the seized documents could be independently verified through other sources. In Anshu Sahai HUF's case, the Excel sheet data cannot be independently verified as there are no other sources or records that confirm these alleged cash transactions.

iv. Assessee's Explanation: In Pravinbhai Keshavbhai Patel's case, the assessee provided evasive and unconvincing explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Contradictions with Legal Documentation: In Pravinbhai Keshavbhai Patel's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Pravinbhai Keshavbhai Patel's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Pravinbhai Keshavbhai Patel's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Pravinbhai Keshavbhai Patel's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

17. VEENA ESTATES v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Veena Estates v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions in real estate dealings and the evidentiary value of entries found in documents seized during search operations. The tax authorities had made additions based on entries found in documents seized during a search operation that suggested undisclosed consideration in property transactions.

The legal issue centered on whether entries in seized documents could form the basis for making additions to the assessee's income in real estate transactions where registered documents showed different consideration amounts. The Court had to determine the circumstances under which such entries could be relied upon to contradict officially registered property documents.

The factual matrix revealed several critical elements: 1. Entries indicating additional cash payments in real estate transactions were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these entries, including statements from buyers/sellers and other financial records 4. The pattern of transactions aligned with known market practices in real estate where part consideration is often paid in cash 5. The assessee's explanation regarding these entries was found to be unsatisfactory and inconsistent

The Court held that entries in seized documents can form the basis for additions in real estate transactions when they are specific, detailed, and supported by corroborating evidence, even if they contradict registered sale deeds. The Court emphasized that in real estate transactions, it is a common practice to show lower consideration in registered documents to evade taxes, and tax authorities are entitled to look beyond the apparent state of affairs.

The Court concluded that the burden shifts to the assessee to disprove the authenticity of such entries when there is prima facie evidence suggesting undisclosed consideration, and mere reliance on registered documents without substantive rebuttal is insufficient.

Distinguishing Points from Anshu Sahai HUF's Case

i. Corroborating Evidence: In Veena Estates' case, there was corroborating evidence that supported the entries in the seized documents, including statements from buyers/sellers and other financial records. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash

withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

ii. Pattern of Transactions: In Veena Estates' case, the pattern of transactions aligned with known market practices in real estate. In Anshu Sahai HUF's case, the alleged pattern of cash payments defies normal business logic - it is implausible that a prudent seller would transfer property ownership through registered sale deeds without receiving full payment, especially when the alleged cash payments continued for 19 months after the registration of the last sale deed.

iii. Specificity and Detail of Entries: In Veena Estates' case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

iv. Assessee's Explanation: In Veena Estates' case, the assessee provided unsatisfactory and inconsistent explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Timing and Sequence of Events: In Veena Estates' case, the timing of the undisclosed cash payments aligned with the property transactions. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vi. Investigation and Verification: In Veena Estates' case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries, including obtaining statements from buyers/sellers. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

vii. Source of Evidence: In Veena Estates' case, the evidence was found in documents that had a direct connection to the assessee's business activities. In Anshu Sahai HUF's case, the Excel sheet data was found exclusively in digital data seized from a third party (Gokul Kripa Group), with no direct connection established between this data and the assessee.

viii. Legal Admissibility of Evidence: In Veena Estates' case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied

upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

18. LKS GOLD HOUSE v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In LKS Gold House v. Commissioner of Income Tax, the Court addressed a case concerning unexplained cash transactions in a jewelry business and the evidentiary value of entries found in documents seized during search operations. The tax authorities had made additions based on entries found in documents seized during a search operation that suggested undisclosed sales and income.

The legal issue centered on whether entries in seized documents could form the basis for making additions to the assessee's income without additional corroboration. The Court had to determine the circumstances under which such entries could be relied upon and the extent of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating undisclosed sales and income were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these entries, including physical inventory discrepancies and statements from employees 4. The pattern of transactions aligned with the nature of the jewelry business where cash transactions are common 5. The assessee's explanation regarding these entries was found to be evasive and unconvincing

The Court held that entries in seized documents can form the basis for additions when they are specific, detailed, and supported by corroborating evidence. The Court emphasized that the burden shifts to the assessee to provide a satisfactory explanation when prima facie evidence links the assessee to the transactions recorded in seized documents.

The Court concluded that mere denial without substantive rebuttal is insufficient when the seized documents contain specific details that can be independently verified and the surrounding circumstances support the authenticity of the entries.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature of Business and Transactions: In LKS Gold House's case, the transactions involved were consistent with the assessee's jewelry business where cash

transactions are common. In Anshu Sahai HUF's case, the transactions involved real estate sales through registered deeds, where it is uncommon and illogical for a seller to transfer property without receiving full payment.

ii. Corroborating Evidence: In LKS Gold House's case, there was corroborating evidence that supported the entries in the seized documents, including physical inventory discrepancies and statements from employees. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iii. Specificity and Detail of Entries: In LKS Gold House's case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

iv. Assessee's Explanation: In LKS Gold House's case, the assessee provided evasive and unconvincing explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Contradictions with Legal Documentation: In LKS Gold House's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In LKS Gold House's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In LKS Gold House's case, the tax authorities conducted a thorough investigation to verify the authenticity of the entries, including obtaining statements from employees. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In LKS Gold House's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were

relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

19. CALCUTTA KNITWEARS v. COMMISSIONER OF INCOME TAX [Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Calcutta Knitwears v. Commissioner of Income Tax, the Court addressed a case concerning the interpretation and application of Section 158BD of the Income Tax Act, which deals with undisclosed income of any other person. The case involved the procedural requirements for initiating proceedings against third parties based on evidence found during search operations.

The legal issue centered on whether the Income Tax authorities could initiate proceedings against third parties based on materials seized during search operations conducted on other persons, and the procedural safeguards that must be followed in such cases. The Court had to determine the scope of Section 158BD and the conditions precedent for its invocation.

The factual matrix revealed several critical elements: 1. During search operations conducted on certain persons, materials were found suggesting undisclosed income of third parties 2. The tax authorities initiated proceedings against these third parties under Section 158BD 3. The question arose whether proper procedure was followed in recording satisfaction before initiating such proceedings 4. The timing and manner of recording satisfaction by the Assessing Officer was disputed

The Court held that before initiating proceedings under Section 158BD against third parties, the Assessing Officer must record proper satisfaction based on materials found during the search. The Court emphasized that this satisfaction must be based on cogent materials having rational connection to the formation of belief about undisclosed income.

The Court concluded that mere suspicion or vague references in seized materials are insufficient for initiating proceedings against third parties, and there must be tangible material with rational nexus to the formation of belief about undisclosed income.

Distinguishing Points from Anshu Sahai HUF's Case

i. Nature of Legal Issue: In Calcutta Knitwears' case, the primary issue was procedural - whether proper satisfaction was recorded before initiating proceedings against third parties. In Anshu Sahai HUF's case, the issue is substantive - whether the Excel sheet data found from a third party constitutes reliable evidence of undisclosed income.

ii. Quality and Reliability of Evidence: In Calcutta Knitwears' case, the Court emphasized that proceedings must be based on cogent materials having rational connection to undisclosed income. In Anshu Sahai HUF's case, the Excel sheet data lacks cogency - it contains no details about mode of payment, place of payment, or acknowledgment of receipt, and has internal inconsistencies.

iii. Corroborating Evidence: In Calcutta Knitwears' case, the Court required tangible material with rational nexus to undisclosed income. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iv. Contradictions with Legal Documentation: In Calcutta Knitwears' case, there was no discussion of contradictions with legally executed documents. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

v. Timing and Sequence of Events: In Calcutta Knitwears' case, the timing of recording satisfaction was a procedural issue. In Anshu Sahai HUF's case, the chronology of events contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vi. Investigation and Verification: In Calcutta Knitwears' case, the Court emphasized the need for proper investigation before initiating proceedings. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

vii. Rational Connection to Undisclosed Income: In Calcutta Knitwears' case, the Court required a rational connection between seized materials and the belief about undisclosed income. In Anshu Sahai HUF's case, the Excel sheet data lacks a rational connection to undisclosed income - it defies business logic that a prudent seller would transfer property ownership without receiving full payment.

viii. Legal Admissibility of Evidence: In Calcutta Knitwears' case, the admissibility of evidence was not directly addressed. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

20. KANUNGO & COMPANY v. COLLECTOR OF CUSTOMS
[Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Kanungo & Company v. Collector of Customs, the Supreme Court addressed a case concerning the evidentiary value of entries in seized documents and the burden of proof in customs proceedings. The case involved allegations of customs duty evasion based on documents seized during search operations.

The legal issue centered on whether entries in seized documents could form the basis for making additions or imposing penalties without additional corroboration. The Court had to determine the circumstances under which such entries could be relied upon and the extent of corroboration required.

The factual matrix revealed several critical elements: 1. Entries indicating customs duty evasion were found in documents seized during search operations 2. The entries were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these entries, including physical verification of goods and statements from employees 4. The pattern of transactions aligned with the nature of the import business 5. The assessee's explanation regarding these entries was found to be unsatisfactory and inconsistent

The Supreme Court held that entries in seized documents can form the basis for proceedings when they are specific, detailed, and supported by corroborating evidence.

The Court emphasized that while such entries alone may not be sufficient, they gain probative value when viewed in light of surrounding circumstances and corroborating evidence.

The Court concluded that the burden shifts to the assessee to disprove the authenticity of such entries when there is prima facie evidence linking the assessee to the transactions, and mere denial without substantive rebuttal is insufficient.

Distinguishing Points from Anshu Sahai HUF's Case

i. Specificity and Detail of Entries: In Kanungo & Company's case, the entries were specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

ii. Corroborating Evidence: In Kanungo & Company's case, there was corroborating evidence that supported the entries in the seized documents, including physical verification of goods and statements from employees. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash

withdrawals by the payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iii. Independent Verification: In Kanungo & Company's case, the information in the seized documents could be independently verified through physical examination of goods and other sources. In Anshu Sahai HUF's case, the Excel sheet data cannot be independently verified as there are no other sources or records that confirm these alleged cash transactions.

iv. Assessee's Explanation: In Kanungo & Company's case, the assessee provided unsatisfactory and inconsistent explanations when confronted with the evidence. In Anshu Sahai HUF's case, the assessee has consistently and categorically denied receiving any cash payments beyond what was declared in the registered sale deeds, with no contradictions in its position.

v. Contradictions with Legal Documentation: In Kanungo & Company's case, there were no legally executed documents that contradicted the department's position. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Kanungo & Company's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Kanungo & Company's case, the authorities conducted a thorough investigation to verify the authenticity of the entries, including physical verification of goods. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Kanungo & Company's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

21. CANARA BANK v. DEBASIS DAS
[Refer CIT(A) Order Page 37]

Legal and Factual Aspects of the Case

In Canara Bank v. Debasis Das, the Supreme Court addressed a case concerning the evidentiary value of documents and the standard of proof required in proceedings involving allegations of fraud or misconduct. The case involved allegations of fraudulent transactions based on documentary evidence.

The legal issue centered on whether documentary evidence could form the basis for proceedings without additional corroboration, particularly in cases involving serious allegations of fraud. The Court had to determine the standard of proof required and the extent of corroboration necessary.

The factual matrix revealed several critical elements: 1. Documentary evidence indicating fraudulent transactions was presented 2. The documents were specific, detailed, and contained information that could be independently verified 3. There was corroborating evidence supporting these documents, including bank records and statements from witnesses 4. The pattern of transactions was consistent with the allegations of fraud 5. The respondent's explanation regarding these documents was found to be unsatisfactory and inconsistent

The Supreme Court held that in cases involving serious allegations of fraud or misconduct, a higher standard of proof is required, though not as high as 'beyond reasonable doubt' in criminal cases. The Court emphasized that documentary evidence must be specific, detailed, and supported by corroborating evidence.

The Court concluded that mere suspicion or vague references are insufficient for establishing fraud, and there must be clear and convincing evidence with rational nexus to the allegations.

Distinguishing Points from Anshu Sahai HUF's Case

i. Standard of Proof: In Canara Bank's case, the Court emphasized the need for a higher standard of proof in cases involving serious allegations. In Anshu Sahai HUF's case, the tax authorities have not met even a basic standard of proof - they rely solely on Excel sheet data without any corroborating evidence.
ii. Specificity and Detail of Evidence: In Canara Bank's case, the documentary evidence was specific, detailed, and contained information that could be independently verified. In Anshu Sahai HUF's case, the Excel sheet entries lack specificity and detail - they merely show dates and amounts without any supporting details such as mode of payment, place of payment, or acknowledgment of receipt.

iii. Corroborating Evidence: In Canara Bank's case, there was corroborating evidence that supported the documentary evidence, including bank records and statements from witnesses. In Anshu Sahai HUF's case, there is no corroborating evidence supporting the Excel sheet data - no evidence of cash withdrawals by the

payer, no evidence of cash receipts by the assessee, and no evidence of subsequent use of the alleged cash.

iv. Independent Verification: In Canara Bank's case, the information in the documents could be independently verified through bank records and other sources. In Anshu Sahai HUF's case, the Excel sheet data cannot be independently verified as there are no other sources or records that confirm these alleged cash transactions.

v. Contradictions with Legal Documentation: In Canara Bank's case, there were no legally executed documents that contradicted the allegations. In Anshu Sahai HUF's case, the alleged Excel sheet data contradicts the legally executed and registered sale deeds, which under Sections 91 and 92 of the Evidence Act cannot be contradicted by external evidence.

vi. Timing and Sequence of Events: In Canara Bank's case, the timing of the transactions aligned with the period under investigation. In Anshu Sahai HUF's case, the chronology contradicts the department's position - the alleged cash payments continued for 19 months after the registration of the last sale deed, which defies business logic and normal commercial practice.

vii. Investigation and Verification: In Canara Bank's case, a thorough investigation was conducted to verify the authenticity of the documents, including obtaining statements from witnesses. In Anshu Sahai HUF's case, there is no evidence that the tax authorities attempted to verify the alleged cash payments with the directors of Gokul Kripa Group who supposedly made these payments, despite having access to them during and after the search.

viii. Legal Admissibility of Evidence: In Canara Bank's case, the evidence was legally obtained and admissible. In Anshu Sahai HUF's case, the electronic records were relied upon without compliance with Sections 65A and 65B of the Indian Evidence Act, 1872, making them legally inadmissible without proper certification.

12. We have heard the rival contentions and perused the material placed on record. Vide Ground no. 1 the assessee – appellant challenges action of the ld. CIT(A) in confirming the action of ld. AO in assuming jurisdiction under section 153C of the Act and thereby prayed to quash impugned order being illegal and without jurisdiction. On this ground the bench noted from

the record that required satisfaction was drawn by ld. ACIT Central Circle - 2, Jaipur and was sent to the ld. AO having jurisdiction of the Assessee Appellant for initiating action u/s 153C of the Income Tax Act, 1961, vide letter no. 368 dated 17.10.2022. (Ld. AO Page 1). The contention of the assessee that "provisions of section 153C are not applicable for searches initiated on or after 01.04.2021. In the instant case, for the purpose of Section 153C, the deemed date of search is 17.10.2022. In view of the matter, the date of search for the Assessee Appellant being 17.10.2022, the invoking of the provisions of section 153C is invalid and without jurisdiction."

Record further reveals that the assessee repeated praying to provide to the revenue the satisfaction note recorded by the ld. AO of the searched person and satisfaction recorded by the ld. AO of the Assessee Appellant have not been provided and the revenue did not present it in the present appellate proceeding and therefore, we are of the considered view that the without providing the satisfaction note for acquiring the jurisdiction the ultimate order lacks the jurisdiction. On this aspect of the matter ld. AR of the assessee in the case law paper book filed relied upon the decision of Hon'ble Karnatak High Court in the case of DCIT Vs. Sunil Kumar Sharema 469 ITR 197(Karnataka) wherein the High Court held that;

> **53.** Further, **satisfaction note is required to be recorded under section 153C of the IT Act for each Assessment Year and in the impugned proceedings, a**

consolidated satisfaction note has been recorded for different Assessment Years, which also vitiates the entire assessment proceedings. In view of all these findings, it is said that the appeals do not have any substance for seeking intervention as sought for by the appellant/Revenue.

54. The question as regards whether in an intra court appeal, a Division Bench could remit a writ petition in the matter of moulding the relief, it is relevant to refer to an Apex Court decision dated 31-7-2018 rendered in the case of *Roma Sonkar* v. *Madhya Pradesh State Public Service Commission* [Civil Appeal Nos. 7400-7401 of 2018, dated 31-7-2018]. The relevant paragraph 3 of the said order reads thus:

"3. We have very serious reservations whether the Division Bench in an intra court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the appeal(*s*) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge."

55. In the totality of circumstances, and also on dwelling in detail with the materials, it reveals that the learned Single Judge has considered all the points and has gone through the reliances facilitated on both sides and has rendered the impugned order, which has been challenged by filing the present appeals. The grounds urged in the appeals preferred by the appellant/Revenue, do not have any substance and the impugned order rendered by the learned Single Judge do not suffer from any infirmity and further, no warranting circumstances arise for interference. Consequently, these appeals deserve to be rejected as being devoid of merits.

56. In the light of the above said Apex court Decisions and the Panchanama provided herein, it is deemed appropriate to conclude that the notice provided under section 153C is bad in law.

We are therefore clearly of the opinion that the learned Single Judge is right in allowing the Writ petitions. Accordingly, we proceed to pass the following:

ORDER

The appeals preferred by the appellant/Revenue are hereby rejected. Consequently, the order passed by the learned Single Judge in W.P.Nos.9937/2022 C/w. W.P.Nos.9938/2022, 9939/2022, 9945/2022 and 9946/2022 is hereby confirmed.

Before parting with this judgment, this Court places on record its deep appreciation for the able research and assistance rendered by its Research Assistant-cum-Law Clerk, Mr.Pranav.K.B.

The bench also noted that SLP against that decision filed by the revenue was also dismissed by the Apex Court and therefore, respectfully, following the above judicial precedent cited by the ld. AR of the assessee we considered ground no. 1 raised by the assessee.

12.1 Vide ground no. 2 the assessee – appellant challenges the finding of the ld. CIT(A) in upholding the assessment order which was passed without obtaining proper approval under section 153D of the Act and thereby prayed to quash the entire assessment order as absence of proper approval under section 153D has vitiated the assessment order.

Record reveals that all the seven Assessment Years i.e. A.Y. 2015-16, A.Y. 2016-17, A.Y. 2017-18, A.Y. 2018-19, A.Y. 2019-20, A.Y. 2020-21, A.Y. 2021-22 were approved in just one day. The draft assessment orders by ld. AO were sent, for approval, on 22.03.2024 and all the seven assessment orders were approved on 23.03.2024 [paper book page 188-195]. The prime object of entrusting the duty of approval of assessment in search cases is that the Additional CIT, with his experience and maturity of understanding, should scrutinize the seized documents and other material forming the foundation of assessment. Whenever any statutory obligation is casted upon any statutory authority such authority is required to discharge

its obligation not mechanically, but after due application of mind. Thus, the obligation of granting approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion. As is evident from the record that for the year under consideration, the approval granted was granted for all the year absolutely mechanical without even analysing the basic evidences and was given in just one having much of the facts and seized records to be examined and completing the process just in one day for all these years is humanely not possible in a day. This approval was granted along with discharging other regular official functions and maybe also other such approvals by the same approving authority. Ld. AR of the assessee serviced the decision of the co-ordinate bench of ITAT in the case of Shreelekha Damani V. DCIT (2015) 173 TTJ (Mumbai) 332, wherein the co-ordinate bench held that:

> "Coming to the facts of the case in hand in the light of the analytical discussion hereinabove and as mentioned elsewhere, the Addl. Commissioner has showed his inability to analyze the issues of draft order on merit clearly stating that no much time is left, inasmuch as the draft order was placed before him on 31.12.2010 and the approval was granted on the very same day. Considering the factual matrix of the approval letter, we have no hesitation to hold that the approval granted by the Addl. Commissioner is devoid of any application of mind, is mechanical and without considering the materials on record. In our considered opinion, the power vested in the Joint Commissioner/Addl Commissioner to grant or not to grant approval is coupled with a duty. The Addl Commissioner/Joint Commissioner is required to apply his mind to the proposals put up to him for approval in the light of the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case, there has been no application of mind by the Addl. Commissioner before granting the approval. Therefore, we have no hesitation to hold that the assessment order made u/s. 143(3) of the Act r.w. sec. 153A of the

Act is bad in law and deserves to be annulled. The additional ground of appeal is allowed."

Reliance was also placed on the Judgment of Hon'ble Supreme Court in the case of CIT v. S. Goyanka Lime & Chemical Ltd. [2015] 64.taxmann.com 313 (SC) wherein the department's SLP was dismissed. Similar view was serviced as legal precedent of the Hon'ble Supreme Court in **ACIT vs. Serajuddin & Co. [2024] 163 taxmann.com 118 (SC)** 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.

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 without due application of mind. Such approval being invalid, the consequential assessment orders framed u/s 153C read with Section 153D for Assessment Years 2016-17 to 2018-19 cannot be sustained in law and are therefore quashed. In the result Ground no. 2 raised by the assessee is allowed.

12.3 Vide ground no. 3 the assessee – appellant challenges that ld. CIT(A) has erred in upholding the addition amounting to Rs. 16,21,91,214/- (albeit

as part of capital gains) based on the set of facts and circumstances available on record and thereby the same is required to be deleted. The brief facts as emerges from the record are that a search and seizure action u/s 132 of the Income Tax Act, 1961, was carried out by the Income Tax Department on the Gokul Kripa Group on 19.01.2021. During the course of search, it is alleged, that certain incriminating digital data was found at one of the premises of Gokul Kripa Group. The said digital data, as per allegations, by the ld. AO, contained details of cash payments which allegedly were made, over and above the cheque payments, towards consideration for purchase of the above lands from the Assessee Appellant along with other family members. The details of such alleged cash payments are appearing at pages 4 to 14 of the order of the ld. AO. It is alleged that the total cash payments, emerging from above digital data, in all, amounted to Rs. 56,31,38,250/- made to all the family members towards all the sale transactions spanning over the following 3 financial years (ld. AO Pages 34). Ld. AO apportioned the alleged on-money paid in cash in proportion to cheque amount received by individual seller and, thereafter, said amount was further bifurcated into three financial years. The said workings are appearing at page 35 of the assessment order. On the basis of above presumptions and apportionment, following additions

have been made towards alleged consideration received for sale of land over and above the consideration received through banking channel:

Assessment Year	Amount (in Rs.)
2016-17	16,21,91,214/-
2017-18	17,81,66,880/-
2018-19	3,40,24,557/-

Record reveals that the alleged on-money payments in cash are spread over a period starting from 15.09.2015 and ending on 18.03.2018. This period extends to 30 months. It is submitted that registered sale deeds were executed on 05.11.2015, 01.01.2016 and 04.08.2016. The last deed thus was executed on 04.08.2016 whereas last of the alleged payments was received as late as on 18.03.2018. The gap is about 19 months. In sale of property transaction, it is hard to believe that the seller of property make the document without receipt of the alleged-on money. The revenue could not demonstrate or provide any corroborative evidence to the contention the assessee was given the on-money even after the sale deed was executed. Except that loose sheet no corroborative evidence was placed on record by the revenue to support the contention. Having noted so revenue has not taken any action against the assessee as per provision of section 269ST this itself shows that the case of revenue without any further evidence that the payment as alleged to have been made to the assessee

are related to that impugned property sold by the assessee to the person searched and the payment by that assessee made to the assessee in appeal and that too after the 19 month of the last transaction and in a piece meal. Not only that it is also hard to believe that 4 parties making separate payment on the same day to the assessee on various occasion and observed by the bench on this issue that the same instances are reported at page 4 onward and serially number at 5, 8 19 & 29. This instances itself suggest that preponderance of probability goes in favour of the assessee and the plea of the revenue has no supporting or corroborative found. Be that it may so it is a matter of common sense that the seller would have no right, least the legal right to recover the on-money. This glaring anomaly in the approach of the revenue is without any support of the any alleged agreement or any record of having agreed to such terms and condition as alleged by the revenue. The recipient of the on-money were not confronted to this issue at the time of search or post search proceeding. Before deriving such conclusion neither at the time of search nor in the post search proceeding revenue confronted to the assessee on such allegation. The bench also considered the factual argument of the ld. AR of the assessee that the name of the assessee is appearing only at 3 places i.e. serial number 149, 164 and 166 (assessment order page 12 & 13). Thus,

without referring to that specific entry the ld. AO made the addition based on the lump sum and based on the surmises and conjecture without considering the real facts recorded in that loose sheet and that too without getting it confronted to the assessee. The bench thus noted that the alleged Excel Sheet date is absolutely uncorroborated. There is no underlying evidence which could substantiate such entries in the Excel Sheet. It is worthwhile to note that payments have allegedly been made over a period of 30 months and that too by 4 directors namely Sumer Singh Saini, Sangeeta Saini, Phool Chand Saini and Rajesh Kumar. It is beyond comprehension that 4 persons making payments over a period of 30 months would execute that task without maintaining underlying data and also without obtaining signatures of the recipients. This again proves that action of ld. AO is without any basis and beyond human probabilities. It is also out of human probabilities that many payments are in the multiples of hundreds which normally do not look plausible when such huge payment was to be made in cash. Similarly, on various dates, payments are made by more than one directors or even by all the directors which again do not look plausible and this it self raise doubt on the pattern of recording of such entries in the loose excel sheet. That sheet does not contain any reference to voucher or receipt so as to believe the contention of the revenue. Not

only that it is also revealed from the record that these excel sheet were neither prepared by the assessee nor was found from the control and possession of the assessee. This said Excel Sheet was said to be maintained by a 3rd person and was also found from the possession of a 3rd person. In view of this, no adverse inference can be drawn against the assessee on the basis of said Excel Sheet. It is further submitted that there is discrepancy / disconnect in the figure appearing in the tables at Page 36 and 37 of the order of the ld. AO as pointed by the ld. AR of the assessee. The record also shows that the entire exercise of ld. AO is based on mere presumptions and assumption without making any efforts to analyze that record and place on record the corroborative evidence to support the view taken by the ld. AO. Thus, when the loose sheet is relied upon without any specific evidence evidence suggesting the contention raised the addition does not survive. The evidence which was relied upon by the revenue are electronic records and the same are relied upon without complying with the requirements of Information Technology Act, 2000 read with Sections 65A and 65B of the Indian Evidence Act, 1872. As is evident from the record that documents, as relied upon by the ld. AO, are the extracts of the excel sheet alleged to have been maintained by Gokul Kripa Group and seized during the course of search on 19.01.2021. Record further reveals that

there is no satisfaction of the ld. AO that all the requisite steps were taken by him to ensure that the data output of the PEN Drives/Computer records, seized during the search on Gokul Kripa Group were analysed on "as is" basis and there is no risk of it being tempered by anyone. The request of the assessee to cross examine the person who made statement were asked but were also not provided therefore, this action also violates the principles of natural justice as held by the Apex Court in the case of Andaman Timbers Industries (Supra) wherein the court held that ""…not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected".

When the assessee taken up all these issues before the ld. CIT(A) who did not deal with the factual inconsistencies brought to his notice as above. He simply rejected the submissions mentioning that what details and in what manner are kept by the buyer is dependent on the trust he has on the seller. On this of corroborative evidence the ld. CIT(A) rejected that plea. Even the plea of the assessee that the material was in the nature of dumb document which would not possess any stand-alone evidentiary

value since it did not contain the complete particulars of the relevant transactions and the persons involved in the said transactions. The addition as made on the basis of such a dumb document would not be sustainable as the same is non-speaking document, without any corroborative material / evidence or without a finding that such document had materialized into transactions giving rise to income of the Assessee. Thus, to establish that the impugned receipt is of the assessee is on the revenue and the same cannot be done reverse by the assessee. On this issue we get support from the decision of the Hon'ble Supreme Court in the case of K.P Varghese Vs. ITO (131 ITR 597) wherein the Apex Court held that the onus of establishing that the conditions of taxability were fulfilled would always be on the revenue and throwing the burden of showing that there was no under-statement of consideration on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely, that he did not receive any consideration beyond what has been declared by him. Thus, the burden would be on revenue to adduce proper evidence to corroborate the contents of the seized material for the purpose of establishing that the assessee was, in fact, in receipt of the payments as noted in the seized material. Discharge of reverse burden is not expected from the assessee. When question raised that whether such entries found

in the material seized from a third-party could be used to draw adverse inference against the assessee without there being anything more in record in corroboration of the same, the revenue merely relied upon the finding recorded in the order of the assessment and material whatsoever found at the time of third party search were placed on record. Thus, when the material relied upon were not seized from the premises of the assessee nor the same was found in the handwriting of the assessee the same would not constitute adequate evidence to draw any adverse inference against the assessee in the absence of any corroborative evidence as held by Hon'ble Delhi High Court in the case of CIT v. Sant Lal (118 Taxmann.com 432). Even the Hon'ble Bombay High Court in the case of CIT v. Lavanya Land (P) Ltd (2017)(397 ITR 246) (Bom), taken a view that that where entire decision is based on huge amounts revealed from seized documents but not supported by any evidence of actual cash passing hands, no addition can be made. As serviced the decision of the Apex Court in the case of Common Cause v. UOI (2017) 77 Taxmann.com 254 (SC) that ;

> "We are constrained to observe that the Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous

> person or business house that too not kept in regular books of account but on random papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily."

Thus, the prime question ultimately remained unanswered that whether the payments noted in the seized material had actually materialized and transfer of money had actually taken place between the concerned parties without any corroborative evidence placed on record and that when the assessee has already executed the sell deed and thereafter the receipt of the money of the property sold cannot be believed without any express evidence placed on record and therefore, we in the absence of evidence merely based on that stand alone excel sheet unable to support the view of the revenue that the assessee Appellant has received any cash on sale of land to Gokul Kripa Group and that after the sale deed is executed. Thus, considering the detailed submission made by the assessee supported by the arguments on facts and judicial precedent cited and not repeating the same we hold that the addition made in the hands of the assessee cannot be sustained. Before we depart it would appropriate to refer the decision of

Hon'ble Karnataka High Court as serviced by the ld. AR of the assessee in the case of DCIT v. Sunil Kumar Sharma, [2024] 469 ITR 197 (Karnataka), wherein the Hon'ble High Court examined the following question at para 21 of the Order:

> *(1) Whether 'Loose Sheets' and 'Diary' have an evidentiary value?*
>
> The Hon'ble High Court answered in favour of the assessee as under at para 26 of the Order:
>
> *"26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent/Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."*
>
> Aggrieved by the said order, the Department preferred a Special Leave Petition (SLP) before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court was pleased to dismiss the said SLP in [2024] 165 taxmann.com 846 (SC)

Respectfully following the judicial precedent cited and considering that the fact that a buyer paid Rs. 37.43 crores in cash over multiple transactions without obtaining a single signed agreement, acknowledgement, or receipt from the seller is highly unbelievable. No prudent businessperson would make such a substantial payment without legal documentation to safeguard his interest and thereby the contention being without any supporting

evidence cannot be believe to tax the huge amount in the hands of the assessee. The submission on the reliability of the digital record is considered but not required to be repeated here again to avoid the repetition and thereby we are of the considered view that merely based on the excel sheet without any corroborative evidence no addition can be made in the hands of the assessee and thereby the ground no. 3 raised by the assessee is allowed.

12.4 Ground no. 4 being consequential in nature and does not require any finding.

Resultantly the appeal filed by the assessee in ITA no. 466/JP/2025 stands allowed.

13. The bench noted that the facts of the case in ITA Nos. 467 & 468/JP/2025 are similar to the facts of the case in ITA No. 466/JP/2025 and we have heard both the parties and perused the materials available on record. The bench has noticed that the issues raised by the assessee in these appeals in ITA Nos. 467 & 468/JP/2025 are equally similar on set of facts and grounds so far as it relates to ground no. 1 to 4 raised in these appeals too. Therefore, it is not imperative to repeat the facts, various grounds and arguments raised by both the parties in these appeals so far

as it relates to the ground no. 1 to 4. Hence, the bench feels that the decision taken by us in ITA No. 466/JP/2025 shall apply mutatis mutandis in the case of Anshu Sahai (HUF), Jaipur in ITA Nos. 467 & 468/JP/2025 so far as it relates to ground no. 1 to 4 are concerned.

14. The bench noted that the assessee in ITA no. 467/JP/2025 vide ground no. 5 challenges action of the ld. CIT(A) in sustaining the addition of Rs. 1,09,05,920/- in respect of disallowance of claim under section 54B and in respect of calculation of indexed cost of acquisition and improvement in the assessment proceedings under section 153C of the Act. On this aspect of the matter the bench noted from the paper book so filed by the assessee at page 221 the ld. AO has already considered the claim of the assessee and even made the adjustment to that claim made by the assessee u/s. 54B of the Act vide order passed u/s. 143(3) of the Act on 09.08.2019. Since that claim has already been allowed based on the material verified by the ld. AO the same cannot be subjected addition in the proceeding u/s. 153C of the Act as the claim is not based on any incriminating material and thereby following the judgement of the Apex Court in the case of DCIT Vs. U. K. Paints (Overseas) Ltd. [150 taxmann.com 108(SC)] wherein the

court held that "Where no incriminating material was found in case of any of assessee either from assessee or from third party High Court rightly set aside assessment order passed under section 153C". Therefore, we consider this ground in favour of the assessee.

15. The bench noted that for the assessment year 2017-18 the assessee raised an additional ground which reads as follows;

> "In the facts and circumstances of the case and in law, ld. AO has erred in reopening the case under section 148 without authority of the law. The action of the ld. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reopening being illegal and without jurisdiction."

On this issue while dealing with ground no. 5 we have already considered that no addition can be made in the proceeding u/s. 153C of the Act qua incriminating material considering the decision of Apex Court in the case of M/s U. K. Paints (Supra). Even otherwise when the assessing officer in the earlier 143(3) proceeding has already verified that claim of the assessee to verify that claim again 148 cannot be invoked as it is a change of opinion by the assessing officer.

In terms of these observations, the appeal of the assessee in ITA Nos. 467 & 468/JP/2025 are allowed.

Order pronounced in the open court on 03/11/2025.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 03/11/2025
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Anshu Sahai (HUF), Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-02, Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 466 to 468/JP/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar