

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1403/PUN/2025
Assessment year : 2021-22**

Madanlal Lalchand Jain Vibhare Building, Near City Police Station, Hat Darwaja Station Road, Nandurbar – 425412	Vs.	ACIT, Central Circle-2, Nashik
PAN: ABKPJ3633K		
(Appellant)		(Respondent)

**ITA No.1572/PUN/2025
Assessment year : 2021-22**

ACIT, Central Circle-2, Nashik	Vs.	Madanlal Lalchand Jain Vibhare Building, Near City Police Station, Hat Darwaja Station Road, Nandurbar – 425412
		PAN: ABKPJ3633K
(Appellant)		(Respondent)

**CO No.42/PUN/2025
Assessment year : 2021-22**

Madanlal Lalchand Jain Vibhare Building, Near City Police Station, Hat Darwaja Station Road, Nandurbar – 425412	Vs.	ACIT, Central Circle-2, Nashik
PAN: ABKPJ3633K		
(Appellant)		(Respondent)

**ITA No.1404/PUN/2025
Assessment year : 2022-23**

Madanlal Lalchand Jain Vibhare Building, Near City Police Station, Hat Darwaja Station Road, Nandurbar – 425412	Vs.	ACIT, Central Circle-2, Nashik
PAN: ABKPJ3633K		
(Appellant)		(Respondent)

Assessee by : Shri Nikhil S Pathak
Department by : Shri Amol Khairnar, CIT-DR
Date of hearing : 03-11-2025
Date of pronouncement : 21-11-2025

ORDER

PER BENCH:

ITA No.1403/PUN/2025 filed by the assessee and ITA No.1572/PUN/2025 filed by the Revenue are cross appeals and are directed against the order dated 28.04.2025 of the Ld. CIT(A), Pune-12 relating to assessment year 2021-22. CO No.42/PUN/2025 filed by the assessee is against the appeal filed by the Revenue relating to assessment year 2021-22. ITA No.1404/PUN/2025 filed by the assessee is directed against the order dated 28.04.2025 of the Ld. CIT(A), Pune-12 relating to assessment year 2022-23. For the sake of convenience, all these appeals and the CO were heard together and are being disposed of by this common order

ITA No.1403/PUN/2025 (by assessee for A.Y. 2021-22)

ITA No.1572/PUN/2025 (by Revenue for A.Y. 2021-22)

CO No.42/PUN/2025 (by assessee for A.Y. 2021-22)

2. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of land developer and trading in real estate. A search and seizure action u/s 132 of the Act was conducted in the case of Dream Group & Land Developers of Nandurbar on 22.12.2021 during which the case of the assessee was also covered. The assessee filed his return of income u/s 139(1) of the Income Tax

Act, 1961 (hereinafter referred to as 'the Act') on 15.03.2022 declaring total income of Rs.2,16,85,640/-. The return was processed u/s 143(1) of the Act on 08.07.2022 wherein income of the assessee was assessed at Rs.2,65,16,890/-. Subsequently notice u/s 143(2) of the Act was issued and served on the assessee after obtaining approval from the PCIT, Nagpur. Thereafter, notice u/s 142(1) of the Act was also issued to the assessee along with annexure. During the course of assessment proceedings the Assessing Officer noted that various incriminating documents were found and seized during the course of search. He noted that page No.1 of the loose paper bundle was found and seized from the office premise of the assessee contained the details of payments made to the sellers in cash from time to time the total of which comes to Rs.2,35,09,000/-. He noted that during the course of search action, the assessee was asked to explain the excel sheet. In his reply, the assessee had stated that he and Shri Bhavarlal Champalal Jain jointly purchased the land at Survey No.187(1), Zulelal Nagar, Nandurbar from Shri Pukhraj Modmal Jain and accepted that the total payments made to Shri Pukhraj Jain was Rs.2,25,36,000/- out of which an amount of Rs.1,05,00,000/- was paid by him in cash. He also accepted that the remaining amount of Rs.1,30,09,000/- was paid in cash by Shri Bhavarlal Champalal Jain. In view of the above, the Assessing Officer added the amount of Rs.2,35,09,000/- to the total income of the assessee as unexplained investment under section 69B of the Act.

3. The Assessing Officer further noted that during the course of search action, loose paper of Annexure A-2 was found and seized from the office premise of the

assessee. The pages from 22 to 47 contained various cash transactions entered by the assessee. In the search proceedings, the assessee had submitted that the cash transactions as mentioned in these pages are loan taken from various persons and also stated that out of the total amount of Rs.7,85,89,116/-, the amount of Rs.55,00,000/- was through RTGS and the remaining amount of Rs.7,30,89,116/- were the cash loans. During the assessment proceedings, the Assessing Officer asked the assessee to establish its source or in the absence of same to explain as to why Rs.3,35,63,283/- should not be added to the total income of the assessee. On verification of assessee's submission, the Assessing Officer observed that the assessee's total income, which he had offered as his own income has been introduced under the garb of loans of Rs.2,36,00,000/-. However the fact remains that he had not given the exact description of nature and transactions as well as source of such income. Hence he treated the same as deemed income under section 68 of the Act.

4. The Assessing Officer noted that during the course of search action, loose paper as page Nos.3 to 7 were found and seized from the office premise of the assessee. During the post search proceedings as well as assessment proceedings, the assessee had submitted that page Nos.3 to 7 were note sheets for memorizing the expected receipts and disbursement of funds of the family member of the assessee. On verification of excel sheet, the Assessing Officer found that the assessee had incurred cash expenditure/transactions of Rs.74,10,860/- the source of which needs explanation. In this regard, the assessee furnished his explanation for

Rs.10,00,000/- and balance amount of Rs.64,10,860/- (74,10,860 - 10,00,000) remained un-reconciled and was not corroborated by any supporting documentary evidences. Hence, the Assessing Officer added the same to the total income of the assessee as unexplained expenditure under section 69C of the Act.

5. The Assessing Officer also noted that during the course of search action, an excel sheet containing description of land transactions involving cheque amount and on money received in cash was seized as per Annexure 4. He noted that the seized documents contain land transaction details of selling of 16 plots by the assessee to Shri Kalpesh Babulal Jain for the cheque amount of Rs.27,70,000/-. However, during the survey action at the business premises of Shri Kalpesh B Jain, nephew of Shri Shantilal Jain, he stated in his statement that he purchased the 16 plots from Shri Madan Lal Jain and has paid total amount of Rs.1,49,58,495/-, which includes Rs.27,70,000/- in cheque and remaining amount of Rs.1,21,88,495/- in cash to Shri Madan Lal Jain. The Assessing Officer asked the assessee to explain as to why the amount of Rs.1,21,88,495/- should not be treated as unaccounted receipts and added to the total income. In response, the assessee submitted his reply before the Assessing Officer but the same was not accepted by the Assessing Officer. After computing the capital gains, the Assessing Officer enhanced capital gain of Rs.37,74,175/- and added the same to the total income of the assessee.

6. The Assessing Officer accordingly passed the order u/s 143(3) of the Act on 31.12.2022 determining the total income of the assessee at Rs.5,51,08,128/- by making addition of Rs.2,36,00,000/- on account of unexplained credit u/s 68 of the Act, Rs.2,35,09,000/- on account of deemed income u/s 69B of the Act, Rs.64,10,860/- on account of unexplained expenditure u/s 69C of the Act and Rs.37,74,175/- on account of enhanced capital gain.

7. In appeal the Ld. CIT(A) deleted the addition of Rs.2,35,09,000/- made by the Assessing Officer on account of unexplained investment u/s 69B and Rs.64,10,860/- on account of unexplained expenditure u/s 69C of the Act. He further held that the assessee is eligible for telescoping benefit of undisclosed income of Rs.2,35,09,000/- and accordingly directed the Assessing Officer to allow set off against any other addition. He, however, confirmed the addition made by the Assessing Officer in taxing the addition of Rs.2,36,00,000/- u/s 68 r.w.s. 115BBE of the Act. Further he confirmed the addition of Rs.37,64,246/- made by the Assessing Officer by enhancing the capital gain earned by the assessee.

8. Aggrieved with the part relief granted by the Ld. CIT(A) the assessee as well as the Revenue are in appeal before the Tribunal. The assessee has filed the CO against the appeal filed by the Revenue.

9. Grounds raised by the assessee in ITA No.1403/PUN/2025 are as under:

- 1] *The learned CIT(A) erred in holding that the reasst. order passed u/s 147 was valid without appreciating that the approval for completion of asst. was given mechanically and therefore, the reasst order ought to have been held to be null and void.*
 - 2] *The learned CIT(A) erred in confirming the action of the learned A.O in taxing the amount of Rs.2,36,00,000/- u/s 68 r.w.s. 115BBE of the Act.*
 - 3] *The learned CIT(A) erred in not appreciating that the amount of Rs.2,36,00,000/- was rightly offered by the assessee as his business income and there was no reason to tax the same as an unexplained cash credit u/s 68 r.w.s. 115BBE of the Act.*
 - 4] *The learned CIT(A) erred in holding that the assessee had failed to explain the nature and source of the amount of Rs.2,36,00,000/- and therefore, the same was rightly taxable u/s 68 r.w.s. 115BBE of the Act.*
 - 5] *The learned CIT(A) erred in not appreciating that the amount of Rs.2,36,00,000/- was earned by the assessee from his business and accordingly, the same was taxable as business income of the assessee and there was no reason to tax the said amount as an unexplained cash credit u/s 68 r.w.s. 115BBE of the Act.*
 - 6] *The learned CIT(A) ought to have appreciated that the assessee had duly offered the amount of Rs.2,36,00,000/- as his business income and the same was duly credited to the P & L Account and therefore, there was no reason to tax the said amount as an unexplained cash credit u/s 68 r.w.s. 115BBE of the Act.*
 - 7] *The learned CIT(A) erred in confirming the addition of Rs.37,64,246/-by enhancing the capital gain earned by the assessee without appreciating that no such addition was warranted on the facts of the case.*
 - 8] *The learned CIT(A) erred in confirming the said addition on the basis of the statement of Shri Kalpesh B Jain without appreciating that no addition could be made in the hands of the assessee on the basis of the statement of a third party.*
 - 9] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.*
10. Grounds raised by the Revenue in ITA No.1572/PUN/2025 are as under:
1. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) is correct in deleting the addition of Rs.2,35,09,000/- on account of unexplained Investment u/s 69B of the Income Tax Act, 1961 made in the Assessment order without appreciating the facts as brought on record.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) is correct in accepting the assessee's submission that the cash transaction as per the impugned sheet was only Rs.58.55 lakhs while there was evidence of cash payment of Rs.2,35,09,000/- as per page-1 of loose paper bundle seized from the office of Shri Madanlal Lalchand Jain without giving any reasons or basis for the same.*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in holding that the undisclosed cash transaction amounted to Rs.58.55 lakhs only as per the seized documents when the assessee had himself admitted cash payments of Rs.2,25,36,000/- were made to Shri Pukhraj Jain in respect of land at survey No.187(1) out of which Rs.1.05 Cr was paid by him and the balance by Shri Bhawartal Champalal Jain and without establishing a direct nexus between the alleged undisclosed income and the unexplained investment.*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in observing that the respondent appeared to be prima facie eligible for telescopic benefit without conducting any examination of the source and nature of the alleged undisclosed income of Rs.2.36 crore and its availability during the relevant period and directing AO to allow set off against any other addition when there was no such ground of appeal raised by the assessee.*
5. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) is correct in directing the AO to verify whether any telescoping was allowed for the additional income against any other addition made and allow the set off out of the available balance, thereby shifting the onus of establishing the genuineness and availability of the alleged undisclosed income onto the Assessing Officer.*
6. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) is correct in deleting the addition of Rs.64,10,880/- on account of unexplained expenditure u/s 69C of the Income Tax Act, 1961 made in the Assessment order without appreciating the facts as brought on record.*
7. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) is correct in accepting the assessee's explanation that the source of the cash payments constituting the unexplained expenditure was drawings from cash in hand, merely based on the balance sheet as on 31/03/2021 without considering withdrawals as noted in the cash book of the relevant period.*
8. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has not failed to appreciate that the mere availability of cash in hand at the end of the financial year does not automatically prove that the cash drawings were indeed the source of the specific unexplained expenditure incurred during the F.Y. 2020-21 relevant to A.Y. 2021-22.*

9. *The appellant craves leave to add, alter, modify, delete and amend any of the grounds, as per circumstances of the case.*

11. Grounds of objection raised by the assessee in CO No.42/PUN/2025 are as under:

- 1] *The learned CIT(A) erred in directing the A.O to verify as to whether telescoping was allowed for the additional income against any other addition and thereafter, allow the benefit of telescoping in respect of the cash payment of Rs.1.05 Crs*
- 2] *The learned CIT(A) erred in not appreciating that the assessee had not claimed benefit of telescoping of the additional income against any other addition and therefore, he ought to have himself granted the benefit of telescoping instead of directing the A.O. to verify the same and hence, the addition should have been deleted.*
- 3] *The respondent craves to leave to add, alter, amend or delete any of the above cross objections.*

12. So far as the grounds of appeal filed by the assessee are concerned, the Ld. Counsel for the assessee at the outset did not press ground No.1 for which the Ld. DR has no objection. Accordingly, ground No.1 raised by the assessee is dismissed as 'not pressed'.

13. Grounds of appeal Nos. 2 to 6 filed by the assessee relate to the order of the Ld. CIT(A) in confirming the action of the Assessing Officer in taxing the addition of Rs.2.36 crores u/s 68 r.w.s. 115BBE of the Act.

14. The Ld. Counsel for the assessee submitted that the assessee's only business is land developing and trading in real estate. During the course of search, statement of the assessee was recorded u/s 132(4) of the Act during which the

assessee has mentioned that the cash transactions entered by the assessee as per page Nos.22 to 47 of the seized documents are loan taken from various persons. Referring to the statement recorded u/s 132(4) of the Act on 24.12.2021, he drew the attention of the Bench to question No.28 wherein he had stated to have taken loans from different persons. He submitted that subsequently the assessee in his statement recorded u/s 131 of the Act on 28.04.2022 has explained that the amount mentioned as loan by him during the course of search action was nothing but his own income. He had categorically stated that he has not taken any cash loan from any person and the documents seized during the course of search action were written only to memorize his own contribution to the business. The documents were written to show to his son that he has so much loan so that he will pay attention to the business. Referring to page 32 of the paper book, which is the Profit and Loss Account for the year ended 31.03.2021, the Ld. Counsel for the assessee drew the attention of the Bench to the amount of Rs.2.36 crores which has been shown as surplus from regular business income of the transactions as per Note 'G'. He drew the attention of the Bench to the Note 'G' as per Schedule 8 where the assessee has mentioned as under:

“G During the year under consideration Rs.2,36,00,000/- have been received in cash from regular business transactions. The said amount is recorded in books of accounts and has been offered as income from business in Profit and Loss Account for the year ended on 31/03/2021.”

15. Referring to paras 7 to 7.9 of the assessment order he drew the attention of the Bench to the observations of the Assessing Officer while treating the same as deemed income.

16. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) at para 4.6 of the order has sustained the addition made by the Assessing Officer by holding that the submission of the assessee that the amount be considered as business income is not acceptable.

17. The Ld. Counsel for the assessee submitted that although the assessee in the statement recorded u/s 132(4) of the Act has stated to have obtained loans from various persons, however, in his subsequent statement recorded u/s 131 of the Act he has stated that it is his own income from business. He submitted that the assessee is engaged in land developing and trading in real estate and he has no other business. The assessee in the Profit and Loss Account has offered the amount of Rs.2.36 crores as his business income and in the audited accounts the same thing has been categorically mentioned. He submitted that if it is a loan, then the same cannot be taxed in the hands of the assessee. He submitted that the loose papers found during the course of search has to be treated as true, correct and genuine. However, when the assessee stated that it is his own income, the Assessing Officer has never said that it is not the assessee's own income. Further, the source of income found by the Assessing Officer was out of the activity of sale of plots where capital gain and business income has been accepted. Therefore, the Assessing Officer was not justified in invoking the provisions of section 68 r.w.s. 115BBE of the Act.

18. Referring to the decision of the Pune Bench of the Tribunal in the case of Yash Construction Co. vs. ACIT vide ITA Nos.676 & 677/PUN/2024 order dated 31.07.2024 for assessment years 2017-18 and 2018-19, he submitted that the Tribunal in the said decision has held that the additional income declared during the course of search is to be held as business income and the provisions of section 115BBE of the Act are not applicable especially when the Revenue has never put any question or suggestion even regarding the source of its alleged cash expenditure detected during the course of survey.

19. Referring to the decision of the Co-ordinate Bench of the Tribunal in the case of Sopan Bandoba Chavan vs. ITO vide ITA No.869/PUN/2024 order dated 19.11.2024 for assessment year 2017-18, he drew the attention of the Bench from para 11 onwards of the order and submitted that the action of the Assessing Officer in treating the additional income declared of Rs.2 crores as income u/s 68 r.w.s. 115BBE of the Act which was confirmed by the Ld. CIT(A) was set aside and the Tribunal has held that the additional income declared on account of land transactions cannot be brought to tax by invoking provisions of section 68 r.w.s. 115BBE of the Act. Relying on various other decisions, he submitted that the Ld. CIT(A) was not justified in confirming or upholding the action of the Assessing Officer in taxing the surrendered income of Rs.2.36 crore as income u/s 68 r.w.s. 115BBE of the Act.

20. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A). He submitted that the Ld. CIT(A) while deciding the issue against the assessee has considered the decisions both for and against the assessee and finally came to the conclusion that the assessee has simply credited the amount in the Profit and Loss Account and has not explained as to what is the exact nature and source of the income. He has simply given a statement that since he is involved in real estate business where cash dealings are not ruled out, therefore, the income should be treated as regular business income. He submitted that since the order of the Ld. CIT(A) is detailed one, therefore, the same should be upheld and the grounds raised by the assessee on this issue be dismissed.

21. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case invoked the provisions of section 68 r.w.s. 115BBE of the Act to the amount declared by the assessee of Rs.2.36 crores as his own income which was introduced by him under the garb of loans on the ground that the assessee during the course of search u/s 132(4) of the Act has stated the same to be the loans obtained from various parties. We find the Ld. CIT(A) upheld the action of the Assessing Officer on the ground that the assessee in the instant case has simply credited the amount in the Profit and Loss Account and has not explained as to what is the exact nature and source of income. He has simply given a general statement that since he is involved in real estate

business where the cash dealings are not ruled out, therefore, the income should be treated as regular business income. According to him, as per provisions of section 68 of the Act, the onus of proof lies with the assessee to explain the nature and source of sums credited in the books of account. Since the assessee in the instant case has failed to furnish the documentary evidence to prove the nature and source of such income during the course of search action, post-search action as well as during assessment proceedings and has not given any details of the parties involved and which item was sold from which the cash was received which is stated to be business income, therefore, the explanation of the assessee cannot be accepted. While doing so, the Ld. CIT(A) has also mentioned various decisions in the body of the order both for and against the assessee.

22. It is the submission of the Ld. Counsel for the assessee that subsequent to the statement made u/s 132(4) of the Act, the assessee has also given a statement recorded u/s 131 of the Act by the Assessing Officer wherein he has clearly stated that the amount of Rs.2.36 crores is from his own business. It is his submission that since the assessee is engaged into real estate business and no other business is being done by the assessee nor any evidence was found by the search party that the assessee is engaged in any other business other than in real estate business and since the income has been offered as business income in the Profit and Loss Account and notes given in the Notes to the audited accounts, therefore, the same cannot be brought to tax u/s 68 r.w.s. 115BBE of the Act. It is also his submission that if it is a loan then the same cannot be taxed in his hands. It is also his

submission that the loose papers found during the course of search are true, correct and genuine and it cannot be held as partly correct and partly incorrect. Further the Assessing Officer has never stated that it is not the income of the assessee and has not found any other evidence other than the activity of sale and purchase of plots.

23. We find some force in the above arguments of the Ld. Counsel for the assessee. A perusal of the assessment order as well as the order of the Ld. CIT(A) nowhere shows that the assessee is having any other income other than the income from real estate business. Even during the course of search action also no other evidence of any other activity other than real estate business was found from the premises of the assessee. It is also an admitted fact that during the course of assessment proceedings statement was recorded u/s 131 of the Act and the assessee in response to the queries raised by the Assessing Officer has clarified the circumstances under which the statement u/s 132(4) of the Act was recorded wherein he had stated to have obtained loans from various parties. He has submitted that he has written those documents just to show to his son that he has so much loan so that he will pay attention to the business. It is also an admitted fact that the Assessing Officer in the body of assessment order has also made certain additions on account of on-money received by the assessee. This conclusively proves that the additional income so declared by the assessee is nothing but his business income from land trading. Further the assessee in the Profit and Loss Account, copy of which is placed at page 32 of the paper book has declared the amount of Rs.2.36 crores as surplus from regular business transactions. Further in

Notes to accounts as per Annexure – G the assessee has declared that an amount of Rs.2.36 crores has been received in cash from regular business transactions. The said amount has been recorded in the books of account and has been offered as income from business in the Profit and Loss Account for the year ended 31.03.2021. Under these circumstances we have to see as to whether the provisions of section 68 r.w.s. 115BBE of the Act are applicable or not. We find the Ld. CIT(A) while deciding the issue has reproduced certain decisions in the body of the order which are both in favour of the assessee as well as against the assessee.

24. We find somewhat an identical issue had come up before the Pune Bench of the Tribunal in the case of Sopan Bandoba Chavan vs. ITO (supra) wherein the Tribunal set aside the order of the Ld. CIT(A) confirming the action of the Assessing Officer in bringing to tax the additional income declared during the course of survey as income u/s 68 r.w.s. 115BBE of the Act. The relevant observations of the Tribunal from para 11 read as under:

“11. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We find the assessee during the course of survey operation had declared an amount of Rs.2 crore as additional income which was offered in the return of income under the head ‘Income from other sources’. Further, the assessee has claimed current year loss of Rs.86,98,901/- and adjusted the same against the rental income of Rs.72,170/- and the income declared of Rs.2 crore during the course of survey proceedings. We find the Assessing Officer in the order passed u/s 143(3) of the Act treated the additional income declared of Rs.2 crore as income u/s 68 to be read with section 115BBE of the Act. We find the CIT(A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that since such income had arisen to the assessee on account of land dealings which are not recorded in the books of account, therefore, the same was declared as additional income of the assessee which partakes the character of the business income and therefore, the same cannot be

treated as 'Income from other sources' to be taxed under the provisions of section 68 r.w.s. 115BBE of the Act.

12. *We find some force in the above arguments of the Ld. Counsel for the assessee. A perusal of the assessment order clearly shows that the assessee in reply to question Nos.9 and 11 has categorically given the details of the land with survey number etc from which he has received excess cash which was not recorded in the books of account and which was surrendered during the course of survey and offered in the tax return. Thus, the assessee has categorically stated the nature and source of income during the course of survey itself which was offered to tax in the return filed. Under these circumstances, we have to see as to whether the provisions of sections 68, 69, 69A, 69B, 69C or 69D r.w.s. 115BBE of the Act are to be attracted or not.*

13. *We find the Jaipur Bench of the Tribunal in the case of Hari Narain Gattani vs. DCIT (2021) 186 ITD 434 (Jaipur – Trib.) has held that where the assessee surrenders undisclosed income during search action for relevant year, it is not necessary that tax rate has to be charged as per provision of section 115BBE.*

14. *We find the Chandigarh Bench of the Tribunal in the case of Bajaj Sons Ltd. vs. DCIT (2021) 190 ITD 128 (Chandigarh – Trib.) has held that where director of assessee-company surrendered a certain sum during search and the Assessing Officer treated said sum as income from unexplained sources and invoked provisions of section 115BBE and charged tax at a higher rate, since the Assessing Officer had not pointed out any unexplained credit in the books of account, provisions of sections 68, 69, 69A, 69B, 69C and 69D were not attracted on surrendered amount and aforesaid surrender not being covered under the provisions of sections 68, 69, 69A, 69B, 69C and 69D, provisions of section 115BBE were not attracted.*

15. *Similar view has been taken by the Pune Bench of the Tribunal in the case of DCIT vs. Vaishali Agro Soya Products vide ITA No.634/PUN/2024, order dated 11.09.2024 for assessment year 2019-20 where it has been held as under:*

“5.....

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the applicability of provisions of section 115BBE of the Act in respect of income declared during the course of survey proceedings and offered to tax in the return of income. There is no dispute about the amount of addition to be made nor was there any dispute regarding the head of income under which the same was assessed to tax. The dispute is only with regard to the applicability of provisions of section 115BBE of the Act. Admittedly, the income offered during the course of survey proceedings was credited to Profit & Loss Account and the additional income offered on account of deficit in the physical stock was credited to Trading Account. The income offered on account of

alleged expenditure incurred on construction of the commercial building was offered to tax by crediting the same amount to the Profit & Loss Account. Thus, the income was offered to tax under the head "Income from business", the Assessing Officer also assessed the same under the head "Income from business". Therefore, the presumption is to be drawn that the additional income was derived from the business. Thus, it cannot be said that the source for the additional income remain unexplained and, therefore, the provisions of section 115BBE have no application to the present case. The ratio of the decision of the Hon'ble Rajasthan High Court in the case of Bajargan Traders (supra) is squarely applicable to the facts of the present case. The reliance placed by the ld. CIT(A) on the decision of the Hon'ble Madras High Court in the case of M/s. SVS Oils Mills (supra) have no application to the facts of the present case, inasmuch as, in the said case, no explanation as to the source of excess stock was offered, whereas, in the present case, it is undisputed fact that the additional income was derived from business. Therefore, the orders of the Assessing Officer as well as the ld. CIT(A) are reversed and direct the Assessing Officer not to tax the additional income under the provisions of section 115BBE of the Act. The Assessing Officer shall tax the additional income under the normal rate of income tax. Accordingly, the grounds of appeal filed by the assessee stand allowed."

6. This is indeed coupled with the fact that the assessee's survey statement dated 26.03.2019 [in question no.13] had also explained the reasons of stock deficiency of non-maintenance proper book results in regular business only. We thus adopt the above detailed reasoning mutatis mutandis to uphold the learned CIT(A)'s detailed discussion reversing Assessing Officer's action assessing the assessee's entire stock of Rs.7,00,00,100/- u/sec.115BBE of the Act. Ordered accordingly."

16. The various other decisions relied on by the Ld. Counsel for the assessee in the paper book also supports his case to the proposition that the income surrendered during the course of survey need not be taxed by invoking the provisions of section 115BBE of the Act i.e. to be taxed @ 30% only.

17. So far as the decision of the Mumbai Bench of the Tribunal in the case of DCIT vs. M/s. Madhu Developers (supra) is concerned, we find that was an ex-parte order by the Tribunal and the Tribunal has restored the issue to the file of the Assessing Officer with a direction to give an opportunity to the assessee to provide the details of name and address of the parties from whom the said cash of Rs.2,26,00,000/- was received which was taxed by the Assessing Officer u/s 69A r.w.s. 115BBE of the Act. Therefore, the said decision is not applicable to the facts of the present case especially, when the assessee in the instant case during the course of survey had categorically given the details of such cash receipts on account of land transaction and the particulars of land were given at the time of survey itself. In view of the above discussion, we hold that the Ld. CIT(A) was not justified in confirming the order of the Assessing Officer taxing the surrendered

income of Rs.2 crore by invoking the provisions of section 68 r.w.s. 115BBE of the Act. Accordingly, the same is set aside and the grounds raised by the assessee are allowed.”

25. As mentioned earlier, even the Ld. CIT(A) in the body of the order has also relied on various decisions including the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Bajargan Traders reported in (2017) 86 taxmann.com 295 (Raj), decision of Ahmedabad Bench of the Tribunal in the case of Choksi Hiralal Maganlal vs. DCIT, decision of Delhi Bench of the Tribunal in the case of Oberoi Motors vs. ACIT vide ITA No.2512/Del/2018 order dated 16.07.2021 for assessment year 2012-13 and various other decisions according to which the undisclosed income found during the course of search or survey action is taxable under any of the five heads of income as specified in section 14 of the Act and provisions of section 115BBE cannot be applied. Since the assessee in the instant case is engaged in only business of trading in land and no other activity whatsoever was found during the course of search or post-search enquiries and the assessee in the Profit and Loss Account has offered the same as business income which has been accepted by the Assessing Officer, therefore, such additional income declared by the assessee to the tune of Rs.2.36 crores cannot be brought to tax by invoking the provisions of section 68 r.w.s. 115BBE of the Act. We, therefore, set aside the order of the Ld. CIT(A) and hold that the provisions of section 68 r.w.s. 115BBE of the Act cannot be attracted to the additional income declared during the course of search.

26. Even otherwise also the assessee during the course of search in his statement recorded u/s 132(4) of the Act has stated to have obtained loans from various persons as per the seized document.

27. We find the Pune Bench of the Tribunal in the case of Chander Mohan Mehta vs. ACIT (supra) has held that the statement recorded during the course of search action has to be considered and accepted as a whole and the Revenue cannot be permitted to use that part of the statement which was beneficial to it and reject the other part of the statement which was detrimental to it. It has been held that the borrowings mentioned in these loose papers have to be accepted as genuine and no addition could be made. The relevant observations of the Tribunal read as under:

“9. In view of the above, it is held that the entire statement of the assessee has to be accepted. If that is so, no addition can be sustained on the basis of the materials mentioned above. The loose papers were maintained and kept by the assessee for his private knowledge and information and not meant for disclosing to the Department. If the statement of the assessee is to be rejected in toto, then no addition can be made on the basis of loose papers since those would be dumb papers as discussed in the earlier part of our order. If the statement of the assessee is accepted in toto, then contents of the statement are to be accepted and the borrowings mentioned in these loose papers have to be accepted as genuine. In either case, no addition is called for. No doubt, the presumption to the correctness of the documents can be rebutted by the Department, but the Revenue has not been able to bring any material on the record for rebuttal. Therefore, we are of considered view that no addition can be sustained on the basis of these materials.”

In the light of the ratio laid down in the above decision, no addition could have been made. In view of the above discussion, we set aside the order of the Ld. CIT(A) and the grounds of appeal No.2 to 6 raised by the assessee are accordingly allowed.

28. In grounds of appeal No.7 and 8 the assessee has challenged the order of the Ld. CIT(A) in confirming the addition of Rs.37,64,246/- by enhancing the capital gain.

29. Facts of the case, in brief, are that during the course of search proceedings an excel sheet consisting of description of land transactions involving cheque amount and on-money received in cash was seized as Annexure – 4. The seized document contains land transaction details of selling of 16 plots by the assessee for the cheque amount of Rs.27,70,000/-. However, during the course of survey action at the business premises of Shri Kalpesh Babulal Jain, nephew of Shri Shantilal Jain various documents were found and impounded and his statement was recorded. In his statement he has stated that he has paid an amount of Rs.27,70,000/- in cheque and Rs.1,21,88,495/- as on-money in cash in respect of transaction of 16 plots of Jinay City. The Assessing Officer, therefore, confronted the same to the assessee. However, the assessee accepted that he has given only Rs.46,00,000/- in cash. The assessee further submitted that he and his wife Mrs. Gulab M Jain has sold out the joint property consisting of 16 plots at S.No.73/1B, Nandurbar for a total consideration of Rs.73,70,000/- which was recorded price at Rs.27,70,000/- + on-money received at Rs.46,00,000/-. The assessee is having ½ share and accordingly the assessee has received Rs.13,85,000/- as recorded transaction money and Rs.23,00,000/- as on-money. It was submitted that he has also shown capital gain at Rs.31,06,029/- in the return of income in respect of the aforesaid sale at Rs.36,85,000/- (Rs.13,85,000 + Rs.23,00,000). The assessee

further stated that Shri Kalpesh Babulal Jain did not attend the office for cross-examination on 19.12.2022 and 20.12.2022 and therefore, the allegation made by the Assessing Officer is not proved. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made addition of Rs.37,74,175/- as capital gain.

30. In appeal the Ld. CIT(A) upheld the action of the Assessing Officer by observing as under:

“13.3 I have considered the facts of the case, submissions of the appellant and other material available on the record. It is seen that the contention of the appellant that he has received only 46,00,000/- as on money is only self serving and not supported by any evidence. Further, the statement of the purchaser Shri Kalpesh Babulal jain on oath is an evidence of third party and on evaluation of both the evidences, the preponderance of probability weighs more towards the third party evidence. There appears to be no cogent reason why Shri Kalpesh jain would give a wrong statement.

13.4 In view of the above, the action of the AO is upheld. Ground no.4 and 5 are dismissed.”

31. Aggrieved with such order of the Ld. CIT(A) the assessee is in appeal before the Tribunal.

32. The Ld. Counsel for the assessee drew the attention of the Bench to page 115 of the paper book and submitted that the major amounts have been received by the assessee through cheque. Referring to the seized document, copy of which is placed at page 129 of the paper book, he submitted that all the plots are under one sale deed but plot Nos.23 and 24 have not been sold by the assessee to Shri Kalpesh Jain. Further neither the name of the assessee nor any date appears in the

seized documents and there is no mention of any amount paid to Shri Kalpesh Jain. He submitted that these plots might have been sold to some other party and Shri Kalpesh Jain wants to save his skin. Referring to page 130 of the paper book which contains the details of plots noted on the paper seized from Shri Kalpesh Jain, he submitted that the calculation shows in this sheet cannot be treated as correct. He submitted that if the rates mentioned in the seized documents are considered, then the rate for plot No.3 per square feet is Rs.730.88. Since the entire plot has been sold in one sale deed the rate per square feet should have been the same and no bifurcation is possible. Thus, there is an anomaly in the statement of Shri Kalpesh Jain.

33. Referring to the decision of the Pune Bench of the Tribunal in the case of Chander Mohan Mehta vs. ACIT reported in (1999) 71 ITD 245 (Pune), he submitted that the seized papers are to be read as a whole. He submitted that since the document seized from the place of Shri Kalpesh Jain does not contain the name of the assessee nor does it contain any date or any signature and since there are certain anomalies in the document so found, therefore, the Ld. CIT(A) was not justified in confirming the addition made by the Assessing Officer.

34. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A).

35. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer, in the instant case, on the basis of statement by Shri Kalpesh Jain recorded during the course of survey in which he has stated to have paid an amount of Rs.1,21,88,495/- as on-money in cash, made addition of Rs.37,74,175/- in the hands of the assessee as capital gain being 50% share. We find the Ld. CIT(A) upheld the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the impounded documents found from the premises of Shri Kalpesh Jain does not mention the name of the assessee nor any date is mentioned. Further, there is no mention of any amount paid to the assessee and there is no signature of any one and therefore, no addition in the hands of the assessee can be made other than the amount declared. It is also his submission that since all the plots are under one sale deed, there cannot be any variation in the rate per square feet and should have been the same since no bifurcation is possible. It is also his submission that the seized documents have to be read as a whole and it cannot be partly true and partly untrue.

36. We find some force in the above arguments of the Ld. Counsel for the assessee. A perusal of the copy of paper seized from the premises of Shri Kalpesh Jain, copy of which is placed at page 129 reads as under:

4,45,000	P.No. 23, 24	(10)
22,02,000	P.No. 3	
1,56,80,000	P.No. 12, 13	
6,36,000	P.No. 17	
1,67,60,000	P.No. 20	
1,55,24,000	P.No. 36	
2,31,60,000	P.No. 28, 30, 31	
3,51,000	P.No. 18	
2,21,00,000	P.No. 2	
7,92,095	P.No. 25	
1,50,000	P.No. 16	
<hr/>		
1,49,58,495		

37. A perusal of the same nowhere shows the name of the assessee nor does it contain any date or signature of either the assessee or Shri Kalpesh Jain. Therefore, the same in our opinion is nothing but a dumb document which cannot be relied. Further plot Nos.23 and 24 as per the seized document, have not been

sold by the assessee to Shri Kalpesh Jain a statement made by the Ld. Counsel for the assessee and could not be contradicted by the Ld. DR. We, therefore, find some force in the arguments of the Ld. Counsel for the assessee that these plots might have been purchased by Shri Kalpesh Jain from some other party and he wants to save his skin. Further Shri Kalpesh Jain never appeared before the Assessing Officer on the appointed date for cross examination.

38. Since in the instant case the seized document does not contain any signature or date or name of the assessee and since some plots in the said seized document have not been sold by the assessee to Shri Kalpesh Jain, therefore, in absence of any concrete evidence before the Assessing Officer that the assessee has received any extra on-money other than what has been disclosed, therefore, no addition could have been made in the hands of the assessee merely on the basis of some uncorroborative statement of Shri Kalpesh Jain. In view of the above discussion, we set aside the order of the Ld. CIT(A) and direct the Assessing Officer to delete the addition of Rs.37,74,175/-. The grounds of appeal No.7 and 8 are accordingly allowed.

ITA No.1572/PUN/2025 (by Revenue for A.Y. 2021-22)

CO No.42/PUN/2025

39. Grounds of appeal No.1 and 2 by the Revenue and the grounds as per the CO relate to the order of the Ld. CIT(A) granting telescoping benefit.

40. Facts of the case, in brief, are that during the course of search action at the premises of the assessee certain loose papers were found and seized which contain the details of payments in cash from time to time. The column 8 of the page contained the payments made to the seller in cash the total amount of which comes to Rs.2,35,09,000/-. During the course of search proceedings the assessee was confronted with incriminating material in response to which he has stated that he and Shri Bhavarlal Champalal Jain jointly purchased the land at Survey No.187(1), Zulelal Nagar, Nadurbar from Shri Pukhraj Modmal Jain. He had accepted that the total payments made to Shri Pukhraj Jain was Rs.2,25,36,000/- out of which the amount of Rs.1,05,00,000/- was paid by him in cash on 11.01.2021. During the course of post-search proceedings the assessee also reiterated that he has paid an amount of Rs.1,05,00,000/- in cash to Shri Pukhraj Modmal Jain. In his books of account he has also capitalized the cost of asset with the same amount. The assessee has stated during the course of search proceedings that the remaining amount of Rs.1,30,09,000/- was paid in cash by Shri Bhavarlal Champalal Jain. The Assessing Officer issued summons to Shri Bhavarlal Champalal Jain and his statement was recorded. In his response dated 16.12.2022 he has negated assessee's stand regarding part of cash payment being undertaken by him and filed reply online and did not present himself physically owing to poor health. In view of the above the Assessing Officer held that the total amount paid as per notings is Rs.2,35,09,000/-. Since the assessee has agreed for the amount of Rs.1,05,00,000/-, the balance amount of Rs.1,30,09,000/- remains unexplained in the hands of the assessee as unexplained investment. On being confronted the

assessee submitted that the land was purchased by the assessee jointly with Shri Bhavarlal Champalal Jain for a total consideration of Rs.2,55,00,000/- and the assessee has invested Rs.1,20,36,000/-. The amount paid by cash as per excel sheet printout for the above is Rs.58.55 lakhs whereas he has already accepted and included Rs.1,05,00,000/-. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee on the ground that if according to the assessee he has paid an amount of Rs.58.55 lakhs and accepting payment of Rs.1.05 crore, this does not fit in logical scheme of things. Therefore, the Assessing Officer held that the assessee had not come clearly on this issue and did not explain satisfactorily the source of Rs.2,35,09,000/-. Invoking the provisions of section 69B of the Act, the Assessing Officer made addition of the same to the total income of the assessee.

41. Before the Ld. CIT(A) the assessee explained that out of total amount of Rs.2,35,09,000/- mentioned in the seized document, Rs.176.54 lakhs was paid in cheque and the remaining amount of Rs.58.55 lakhs only was paid in cash. The assessee filed the details of cheque payment and cash payments. The Ld. CIT(A) called for a remand report from the Assessing Officer and thereafter accepted the submissions of the assessee that cash transactions as per the impugned sheet is only Rs.58.55 lakhs but he has declared an amount of Rs.1.05 crores as cash amount paid in the above transaction. Further the contention of the assessee that the undisclosed income of Rs.2.36 crores in the hands of the assessee is the source of cash payment of Rs.1.05 crores which is eligible for telescoping benefit was

accepted. He, therefore, directed the Assessing Officer to verify as to whether the telescoping benefit was allowed for the additional income against any other addition made and allow the set off out of available balance.

42. The Revenue is aggrieved with the order of the Ld. CIT(A) whereas the assessee in the CO has challenged that since the assessee has not claimed benefit of telescoping of the additional income against any other addition therefore, the Ld. CIT(A) should have granted the benefit of telescoping instead of directing the Assessing Officer to verify the same.

43. After hearing both sides we do not find any infirmity in the order of the Ld. CIT(A). He has decided the issue on the basis of submissions of the assessee, assessment order, remand report and the rejoinder of the assessee. Since the assessee in the instant case has submitted that the cash transaction as per the impugned sheet is only Rs.58.55 lakhs, therefore, there is nothing wrong in the order of the Ld. CIT(A) giving directions to the Assessing Officer to verify as to whether any telescoping was allowed for the additional income against any other addition made and allow set off out of available balance. Neither the Ld. DR nor the Ld. Counsel for the assessee could point out any infirmity in the order of the Ld. CIT(A) on this issue. We, therefore, uphold the order of the Ld. CIT(A) on this issue and the grounds raised by the Revenue as well as the grounds raised by the assessee in the CO are dismissed.

44. The next issue raised by the Revenue as per the remaining grounds relates to the order of the Ld. CIT(A) in deleting the addition of Rs.64,10,860/- on account of unexplained expenditure u/s 69C of the Act.

45. Facts of the case, in brief, are that during the course of search action certain loose papers were found and seized. During the course of post-search proceedings as well as assessment proceedings it was submitted that pages 3 to 7 were note sheets for memorizing the expected receipts and disbursement of funds of the family members of the assessee. On verification of excel sheets the Assessing Officer found that the assessee has incurred cash expenditure / transactions of Rs.74,10,860/- and since the assessee furnished explanation to the tune of Rs.10 lakhs only, the Assessing Officer made addition of Rs.64,10,860/-.

46. Before the Ld. CIT(A) it was submitted that the total cash expenditure as per seized documents is Rs.64,10,860/-. It was explained that the said expenses have been incurred from out of drawing of the assessee. The assessee filed a detailed chart to support his submissions. The Ld. CIT(A) on analysis of various details filed by the assessee noted that the assessee has explained the source of cash payment as out of drawings from cash in hand. He noted from the Balance Sheet as on 31.03.2021 that cash in hand of the assessee is Rs.1,44,04,108/-. Thus, the assessee has sufficient cash in hand from which drawings have been done for the above cash payments. Since according to him the assessee has explained the

source of expenses and the Assessing Officer has not given any reasons why he has not accepted the explanation of the assessee, therefore, he deleted the addition.

47. After hearing both sides, we do not find any infirmity in the order of the Ld. CIT(A) deleting the addition of Rs.64,10,860/-. The Ld. DR also could not point out any infirmity or error in the order of the Ld. CIT(A) who after verification of the detailed explanation given by the assessee along with date-wise expenditure and the source has deleted the addition. We, therefore, uphold the same. The grounds raised by the Revenue on this issue are accordingly dismissed.

48. In the result, the appeal filed by the assessee is partly allowed and the appeal filed by the Revenue as well as the CO filed by the assessee are dismissed.

ITA No.1404/PUN/2025 (By assessee for A.Y. 2022-23)

49. Grounds raised by the assessee are as under:

- 1] *The learned CIT(A) erred in holding that the reasst. order passed u/s 147 was valid without appreciating that the approval for completion of asst. was given mechanically and therefore, the reasst. order ought to have been held to be null and void.*
- 2] *The learned CIT(A) erred in confirming the action of the learned A.O. in taxing the amount of Rs.1,24,26,820/- u/s 68 r.w.s. 115BBE of the Act.*
- 3] *The learned CIT(A) erred in not appreciating that the amount of Rs.1,24,26,820/- was rightly offered by the assessee as his business income and there was no reason to tax the same as an unexplained cash credit u/s 68 r.w.s. 115BBE of the Act.*

- 4] *The learned CIT(A) erred in holding that the assessee had failed to explain the nature and source of the amount of Rs.1,24,26,820/- and therefore, the same was rightly taxable u/s 68 r.w.s. 115BBE of the Act.*
- 5] *The learned CIT(A) erred in not appreciating that the amount of Rs.1,24,26,820/- was earned by the assessee from his business and accordingly, the same was taxable as business income of the assessee and there was no reason to tax the said amount as an unexplained cash credit u/s 68 r.w.s. 115BBE of the Act.*
- 6] *The learned CIT(A) ought to have appreciated that the assessee had duly offered the amount of Rs.1,24,26,820/- as his business income and the same was duly credited to the P & L Account and therefore, there was no reason to tax the said amount as an unexplained cash credit u/s 68 r.w.s. 115BBE of the Act.*
- 7] *The learned CIT(A) erred in confirming an addition of Rs.38,00,000/- made by the learned A.O. u/s 69A r.w.s. 115BBE of the Act on the ground that had earned an amount of Rs.38,00,000/- on the basis of the notings on loose paper No. 47, bundle No. A-2.*
- 8] *The learned CIT(A) failed to appreciate that there was scratching on loose paper No.47, bundle No.A-2 and therefore, question of making any addition in the hands of the assessee on the basis of the said paper simply did not arise and hence, the addition made is not justified and the same may kindly be deleted.*
- 9] *The learned CIT(A) failed to appreciate that loose paper No.47, bundle No.A-2 was a dumb paper and no addition could be made in the hands of the assessee on the basis of the notings on the said paper.*
- 10] *Without prejudice to the above grounds, the assessee submits that in case, any addition is warranted of Rs.38,00,000/-, the same should be taxed as a business income of the assessee and not as unexplained money u/s. 69A r.w.s. 115BBE of the Act.*
- 11] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.*

50. Ground No.1 raised by the assessee is not pressed by the Ld. Counsel for the assessee for which the Ld. DR has no objection. Accordingly, the same is dismissed as 'not pressed'.

51. Ground Nos.2 to 6 raised by the assessee relate to the order of the Ld. CIT(A) in confirming the action of the the Assessing Officer in invoking the provisions of section 68 r.w.s. 115BBE of the Act to the additional income declared amounting to Rs.1,24,26,820/-.

52. After hearing both sides we find the above grounds are identical to the ground Nos.2 to 6 raised by the assessee in ITA No.1403/PUN/2025. We have already decided the issue and the grounds raised by the assessee have been allowed. Following similar reasonings, the grounds of appeal Nos.2 to 6 raised by the assessee are allowed.

53. Ground Nos.7 to 10 raised by the assessee relate to the order of the Ld. CIT(A) in confirming the addition of Rs.38 lakhs made by the Assessing Officer u/s 69 r.w.s. 115BBE of the Act on the basis of certain notings on loose paper No.47, bundle No.A-2.

54. Facts of the case, in brief, are that during the course of search action loose paper bundle of Annexure A-2 was found and seized from the office premises of the assessee. Page 47 contains various cash transactions entered into by the assessee for assessment year 2022-23. On being asked by the Assessing Officer the assessee replied that it is a cancelled / scrap promissory note and thus it is a dumb paper. However, the Assessing Officer did not accept the contention of the assessee and made addition of Rs.38 lakhs u/s 69A of the Act.

55. In appeal the Ld. CIT(A) upheld the action of the Assessing Officer.
56. Aggrieved with such order of the Ld. CIT(A) the assessee is in appeal before the Tribunal.
57. The Ld. Counsel for the assessee at the outset drew the attention of the Bench to page 92 of the paper book and submitted that this is a cancelled page, therefore, it has no evidentiary value. Relying on the decision of the Pune Bench of the Tribunal in the case of Chander Mohan Mehta vs. ACIT (supra) he submitted that the seized documents have to be considered as a whole and a part of the said document cannot be held as true and the other part as untrue. He accordingly submitted that there is cross mark in the entire seized document meaning thereby it has been cancelled, therefore, no addition can be made on the basis of seized document which has been cancelled.
58. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A).
59. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. A perusal of the seized document, copy of which is placed at page 92 of the paper book shows that there is scratch / cut mark in the seized document meaning

thereby the notings on the same has been cancelled. We, therefore, find merit in the argument of the Ld. Counsel for the assessee that no addition could have been made on the basis of a cancelled written paper. Since the very basis of the addition is on the basis of the cancelled paper found from the premises of the assessee during the course of search, therefore, in absence of any corroborative material, the addition made by the Assessing Officer in our opinion is not sustainable. We, therefore, set aside the order of the Ld. CIT(A) and allow the grounds raised by the assessee on this issue.

60. In the result, the appeal filed by the assessee is partly allowed.

61. To sum up, ITA No.1403/PUN/2025 and ITA No.1404/PUN/2025 filed by the assessee are partly allowed and the CO No.42/PUN/2025 filed by the assessee and ITA No.1572/PUN/2025 filed by the Revenue are dismissed.

Order pronounced in the open Court on 21st November, 2025.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 21st November, 2025
GCVSR

Sd/-
(R. K. PANDA)
VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	18.11.2025		Sr. PS/PS
2	Draft placed before author	18.11.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			