IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

AND

SHRI AMITABH SHUKLA, ACCOUNTNAT MEMBER

ITA No.5031/Del/2024
[Assessment Year: 2015-16]

Assistant Commissioner of Income Tax, Central Circle-01, E-2, Jhandewalan Extn. New Delhi-110055	Vs	Om Prakash Arora, M-3, Flat No.103, AVG Bhawan The Variety Books Depot. Connaught Place, New Delhi-110001
		PAN-ACCPA9774F
Assessee		Revenue

Cross Objection No.42/Del/2025
(Arising out of ITA No.5031/Del/2024)
[Assessment Year: 2015-16]

Om Prakash Arora, M-3, Flat No.103, AVG Bhawan The Variety Books Depot. Connaught Place, New Delhi-110001	Vs	Assistant Commissioner of Income Tax, Central Circle-01, E-2, Jhandewalan Extn. New Delhi-110055
PAN-ACCPA9774F		
Assessee		Revenue

ITA No.5029/Del/2024
[Assessment Year: 2016-17]

Assistant Commissioner of Income Tax, Central Circle-01, E-2, Jhandewalan Extn. New Delhi-110055	Vs	Om Prakash Arora, M-3, Flat No.103, AVG Bhawan The Variety Books Depot. Connaught Place, New Delhi-110001
		PAN-ACCPA9774F
Assessee		Revenue

Assessee by	Shri Ajay Vohra, Sr. Adv. Shri Aditya Vohra, Adv. Ms. Aakarti Bansal, CA
Revenue by	Ms. Amisha S.Gupt, CIT(DR)

Date of Hearing	**13.10.2025**
Date of Pronouncement	**09.01.2026**

ORDER

PER AMITABH SHUKLA, AM,

These two appeals bearing ITA No.5029 and 5031/Del/2024 have been preferred by Revenue against the order of ld. Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred to as 'ld. CIT(A)') both dated 28.08.2024 pertaining to Assessment Year 2015-16 and 2016-17, respectively. The assessee has also filed Cross Objection for AY 2015-16 vide CO No.42/Del/2025. The word 'Act' herein this order would mean Income Tax Act, 1961.

2. As the appeals of the Revenue and assessee concern some common grounds, for the purposes of convenience, the same were heard and are being adjudicated by this common order.

CO No.42/Del/2025 for AY 2015-16

3. The assessee through its impugned Cross Objection contested the order of ld. CIT(A) for confirming legal validity of the proceedings under section 147 r.w.s. 148 of the Act. As the challenge of the assessee hits the very foundation

of the assessment order for AY 2015-16, we have chosen to examine the same first. The assessee has raised the following grounds of appeal:--

> *1. That on the facts and circumstances of the case and in law, Commissioner of Income-tax (Appeals) ["CIT(A)"] vide order dated 28.08.2024, erred in upholding the initiation of reassessment proceedings under section 147 of the Income-tax Act, 1961 ("the Act") to be valid in the present case, without appreciating that the same was without jurisdiction, void ab initio and bad in law.*
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> *1.1 That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of reassessment proceedings as valid without appreciating that the notice under section 148 of the Act was issued by Additional Commissioner of Income-tax, Special Range-18, Delhi without having valid jurisdiction.*
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> *1.2 That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of reassessment proceedings as valid without appreciating that 'reasons to believe' were undated, unsigned and without any stamp or seal of office.*
>
> *1.3 That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of reassessment proceedings as valid without appreciating that same was initiated without obtaining valid sanction under section 151 prior to issue of notice under section 148 of the Act.*
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> *1.4. That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of reassessment proceedings as valid without appreciating that the assessing officer disposed off the objections raised by the assessee in arbitrarily manner and without passing a speaking order.*
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> *1.5 That on the facts and circumstances of the case and in law, the CIT(A) erred in not holding the initiation of reassessment proceedings under section 147 of the Act to be invalid, not appreciating that there existed no 'reasons to believe that income of the Appellant for the subject assessment year had escaped assessment.*
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> *2 That on the facts and circumstances of the case and in law, the CIT(A) erred in notholding the impugned assessment order to*

be bad in law and invalid for the reason that the assessing officer who passed the reassessment order is different from the assessing officer initiated the reassessment proceedings."

4. As per brief factual matrix of the case, original Return Of Income u/s 139(1) was furnished by the appellant on 30.09.2015 disclosing total income of Rs.2,63,02,160/-. No scrutiny assessment u/s 143(3) was made in this case. Subsequent to the information received by the Revenue, notice under section 148 of the Act was issued by the Additional Commissioner of Income-tax, Special Range-18, Delhi on 28.01.2019 on the ground that income on account of deemed dividend under section 2(22)(e) of the Act had escaped assessment. In response to the said notice, the Appellant filed return of income on 20.02.2019. The Appellant also requested for supply of reasons recorded before issue of notice under section 148 of the Act for reopening the assessment. The certified true copy of the reasons recorded was supplied to the Appellant by the learned Addl. CIT vide letter dated 20.05.2019. Meanwhile, vide order dated 03.10.2019, the case was transferred to the Assistant Commissioner of Income-tax, Circle-53(1), Delhi who passed the impugned re-assessment order after completion of assessment proceedings. The Appellant/assessee vide letter dated 02.12.2019 had objected to the reassessment proceedings on the premise that the Joint Commissioner or Additional Commissioner could not be the Assessing Officer under section 2(7A) of the Act unless specifically directed under section 120(4)(b) of the Act to perform the functions of an AO and in the case of the Appellant, no such directions had been issued and the case had merely been

transferred to the learned Addl. CIT under section 127 of the Act. It was also contested that the reasons recorded were unsigned, undated and without any stamp or seal of the office and therefore, such unsigned and undated reasons could not be taken as valid reasons in the eyes of law. The objections raised by the appellant were disposed of by the AO vide order dated 06.12.2019. The ld. CIT(A) after considering the arguments raised by the assessee concluded that no case of any infirmity in the 147 r.w.s. 148 proceedings have been made out.

5. Per Contra, the ld. DR relied upon the order of the ld. CIT(A) (supra).

6. The ld. Counsel for the assessee, Shri Ajay Vohra, reiterated the arguments taken before the ld. First Appellate Authority. He contested that the decision of Ld. CIT(A) is contrary to the law and facts on the case. Reliance was also placed upon few judicial precedents covering the matter.

7. We have heard rival submissions in the light of material available on record. We have noted that the ld. CIT(A) in paras 11 to 15 on page -12 of the impugned appellate order has comprehensively analyzed the issue, in the light of facts on records, before concluding validity of proceedings under section 147 of the Act. We do not find any legal infirmity in his conclusion that Range head has a concurrent jurisdiction with the Assessing Officer to initiate any proceedings under section 147 r.w.s. 148 of the Act. On the issue of undated and unsigned reasons also he has correctly observed that the same were not fatal to the proceedings as they were provided along with a covering letter having

DIN. We also find force in the argument that the assessee could not otherwise establish that the impugned proceedings were bad in law. Accordingly, we are of the considered view that no blame of any inappropriate conclusion can be placed upon the ld. CIT(A). We have noted that the arguments taken by the assessee challenging validity of the assessment order on account of invalid proceedings are unfounded and not supported by facts on record. The decision of the ld. CIT(A) on the issue of challenge to proceedings under section 147 r.w.s. 148 of the Act is therefore confirmed and **all the grounds of appeal raised by the assessee in its Cross Objection are dismissed.**

8. **In the result, the Cross Objection filed by the assessee is dismissed.**

ITA No.5031/Del/2024

The grounds of appeal raised by the Revenue in ITA No.5031/Del/2024 are as under:-

1. The order of Ld. CIT(A) is not correct in law and facts.

2. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the Addition of Rs. 8,88,00,139/- on account of deemed dividend from Quantum Securities under provisions of section 2(22)(e) of the IT Act?

3. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the Addition of Rs. 20,43,125/- on account addition u/s 14A of the I T Act where the assessee earned exempt income of Rs. 42,98,616/- in the form of dividend on investment made in shares amounting to Rs. 21,13,00,309/- during the year under consideration?

4. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the

5. Addition of Rs. 1,72,18,791/- as non genuine transaction on account of short term capital loss?

9. The first issue raised by the Revenue in its appeal vide ITA No.5031/Del/2024 vide ground of appeal no.2 and in its appeal vide ITA No.5029/Del/2024 vide ground of appeal no.6 is regarding the action of the ld. AO in making an addition under section 2(22)(e) of the Act. It is pertinent to point out that no distinguishment of facts has been pointed out by the appellant Revenue on this issue. For the purposes of this order, we will consider figures for AY 2015-16 taking as the lead year. As per brief factual matrix of the case, during the course of assessment proceedings, it was found by the ld. AO that the appellant was holding 50% shares in M/s Quantum Securities Pvt. Ltd. for the last two decade. On examination of the account of the assessee, it was seen that during the year under consideration, appellant had shown amount payable to M/s Quantum Securities Pvt. Ltd. as at 01.04.2014 Rs. 16,65,11,385/- and Rs. 13,80,33,660/- as at 31.03.2015. Before the ld. AO, the assessee filed a copy of account which showed that there were the transaction of purchases and sale of shares by the assessee. Further, the assessee was having debit balance alluding thereby that the assessee had taken money from the company or there was some amount payable by the assessee to M/s Quantum Securities Pvt. Ltd. The ld. AO in his order has as incorporated the following details of the transactions

Date	Opening Debit Balance	Payment received by	Closing Debit Balance

	with M/s Quantum Securities Pvt. Ltd.	the assessee from M/s Quantum Securities Pvt. Ltd.	with M/s Quantum Securities Pvt. Ltd.
29.07.2014	17,44,80,813/-	25,00,000/-	17,69,80,813/-
30.09.2014	12,35,43,305/-	2,75,00,000/-	15,10,43,305/-
04.09.2014	10,14,46,027/-	2,25,00,000/-	12,39,46,027/-
26.11.2014	11,32,93,154/-	2,50,00,000/-	13,82,93,154/-
03.01.2015	12,63,04,073/-	24,18,848/-	12,87,22,921/-
12.01.2015	12,67,49,206/-	25,89,729/-	12,93,38,935/-
15.01.2015	12,68,39,420/-	24,81,344/-	12,93,20,764/-
16.01.2025	12,93,20,764/-	25,10,218/-	13,78,30,992/-
19.03.2015	12,58,68,029/-	13,00,000/-	12,71,68,029/-
		8,88,00,139/-	

9.1. The ld. AO concluded that M/s Quantum Securities Pvt. Ltd. was charging interest from the assessee and this fact establishes that the assessee had taken loan from the company in which he held 50% equity shares. He observed that the accumulated profits of the company as at 10,36,65,028/- as on 31.03.2014 and Rs. 10,42,26,198/- as on 31.03.2015. After analysing the provision of section 2(22)(e), the ld. AO held that the amount of Rs.8,88,00,139/- was taxable as income in the hands of assessee and made addition of even amount. The ld. CIT(A) after considering the details and submissions made by the assessee concluded that the impugned addition was unwarranted as it did not have the colour of any loans or advances transacted between the assessee and M/s Quantum Securities Pvt. Ltd.

10. The ld. Counsel for the assessee reiterated the argument taken before the ld. First Appellate Authority. Through a voluminous paper book, the ld. Counsel took us through extracts of accounts, financial, etc to allude that the impugned transactions between the assessee and the Quantum did not fall within the mischief of section 2(22)(e) of the Act. It was primarily stressed that the debit credit entries between the assessee and the quantum represented regular transactions towards sale purchase of shares and not for any loans and advances.

11. Per Contra, the ld. DR vehemently argued in favour of the ld. AO while assailing the relief accorded by the ld. CIT(A) as excessive and unwarranted.

12. We have heard rival submissions in the light of material placed on record. Section 2(22)(e) of the Act postulates a deeming provision of deemed dividend in the event of an assessee holding substantial interest in a company and wherein transactions of loans and advances are undertaken. In the present case, the assessee holds 50% shares of Quantum and thus satisfies the first limb of Section 2(22)(e) of the Act. The question that however comes is as to whether the transactions reflected by way of debit/credit entries between assessee and Quantum are in respect of loans and advances or have some other connotation. It is the case of the assessee that it is making sale purchase of shares through Quantum for nearly last two decades and that it is one of the biggest clients for Quantum. The assessee has thus indicated that the transactions referred by the

ld. AO are in reality normal business transactions of sale/purchase of shares. In support of its contentions, the assessee has placed reliance upon a Catina of judgments on the subject, *inter alia,* including of this Tribunal pronouncing that transactions under taken in the ordinary course of business do not attract invocation of Section 2(22)(e) of the Act. Thus, we have considered the decision of a Co-ordinate Bench of this Tribunal in the case of Futurz Next Services Ltd. 139 taxmann.com 199 confirming this hypothesis. We have noted that while doing so in the case of Futurz Next Services Ltd (supra), the hon'ble Co-ordinate Bench considered CBDT Circular No.19/2017 dated 12.06.2017 postulating that transactions under taken in the ordinary course of business do not attract invocation of Section 2(22)(e) of the Act. We have also noted that the decision of Hon'ble Bombay High Court in the case Parle Plastic Ltd. 332 ITR 63, of Hon'ble Delhi High Court in the case of Rajkumar 318 ITR 462 approving the above hypothesis.

13. Upon consideration of the matter, we are of the view that the ld. CIT(A) has correctly analyzed the facts of the case in the light of judicial precedent covering the matter. We are of the considered view that there is no infirmity in the order of the ld. CIT(A) qua his decision to direct the ld. AO deletion of addition made on account of invocation of section 2(22)(e) of the Act. We therefore sustain the order of the ld. CIT(A) **and dismiss the ground of appeal no.2 raised by the Revenue in its appeal vide ITA No.5031/Del/2024 vide**

and the ground of appeal no.6 raised by the Revenue in its appeal vide ITA No.5029/Del/2024.

14. The next issue raised by the appellant revenue through ground of appeal no.3 is regarding the action of ld. CIT(A) in directing the ld. AO to delete the addition of Rs.20,43,125/- made under section 14A of the Act. As per the facts of the case, the ld. AO had noted that the assessee had earned dividends income amounting to Rs.42,98,616/- and had claimed it as exempt under section 10(34) of the Act. The ld. AO noted that the assessee made investment in shares of about Rs.21,13,00,309/- but no expenditure was shown nor was any disallowance made under section 14A of the Act. The ld. AO postulated that the earning of dividend income without any corresponding expenses is unimaginable and hence concluded that there must be some expenses claimed by the assessee in its proprietary concern M/s Variety Book Depot. Accordingly, addition of Rs.20,43,125/- was made under section 14A of the Act.

15. The assessee pleaded before the CIT(A) that no addition under section 14A was liable in its case. Placing reliance upon the balance sheet of M/s Variety Book Depot as on 31.03.2015, it was demonstrated that there was no share investment in the impugned entity and that therefore there cannot be any case for making any disallowance under section 14A of the Act. It was also submitted that the entire sale purchase of shares for the assessee was done by

the Quantum who were remunerated for their services. The ld. CIT(A) concurred with the pleadings of the assessee and deleted addition.

16. The ld. DR vehemently argued in favour of the ld. AO.

17. We have heard rival submission in the light of material placed on record. We have noted that the relief allowed by the ld. CIT(A) is based upon correct appreciation of the evidence on record, in this case being balance sheet of M/s Variety Book Depot as on 31.03.2015. The said entity is a proprietorship concern of the assessee. The ld. AO has concluded that some expenses must have been included in the overall expenditure claimed of the said concerns and that therefore commensurate disallowance under section 14A of the Act was required. We have noted from the details extracted by the ld. CIT(A) in his appellate order as well as those placed by assessee in its paper book before us that perusal of balance sheet of M/s Variety Book Depot as on 31.03.2015 do not reflects any investments in shares. Now, when there was no investment in shares there cannot be any case for any disallowance under section 14A of the Act. The presumption drawn by the ld. AO was therefore materially defective. We therefore sustain the order of the ld. CIT(A) on the issue of deletion of the addition of Rs.20,43,125/- made under section 14A of the Act by the ld. AO and **dismiss the ground of appeal no.3 raised by the appellant revenue.**

18. The next issue raised by the appellant revenue through grounds of appeal no. 4 and 5 is regarding the deletion by ld. CIT(A) of the addition of

Rs.1,72,18,791/- made by the ld. AO. As per brief facts of the case, the assessee had claimed Short Term Capital Loss of Rs.1,72,18,791/- in respect of sale of a property. The assessee had claimed that it was owner of a property namely Flat No.041 in 'The Belaire' in Gurgaon, which was acquired for Rs.5,02,00,854/- from the DLF. The assessee had claimed that it had sold the impugned property to one Ms. Hemlata for a sum of Rs.3,29,82,063/- leading to loss of Rs.1,72,18,791/-. In support of its contentions, the assessee filed before the ld. AO documents indicating cost of acquisition in the shape of payments through bank account, copy of letter written to DLF for transfer of rights, copy of apartment buyers agreement, 26AS statement, etc. The ld AO however proceeded to make the addition holding that the assessee has not produced any documents evidencing sale consideration of the property except copy of a letter written to DLF for transfer of rights of the property in favour of Ms. Hemlata. In the impugned letter mention was made that assessee had paid Rs.4,12,29,741/- to DLF and wanted name of Ms. Hemlata to be included in records as nominee of the assessee. The ld. AO observed that there was no mention of sale of the said property. The ld. AO also noted that in Form 26AS, TDS of Rs.3,01,338/- was shown against total amount of Rs.3,08,33,825/-. Consequently, the ld. AO concluded that the claim of loss is a sham transaction and in reality, a fictitious transaction under taken with the ulterior motive of reducing tax liability. He therefore made the impugned addition of addition of

Rs.1,72,18,791/- being the Short-Term Capital Loss claimed in respect of sale of said property.

19. The ld. CIT(A) deleted the addition made by the ld. AO holding as under:-

> "……72. *The assessment order, arguments of the appellant and the various agreements furnished by the appellant has been perused.*
>
> *73. It is also a matter of record evident from the document that the circle rate of the property was below the sale consideration. Therefore, the provisions of section 50C was not applied by the Assessing Officer. Therefore, the Assessing Officer could not have disturbed the sale consideration if the income/loss is assessed under the head capital gains.*
>
> 74. *The provisions of Income Tax Act empower the Assessing Officer to disturb the sale consideration in respect of sale of any capital asset on the two circumstances; a. When the sale consideration is below the circle rate and; b. When there is evidence to establish that the actual consideration was more than the disclosed sale consideration. In the instant case neither of the two conditions are met. The stamp duty value as on the said date was Rs. 2,10,85,000/- (4217 Sq. Ft. x Rs. 5,000 per Sq. Ft.). Relevant extracts of the circle rate list of Tehsil Gurgaon is reproduced below: -*
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> xxxxxxxxxxxxxx
>
> 75. *The argument of the Assessing Officer that the sale deed was not registered is immaterial because such transfers could be made by way of deed of Conveyance and not by way of sale because the sale can only be made by the promoter's company of the building.*
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> 76. *The fact that the sale consideration of the property was lower than the purchase consideration no doubt raises a suspicion. However, suspicion no matter how strong it is cannot replace evidence. In the instant case, instead of gathering the evidence to nail the appellant, the Assessing Officer has simply relied on his suspicion that there must be something wrong in the transaction. The*

law however does not presume the suspicion of the Assessing Officer to be correct in the absence of clinching evidence.

77. *If the transactions were treated as business transaction by the appellant, in that case, there was powers with the Assessing Officer to disturb the consideration received or paid. As per the provisions of section 40A(2)(b), if a higher consideration was paid for purchase, then the Assessing Officer could have made adjustment. However, in this case the transaction of purchase by the appellant is not between the related parties and therefore, even the provision of section 40A(2)(b) would not be invoked by the Assessing Officer.*

78 *The other provision leading with charging of less consideration are contained in Chapter XA dealing with General Anti Avoidance Rules (GAAR). However, the provisions were ma applicable from 01.04.2018. Hence, the Assessing Officer could not have disturbed the consideration even when the allegation of charging of lesser sales consideration in transaction is alleged.*

79. *In view of the above discussion, it is evident that there was no legal provision invoking which the Assessing Officer would have disturbed the sale consideration of the transaction.*

80. There is no evidence brought on record to establish that the sale consideration was more than the disclosed amount. There is no evidence to suggest that the appellant had taken a consideration in cash from the buyer of the property. Therefore, the short-term capital, could not be disallowed.

81. In view of the above, disallowance of short-term capital loss of Rs.1,72,18,79 deleted….."

20. The ld. Counsel for the assessee Shri Ajay Vohra, placed total reliance upon the order of the ld. CIT(A). It was reiterated that the decision of deleting the disallowance of Short Term Capital Loss is based upon correct understanding and interpretation of the facts of the case and does not require any intervention at this stage on the matter.

21. The ld. CIT-DR, Ms. Amisha S. Gupt, vehemently argued in favour of the order of the ld. AO. It was submitted that the ld. CIT(A) has totally misread the facts and the evidence on record and therefore the relief accorded is excessive.

22. We have heard rival submission in the light of material placed on record. The principal controversy in this matter is as to whether the assessee has actually sold any property by way of any sale deed to Ms. Hemlata or not? The ld. AO has clearly recorded on page-20 of his order that the assessee failed to submit any document evidencing sale of property by the assessee to Ms. Hemlata in the form of sale deed. The letter filed by the assessee addressed to DLF to take Ms. Hemlata on records as his nominee cannot be equated with a sale deed. We have also noted that there are differences in the figures allegedly received from Ms. Hemlata towards sale of a property, shown in Form 26AS vis a vis those in the Return of Income. Mere exhibition of certain amounts in Form 26AS and corresponding TDS thereupon would not give credence to a theory of sale of any property. There is nothing on record to evidence that the legal title of the property moved from the assessee to Ms. Hemlata as postulated under the definition of 'transfer' under the Income Tax Act read with the Transfer of Property Act. Thus, it is evidenced that the assessee has failed to demonstrate with clinching evidences regarding the sale of a property to Ms. Hemlata. There is also strength in the hypothesis as to the justification for the alleged

loss. The contributory factors responsible for the loss could not be demonstrated. We have also noted that the relief accorded by ld. CIT(A) in paras 75 to 80 of his order (supra) is also based upon some cryptic, incoherent and incomprehensible findings regarding the failure of the Assessing Officer while making the impugned addition. Accordingly, we set-aside the order of the ld. CIT(A) and confirm the addition made by the ld. AO. **The ground of appeal no.4 and 5 raised by the Revenue is therefore allowed.**

23. In the result, the appeal of the Revenue in ITA No.5031/Del/2024 is partly allowed.

ITA No.5029/Del/2024

The grounds of appeal raised by the Revenue in ITA No.5029/Del/2024 are as under:-

> *"1. The order of Ld. CIT(A) is not correct in law and facts.*
>
> *2. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the Addition of Rs. 2,14,14,109/- on account of unexplained of Sundry Creditors u/s 41(1) of the I T Act as neither list/ schedule of current liabilities was filed alongwith the return nor the complete list alongwith genuineness of liabilities supplied during the course of assessment proceeding?*
>
> *3. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the Addition of Rs. 2,00,00,000/- on account of Unexplained cash deposit in bank accounts u/s 68 of the Act during the year under consideration?*
>
> *4. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the Addition of Rs. 7,45,42,538/- on account of disallowance of commission paid to K.P. R. Nair?*

5. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the Addition of Rs. 50,98,87,154 /- on account of disallowance of commission, reduction in share of co-sharer and disallowance of Short Term Capital?

6. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the Addition of Rs. 1,75,00,000 /- on account of deemed dividend from Quantum Securities under provisions of section 2(22)(e) of the IT Act?

7. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in treating the two persons namely Sh. Ramesh Chander Kalra and Sh. Sanjeev Verma as co-sharers of the property in light of the fact came into notice when Sh. Sanjeev Verma, one of the co-sharer filed copy of another MoU dated 22.03.2010 entered with them on 22.03.2010 in which Sh. O.P. Arora (First Party-Vendor) and Sh. Sanjeev Verma & Sh. Ramesh Chander Kalra (Second Party-Vendee) has agreed to transfer 1/2th share in the undivided property at Prithvi Raj Road to be transferred to the Vendee for Rs. 50 Cr. against which payment of Rs. 5 Cr. was acknowledged to be received and balance amount to be paid as and when execution of sale deed as per MoU dated 20.03.2010 entered with owner of Prithvi Raj Road Property and This shows that the cost of Prithvi Raj Road property for the co-sharer i.e. Sh. Sanjeev Verma and Sh. Ramesh Chander Kalra was of Rs. 100 Cr. and their share for one half share comes to Rs. 50 Cr?

8. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in treating the two persons namely Sh. Ramesh Chander Kalra and Sh. Sanjeev Verma as co-sharers of the property in light of the fact came into notice Sh. Sanjeev Verma and Sh. Ramesh Chander Kalra categorically denied of their rights/ gains or loss in the Jor Bagh Property and in fact they have not been provided with any computation of profit of gain but has been given a lump sum gain of Rs.25 Cr (12.45 Cr. each) as assured by Sh. O.P Arora ?

9. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in allowing the loss on sale of Jorbagh Property to the assessee when it came to the notice the the two deals/ transactions i.e. Prithvi Raj Road Property and Jor Bagh Road property were happened simultaneously but they are not conditional and these two transactions were done by two parties

simultaneously but the sale consideration was determined independent of each other as per the market forces or the mutual need/ benefit of both the parties?

24. Ground of appeal no.1 is general in nature and hence dismissed as infructuous.

25. The first issue raised by the appellant Revenue through ground of appeal no.2 is regarding the action of the ld. CIT(A) in deleting the addition of Rs.2,14,14,109/- made by the ld. AO on account of unexplained sundry creditors under section 41(1) of the Act. As per brief factual matrix, the ld. AO had noted that the proprietary concern of the assessee M/s Variety Book Depot was having sundry creditors. The AO had requested assessee to file a list of sundry creditors, in response to which list of top 38 creditors, where amounts exceeded to Rs.5 lakhs, was filed aggregating to Rs.10,80,33,926/-. The ld. AO observed that list/address of all the sundry creditors aggregating to Rs.19,39,90,362/-. was not filed leading to suspicion of the genuineness of the purchases purport to have been made from the alleged sundry creditors. It was noted that in the absence of identity and genuineness of sundry creditors to the extent of Rs.8,56,56,436/-, 25% thereof were deemed as unverifiable and the AO proceeded to make addition of Rs.2,14,14,109/- under section 41(1) of the Act. The ld. CIT(A) concurred with the findings of the assessee that provisions of section 41(1) were non-maintainable in this case. The assessee had argued that no addition under section 41(1) can be made by doubting identity and

genuineness of sundry creditors and that to by making an ad hoc estimated addition. Reliance was placed upon the decision of Hon'ble jurisdictional High Court in the case of Jain Export Pvt. Ltd. 35 taxmann.com 540 as well as other pronouncements covering the subject including of this Tribunal in the case of Satpal and Sons 166 ITD 616, etc.

26. Per Contra, the ld. DR placed reliance upon the order of the ld. Assessing Officer.

27. We have heard rival submissions in the light of material placed on record. Section 41(1) of the Act postulates addition in the hands of the assessee qua liabilities which have ceased to exist. In the instant case, it is not the case of the Revenue that the said liabilities have ceased to exist and if yes manner thereof. The entire addition has been made by the ld. AO by casting a doubt on the purchases of yester years qua which liabilities were shown in the present year. The same cannot be done. Purchase transaction of a particular year can be examined only in the year of purchase and not subsequently. Further, the statutory prescription contained in section 41(1) do not allow any estimated or ad-hoc additions. There cannot be any estimation of cessation of liabilities. Either the liabilities exist or they cease to exist. We are accordingly of the view that the action of the ld. CIT(A) in deleting the addition is based upon correct understanding of the facts of the case and the contemporaneous law of section 41(1). We are therefore of the considered view that no case of any intervention

to the order of the ld. CIT(A) is made out at this stage. We therefore confirm the order of the ld. CIT(A) **and dismiss the ground of appeal no.2 raised by the Revenue.**

28. The next issue raised by the appellant revenue through **ground of appeal no.3** is regarding the action of the ld. CIT(A) in deleting an addition of Rs.2 Crores made by the ld. AO under section 68 on account of unexplained cash deposit. The ld. AO noted that the appellant had deposited an amount of Rs.2.93 Crores in his bank account with Federal Bank between the period 17.03.2016 to 28.03.2016. The ld. AO had queried the assessee about the genuineness of the same. The ld. AO further noted that appellant had deposited total amount of Rs.6,25,50,000/- in all its bank account and that out of the same between the period 17.03.2016 to 28.03.2016, an amount of Rs.4,55,00,000/- was deposited. Before the AO, the assessee had produced his cash book. The Ld. AO was informed that certain cash deposits were attributable to cash withdrawal made on earlier occasions. The ld. AO concluded that there was no need for the assessee to withdraw cash when there was sufficient cash in hand in its books and that the same was done probably towards expenditure/investments in real estate where introduction of cash was normal activity. Thus, the sources of the cash was doubted. The ld. AO rejecting the books of accounts of the assessee under section 145 of the Act, on this account proceeded to make the impugned addition of Rs.2 Crores as unexplained deposit under section 68 of the Act.

Before the ld. CIT(A), the assessee premised that there is no law which prohibits withdrawal of cash beyond a prescribed limit. It was argued that the addition qua cash expenditure/investments in real estate, was purely based upon conjectures and surmises of the ld. AO. On the issue of rejection of books of accounts under section 148, the assessee had urged that firstly the same was done without pointing any specific defects therein and also without giving the assessee any opportunity to explain and/or reconcile the differences. It was also stated that the rejection of books of accounts was untenable since the ld. AO did not assume any jurisdiction under section 144 of the Act. the assessee has also premised that section 68 was not applicable in its case since the credits were found in the bank account of the assessee and not in the account books of the assessee. The ld. CIT(A) after examining the evidences raised before him and considering the argument of the assessee deleted the impugned addition.

29. The ld CIT-DR argued in favour of the Assessing Officer while assailing the order of the ld. CIT(A).

30. The ld. Counsel for the assessee placed reliance upon the order of the ld. CIT(A) and reiterated all the arguments made before him in the light of evidences produced, copy of which has been placed in the paper book filed.

31. We have heard rival submissions in the light of material placed on record. The ld. CIT(A) has rightly observed that the ld. AO has exceeded his jurisdiction while making the impugned addition under section 68. He has

rightly observed that without pointing any specific entry 'credited' in the 'books of accounts' of the assessee, the ld. AO was not entitled to make any additions under section 68. His conclusion that the troika of identity, creditworthiness and genuineness of transactions mandated under section 68 is sine quo non before making any addition under section 68 has been found to be correct. We have also noted that the observation of ld. CIT(A) regarding failure of the ld. AO to bring on record any evidence to support cash expenditure on repair and maintenance of building by the assessee, is also correct. Thus, we have noted that the order of the ld. CIT(A) is based upon correct understanding and interpretation of the facts on records and therefore does not require any intervention at this stage. **We therefore confirm the order of the ld. CIT(A) and dismiss the ground of appeal no.3 raised by the Revenue.**

32. The next issue raised by the Revenue through its grounds of appeal no.4, 5, 7, 8 and 9 are regarding the action of the ld. CIT(A) in deleting addition made by the ld. AO amounting to Rs.50,98,87,154/- on account of disallowance of commission, reduction in share of co-sharers and disallowance of Short-Term Capital Loss.

33. Upon consideration of the entire controversy at hand, we have noted that the same involves myriad of sale purchase agreements for immovable properties as well as memorandum of understandings between the assessee, buyers and sellers of immovable properties, alleged commission recipients and co-sharers

of profit & loss from impugned immovable properties. For a clear understanding of the facts of the case we deem it necessary to reproduce the brief factual matrix narrated by the ld. CIT(A) on pages 4 to 6 of his order

> *"……5.3 The Brief background for making additions/disallowance by the AO of this issue is as under:-*
>
> *".....5.3.1 Appellant had entered into agreement dated 20.03.2010 with one Ms. Rajamma S. Madden for purchase of property at 11A, Prithvi Raj Road, New Delhi for a consideration of Rs. 71 crores. As per the agreement to sale, appellant paid Rs. 10 Cr. as an advance by way of banking transactions. As per the agreement, the balance amount of Rs. 61Cr was to be paid later at the time of execution of sale deed.*
>
> *5.3.2 There were several conditions in the impugned agreement (para 6) dated 20.03.2010, which the Appellant had to undertake at its own cost for:*
>
> - *Get tenant evicted;*
> - *Convert leasehold property to freehold*
> - *Settle cases related to unauthorized construction*
> - *Get building plans sanctioned from NDMC*
>
> *5.3.3 Appellant also entered into a brokerage agreement dated 20.03.2010 with Sh. K.P.R Nair [who was the broker & also nephew of Ms. Rajamma S. Madden] and paid Rs.3cr in advance for services through banking channel. The appellant finally paid him Rs.7.10 Cr for his services.*
>
> *5.3.4 Simultaneously, Appellant also entered into agreement dated 22.03.2010 with Sh. Sanjeev Verma & Sh. Ramesh Chandra Kalra (hereafter referred as co-shares) and offered them 50% shares in gain/loss in the property at Prithvi Raj Road. Through this agreement following aspects come to light:-*
>
> - *Parties acknowledged that the MoU became part & parcel of the agreement to sell dated 20.03.2010 entered between Appellant & Ms. Rajamma S. Madden.*
> - *Co-sharers reimbursed 50% share of cost of advance already paid by the Appellant to the owner of property;*

- *It was also agreed that in case of redevelopment (if any), cost/ expenses will be proportionately contributed by co-sharers.*
- *Further, as & when property shall be sold by First Party - sale consideration/profit/ loss shall be divided by and between Appellant and co-sharers 50% - 50%.*

5.3.5 While the Appellant & co-sharers collectively paid Rs. 10 Cr as advance to Ms. Rajamma S. Madden, they still owed balance Rs. 61 Cr to her estate (after she passed away in 2013).

5.3.6 The Appellant had received the possession of the property in 2012. However, till that time, the appellant has paid only R5.10 crore as advance and the entire consideration was not paid by the appellant.

5.3.7 As per para 20 of the agreement, the advance amount of Rs.10 Crores was to be forfeited if the conditions the agreement were not fulfilled.

5.3.8 In the impugned financial year, Appellant sold the said property to Sh. Harish Ahuja for a consideration of Rs. 173 cr.

5.3.9 As per the Appellant, Sh. Harish Ahuja agreed to buy the said property for a consideration of Rs. 173 cr. with a condition that the Appellant will in turn buy his property at Jor Bagh for a consideration of Rs. 75 cr. It was claimed by the appellant that as he and co-sharers, were desperate to sell the property, they agreed to such a condition, as they were still in overall net profit. Aggregate short-term capital gain for all parties on sale of Prithvi Raj Road property was Rs. 93,30,40,124/-.

5.3.10 It has been stated that purchase of JorBagh property was an unexpected acquisition, in order to distribute the profit amongst themselves in the agreed ratio of MOU dt. 22/03/2010 and part-ways, the Appellant & co-sharers decided to sell the same to a 3md party and thereafter, distribute the overall net profit amongst themselves.

5.3.11 When after several months the Appellant & co-shares were not able to find any suitable 3rd party buyer, they sold the Jor Bagh property to a company M/s Book Wise India Pvt. Ltd (which is an associate enterprise of the Appellant) at Rs. 31.50 crores (near above the circle rate). This resulted into short-term capital loss of Rs. 43.5 cr for all parties on this transfer.

5.3.12 The computation of income submitted by the Appellant in respect of these two transactions, is as under:

Property no. 11A, Prithvi Raj Road, New Delhi		
Sale consideration		173,00,00,000
less - Cost of acquisition :		
Purchase cost	71,00,00,000	
Freehold conversion charges	1,24,17,338	
Brokerage & Misc. expenses	7,45,42,538	(-) 79,69,59,876
		93,30,40,124
Less – Share of co-owners :		(-) 46,65,20,062
Capital Gains offered by Appellant in his ITR		**46,65,20,062**

Property no. 115/112, Jor Bagh, New Delhi	
Sale consideration	31,50,00,000
less - Cost of acquisition	(-) 75,00,00,000
	(43,50,00,000)
less – Share of co-owners :	(-) 21,75,00,000
Capital Loss offered by Appellant in his ITR	**(21,75,00,000)**

5.3.13 It is seen that the AO has perused all the agreements/ MOUs/ sale deeds entered by the Appellant with various parties and held that:-

I. Firstly, the AO has rejected the Appellant's claim that the collective gain & loss earned/ incurred from the sale of Prithvi Raj Road property & Jor Bagh are to be equally shared amongst the Appellant and the co-sharer. The Assessing Officer held that the entire gain on purchase and sale of the two properties were of the appellant only. The Assessing Officer further held that the two co-sharers were not having equitable right/ ownership or responsibility but are having minority ownership and were largely at the mercy of the appellant. The Assessing Officer concluded by holding that the claim of the appellant that he had shared the gains earned from the sale of Prithvi Raj Road property equally among the co-sharers is absolutely false and untenable. Therefore, the Assessing Officer has rejected Appellant's claim of offering only 50% of gain on sale of Prithvi Raj Road and claiming only 50% loss on sale of Jor Bagh, to tax in his ITR. Hence, AO has computed the entire gain or loss from sale of both these properties in the hands of the Appellant only. However, AO has allowed deduction for payments of share of profit aggregating to Rs. 24.90 cr. made to the co-sharers from the computation of income as the payments were actually made to the two persons.

In page no. 5-6 of the assessment order, the Assessing Officer has computed the profit on sale of property as under:-

S.No.	Particulars		Amount
I	**Prithvi Raj Road**		
	Sales Consideration [A]	1,730,000,000	
less	Cost of acquisition [B]	(710,000,000)	
less	Sales related expenditure		
	- Brokerage & other Misc. expenditure* [C]	(74,542,538)	
	- Freehold conversion charges [D]	(12,417,338)	
		933,040,124	
less	profit assigned to co-sharers (granted by AO - pg 52 of order) [E]	(249,020,062)	
	Capital Gain from Prithvi Raj Road [F]		684,020,062
II	**Jori Bagh Property**		
	Sales Consideration [G]	315,000,000	
less	Cost of acquisition [H]	(750,000,000)	
	Capital Loss from Jori Bagh Property* [I]		(435,000,000)
	Net Capital Gain from above 2 properties		**249,020,062**
III	**IREO Property**		
	Sales Consideration [J]	12,910,953	
less	Cost of acquisition [K]	(13,255,569)	
	Capital Loss from IREO** [L]		(344,616)
	Returned Capital Gain on properties as per Income-tax return (reconciliation)		**248,675,446**

II. Secondly, AO has held that the sale of Jor Bagh Property for Rs. 31.50 cr. to M/s Book Wise India Pvt. Ltd. and consequent claim of short-term capital loss of Rs. 43.50 cr., was a sham transaction and colorable device to evade the tax. Although Appellant has claimed only half of the said loss (Rs. 21.75cr) in his ITR, however, as a result of the aforesaid first conclusion, the entire loss of Rs.43.50 cr has been added to the income of the Appellant.

III. The Assessing Officer has disallowed Rs.7,45,42,538/- paid to Shri K.P.R. Nair as commission on the ground that Shri Nair did not confirm the transaction.

6. Appellant is aggrieved on these three grounds of disallowances….."

34. In appeal, the ld. CIT(A), while concurring with the arguments of the assessee, deleted the impugned addition of Rs.50,98,87,154/- made by the ld. AO on the three counts of disallowance of commission, reduction in share of co-sharers and disallowance of Short-Term Capital Loss. On the issue of disallowance of sharing of gain or loss by the assessee with his co-sharers

namely Shri Sanjiv Verma and Shri Ramesh Chandra Kalra, the ld. CIT(A) on pages-7 to 8 has observed as under:-

> *"....6.1 Contention that 50% of the gain/ loss on sale of both Prithvi Raj Property and Jor Bagh property is to be shared with 2 co-sharer (Sh. Sanjeev Verma and Sh. Ramesh Chander Kaira)*
>
> *6.2 With regard to the impugned issue, following are the findings of the AO are summarised as under:-*
>
> *6.2.1 Inferences drawn on key agreements - Memorandum of Understanding dated 22.03.2010 entered between the Appellant and Sh. Co-sharers (i.e. Sh. Ramesh Chander Kalra & Sh. Sanjeev Verma) are as under:-*
>
> *a) That this MoU contain all the clause which relates to cost and sale proceed of Prithvi Raj Road Property and its development but this MoU do not conatin any clause as to the purchase of new property i.e. Jor Bagh Property and the gain/ loss arising therefrom.*
>
> *b) That the name of two co-sharer/ owner are not mentioned in any of the sale/ purchase document in respect of Prithvi Raj Road Property and Jor Bagh Property.*
>
> *c) Agreement entered into on 20.03.2010, through which Sh. O.P. Arora earn the right/ Swnership with the property also become infructuous on the death of Ms. Rajamma S. Madden as the property right to Sh. O.P. Arora has now emanated through willi testament in which no other person can be co-owner/sharer as their name was not mentioned.*
>
> *d) Last but formost the concept of co-sharer and consequent equal sharing of cost, sale proceed and consequent gain/ loss is prima facie incorrect and concocted story. T ascertain the truth and genuineness of assessee's claim of co-opting of co-sharer and equal sharing of profit & loss not only in respect of Prithvi Raj Property but also Jor Bagh Property, enquires were made from the co-sharer and summon u/s 131 were issued to them on 11.12.2018 for personal deposition of 14.12.2018. Accordingly, Sh. Sanjeev Verma and Sh. Ramesh Chander Kalra were examined on Oath and their statement were recorded in which they affirmed that they have joined Sh. Om Prakash Arora*

through MoU dated 20.03.2010 in respect of Prithvi Raj Road Property. Initially when this transaction was entered, Sh. Om. Prakash Arora told them that beside the payment of Rs. 5 Cr., no further payment would be required to be made as this property will be sold on Baiyana and they will get profit of Rs.2-3 Cr within a span of 6 months by each of them.

e) This fact was also confirmed by Sh. Ramesh Chander Kalra when he was examined on Oathu/s 131 and as to the cost of Prithvi Raj Property he replied the same that the Prithvi Raj Property cost this Rs. 100 Cr. They also stated that in year 2013-14 when matter was dragged for quite some time, Sh. O.P. Arora assured that both this co-sharer will get total profit of Rs. 25 Cr. jointly i.e. Rs.12.5 Cr. each of them. They have also stated that they have no ownership/ bearing with the property at Jor Bagh, therefore the question of contribution towards sales cost or profit do not arise.

f) The above facts shows that the co-shares, co-opted by Sh. O.P. Arora were not having equitable right/ ownership or responsibility but are having minority ownership and largely at the mercy of Sh. O.P. Arora under which they have received gain of Rs. 12.45 Cr each in the April 2015 as lump sum amount of their share of gain. They categorically affirmed that they have not been given any computation for determination of profit nor have any bearing with the purchase and sale of property at Jor Bagh or any gain or loss arising therefrom.

6.2.2 Inferences drawn by AO on confirmation from co-sharers w.r.t. receipt of their profit share, are as under:

a) Sh. O.P.Arora has interned executed the deal for Jor Bagh Property on his own and by camouflaging the MoU to interlink the deal for Prithvi Raj Road and Jor Bagh Property, he devise plan to firstly generate the short term capital loss in respect of Jor Bagh Property (which was infact a notional loss as being entered with assessee's own company and attempted to share the loss equally with two co-sharer and thereby reduce the co-sharer profit in the Prithvi Raj Road property in the disguise of Jor Bagh Property Loss.

b) However, in the fact of the case Sh. Sanjeev Verma and Sh. Ramesh Chander Kaira categorically denied of their rights/ gains or loss in the Jor Bagh Property. In fact they have not been

provided with any computation of profit of gain but has been given a lump sum gain of Rs. 25 Cr (12.45 Cr. each) as assured by Sh. O.P Arora. In this regard, Sh. O.P Arora filed the confirmation with regard to profit and gain share with Sh. Sanjeev Verma and Sh. Ramesh Chander Kara alleged to be jointly in respect of Prithvi Raj Road Property and Jor Bagh Property which shows of earning/ payment of net profit of Rs. 249020062/- for Sh. O.P Arora and Rs. 124510031 each for Sh. Sanjeev Verma and Sh. Ramesh Chander Kara. The scan copy of confirmation cum computation of profit as filed by assessee is reproduced as under:

xxxxxxx

c) On the analysis of above, it is inferred:-

- *This certificate cum confirmation is signed by all the co-owner as late as in Nov' 2018 but it doesn't contain any working as to the computation of Capital Gain from any property neither Prithvi Raj Road Property nor Jor Bagh Road property.*
- *It talk about the transaction and profit from Prithvi Raj Property and no reference to the Jor Bagh Property.*
- *It talk about accounting for and looking into all expenses incurred by Sh. O.P. Arora but no reference to the loss from sale of Jor Bagh Property.*

35. The findings of Ld CIT (A) on this issue are given on pages 11 to 14 of his order as extracted herein below:-

"....6.4.1 Thus, the two co-sharers paid their part of consideration to the appellant. The Assessing Officer has not brought out any evidence on record to establish that there was no co-sharer in the property. From perusal of the assessment order, it is seen that the Assessing Officer has held that they were only minority shareholder in the property whereas in the agreement dated 22.03.2010, it is evident that they (Shri Ramesh Chandra Kalra and Shri Sanjeev Verma were 50% shareholder. In arriving at the conclusion that they were minority shareholder having minority ownership and largely at the mercy of appellant, the Assessing

Officer has relied upon a agreement to sell between the appellant (being the first party) and the two co-sharers (being the second party). However, the said agreement to sell is regarding the agreement that the first party would sale the property to the second party. It is matter of record that no such sale as per the agreement has been made by the first party to the second party. In other words, the terms of the agreement was never acted upon by any of the two parties.

6.4.2 In the co-sharer agreement (MOU) dated 22.03.2010, the following clause is

"2. This MOU is part an parcel of the agreement to sell dated 20.03.2010 signed between the first party and the owner of 11A, Prithvi Raj Road, New Delhi.

3. That as and when the aforesaid property shall be sold further by the First party, then the sale consideration/profit/loss shall be dividend by and between the First Party and second party in following proportion:-

First Party :50%

Second Party :50%

And in case the said property is redeveloped by the First party or any expense of any kind incurred in respect to this property then the Second Party shall proportionately contribute cost of construction /expenses of their share. For the purpose of facilitating further sale, the Second Party gives their consent for further sale of their share in favor of First party & the First party shall alone be entitled to sign any Agreement/MOU/LOI with any prospective buyer without any objection/permission by the Second Party.

4. That it is hereby clarified between the parties that in the event of First Party receiving any advance consideration from any prospective buyer of the said property, the same shall be refunded by the First Party to the prospective buyer for the following reason and without any permission of the second party.

a) If there arise any dispute between the First party and the owner of 11-A, Prithvi Raj road, New Delhi.

b) The First Party has full right to refund the earnest money received from the prospective buyer without any discussion/permission from the second party.

c) The advance payment received from the prospective buyer of the First Party shall remain with the First party till transactions are fully completed.

That this MOU is final and binding upon the parties their legal heirs successors, legal representatives etc.

5. That this transaction taken place in New Delhi and as such New Delhi courts shall have exclusive jurisdiction to entertain any dispute between the first party and second party."

6.4.3 Thus, the appellant was given the sole right to sale the property to anyone. The sale of property to Shri Harish Ahuja has not been disputed by the two co-sharers. The following document was before the Assessing Officer also:

TO WHOMSOEVER IT MAY CONCERN

Whereas it was mutually agreed between Sh. Om Parkash Arora S/o Sh. Tek Chand R/o 122, Jorbagh, New delhi – 110003, Sh. Ramesh Chander Kalra S/o Sh. K.L Kalra R/o B-113, Shivalik, New Delhi – 110017, and Sh. Sanjeev Verma S/o Sh. Inder Jit R/o E-167, Masjid Moth, New Delhi, - 110048 to Jointly acquire property No. 11-a, Prithviraj Raj Road, New Delhi – 110001. The said Property was sold on 8th of April 2015.

The following investment was made by Sh. Ramesh chander Kalra and Sh. Sanjeev Verma :-

	AMOUNT	CHEQUE NO.	DATED	DRAWN ON
1.	Rs. 3,65,00,000/- by bank transfer, through RTGS, dated 19.03.2010			
2.	Rs. 50,00,000/-	400986	20.03.2010	Citi Bank,
3.	Rs. 85,00,000/-	000134	19.03.2010	Bank of India
4.	Rs. 1,50,00,000/-	0000136	20.03.2010	Bank of India
5.	Rs. 20,00,000/-	953616	17.03.2011	S.Chartered Bank
6.	Rs. 21,00,000/-	953524	05.04.2011	S. Chartered Bank
7.	Rs. 15,00,000/-	375661	12.08.2011	S. Chartered Bank
8.	Rs. 10,00,000/-	424990	21.11.2011	Bank of India
9.	Rs. 8,75,000/-	424996	10.02.2011	Bank of India
10.	6,25,000/-	424997	22.02.2012	Bank of India

After looking into the account of all expenses incurred by Sh. Om Arora, the gain payable was mutually determined as under:-

1.	Sh. Om Arora	Rs. 24,90,20,062/-
2.	Sh. Sanjeev Verma	Rs. 12,45,10,031/-
3.	Sh. Ramesh Chander Kalra	Rs. 12,45,10,031/-

All Parties hereby agree to the correctness of the above figures and after receiving the due gain, now parties have no claim left whatsoever against each other.

Sh. Om Parkash Arora — ACCPA9774F
Sh. Ramesh.C Kalra — AHBPK1827H
Sh. Sanjeev Verma — ACSPV6400D

Place : Delhi

Date : 12/11/2015

6.4.4 In the above document, the two co-sharers have confirmed receipt of their share of money amounting to Rs.124510031/- each. During the course of assessment proceedings also, the two co-sharers in their statement under oath (page no.14 and 15 of the assessment order) have confirmed having received the amount from the appellant being their share of profit.

6.4.5 In his assessment order also, the Assessing Officer has allowed the deduction of Rs.24,90,20,062/°(Rs.12,45,10,031 X 2). When the Assessing Officer has allowed the deduction on account of payment to the two co-sharers, it is not understood as to why the two persons have not been treated as Co-sharers of the property.

6.4.6 The above-mentioned facts establishes that the two persons were co-sharers of the property. Therefore, it is held that the Assessing Officer was not justified in computing the entire gain on property as taxable in the hands of appellant only. It is further held that the appellant was correct in treating 50% of the gain on the transaction as his income. Thus, the issue is decided in favour of the appellant….."

36. On the issue of Short Term Capital Loss qua the Jor bagh property amounting to Rs.43.50 Crores treated as a sham transaction by the ld. AO, the ld. CIT(A) noted the following on pages 14 to 24 of his order as under:-

"….7. <u>Sale of Jor Bagh Property for Rs. 31.50 Cr. to M/s Book Wise India Private Limited and claim of Short Term Capital Loss of Rs. 43.50 Cr. is a sham transaction and colorable device to evade the tax</u>

7.1. During the year under consideration, the appellant has purchased and sold a property at Jor Bagh. The property was purchased from Shri Harish Ahuja (the same person to whom the property at Prithvi Raj Road was sold). The property was purchased from Shri Harish Ahuia for a consideration of Rs.75,00,00,000/-. The property was sold to M/s Bookwise (India) Pvt, Ltd. for a consideration of Rs.31,50,00,000/-. Accordingly, a oss (Short term) of Rs.43,50,00,000/- was incurred which was set off against the gain of Prithvi Raj Road property.

7.2 On the impugned issue, following are the findings of the AO:-

7.2.1 The Assessing Officer has analysed various agreements and has drawn Inferences on key agreements/Memorandum of Understanding for

agreement for sale 03.03.2014 for purchase of Jor Bagh Property by the Appellant from Sh. Harish Ahuja, are as under:

a) This agreement do not contain any clause which suggest that the price of Jor Bagh Property is unreasonably high and it is compulsive deal between the two parties.

b) While entering this agreement for sale of Jor Bagh Property no part payment was paid by Sh. Om Prakash Arora to Sh. Harish Ahuja towards the sale consideration of Rs. 75 Cr. In the absence of part payment towards sale consideration of Rs. 75 Cr. which could have been effected through cheques having evidentiary value, the genuineness of this Mo cannot be relied upon. This signifies that this agreement is an afterthought between the two parties just to link the deals and to make ground for the claiming the Short Term Capital Loss on sale/ transfer of this property at lower rate.

c) Both these MoU for agreement to sale are neither registered nor they were notarized by any Notary Public.

d) Both the agreement alleged to have entered on the same date i.e. 03.03.2014, the MoU for agreement to sale for Prithvi Raj Road do not contain any reference or not to mention any condition related to the Jor Bagh Property which claim to be a quintessential of the sale of Prithvi Raj Road Property. Therefore the claim of the assessee that the Jor Bagh Property is intricately linked Prithvi Raj Road property sale is camouflage to discredit to sale price of Jor Bagh Property which is a concocted story to derive unwarranted inference to discount the sale price Jor Bagh Property and liable to be rejected.

e) It may mentioned as per the property consultant, article published in IndiaToday, in October 2012, the consultant inter alia observed that the price of Jor Bagh Property is much higher than that of Prithvi Raj Road/Aurangzeb Road Property. This strengthen that the Jor Bagh Property is rightly priced at Rs. 75 Cr. and in not effected due to any conditionality of linking with the Prithvi Raj Road property as alleged by the property.

f) Thus the contention of the assessee that the sale transaction of Prithvi Raj Road Property is linked and conditional upon the sale of Jor Bagh Property and assessee had to pay higher amount for Jor Bagh Property is not correct, baseless and is an afterthought and premeditated plan to claim the self generated loss on sale of Jor Bagh property, which is rejected.

g) The assessee contended that the Jor Bagh Property purchased at Rs. 75 Cr from Sh. Harish Ahuja was conditional to the sale of Prithvi Raj Road Property, therefore acquired at higher price. Though the two deals/ transactions were happened simultaneously but they are not conditional. These two transactions were done by two parties simultaneously but the sale consideration was determined independent of each other as per the market forces or the mutual need/ benefit of both the parties.

h) Hence, sale of Jor Bagh Property for Rs. 31.50 Cr. to M/s Book Wise India Private Limited and claim of Short Term Capital Loss of Rs. 43.50 Cr. is a sham transaction and colorable device to evade the tax.

i) Thus no business/ commercial interest/rationale was served by transferring the Jor Bagh Property from assessee's personal hand to company M/s Book Wise India Pvt. Ltd. as by no stretch of imagination, M/s Book Wise India Pvt. Ltd. was more capable or resourceful than that of Sh. Om Prakash Arora himself as his net worth is much higher and more resourceful having more creditworthiness to garner the fund from the bank as well as to instill confidence in the prospective buyer for development and completion of apartment on the Jor Bagh Land. Therefore this transaction of sale of property at Rs. 31.50 Cr. is a colorable device and a sham transaction precisely entered to evade the tax by claiming Short term Capital Loss which is self generated, artificial and notional loss which cannot be allowed to adjust the gain earned by the assessee from Prithvi Raj Road Property.

j) In this regard, reference may be made to the judgment of the Hon'ble Supreme Court with regard to the colorable devices where transactions are sham and not genuine. The Hon'ble Supreme Court in Vodafone International (dated 20 January 2012) considered its decisions in the matters of McDowell reported in (1985) 3 SCC 230, Azadi Bachao reported in (2004) 10 SC 1 and the Mathuram Agarwal reported in (1999) 8 SC 667 and concluded that where the transaction is not genuine but a colourable device there could be no question of tax planning. Supreme Court makes it very clear that a colourable device cannot be a part of tax planning.

k) Therefore where a transaction is sham and not genuine as in the present case then it cannot be considered to be a part of tax planning or legitimate avoidance of tax liability. The Supreme Court in fact concluded that there is no conflict between its decisions in the matter of McDowell (supra), Azadi Bachao (supra) and Mathuram Agarwal (supra).

l) In the present case the purchase and sale of Jor Bagh Property, so as to take short term capital loss was found as a matter of fact as a premeditated artifice to claim the Short Term Capital Loss, therefore the same is treated as sham and the consequent short term capital loss in the hand of assessee and his efforts to spread among the co-sharer is reject and disallowed.

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7.3 The arguments of the Assessing Officer and the reply of the appellant has been considered. It is seen that the purchase consideration for Jor Bagh property is not disputed. The appellant purchased the property at Rs.75,00,00,000/-, An agreement to sell was made between Shri Harish Ahuja (First Party) and Shri Omprakash Arora (Second Party), the appellant on 08.04.2015 fixing the consideration at Rs.75,00,00,000/-

7.3.1 The property was sold on 23.02.2016 to M/s Bookwise (India) Pvt. Ltd. for a consideration of Rs.31,50,00,000/-. The appellant is the shareholder and director of M/s Bookwise (India) Pvt. Ltd. As on 23.02.2016, the market price of the property as per the stamp duty valuation authority was Rs.31,00,46,644/-. Both the purchase and sale of Jor Bagh Property has been made during the year under consideration only.

7.3.2 The purchase and sale of the Jor Bagh property has been treated as an investment activity by both the appellant and the Assessing Officer. Therefore, on the impugned property the appellant has computed loss under the head capital gains. The Assessing Officer has also not disturbed the claim of loss be assessed under any other head other than capital gains.

7.3.3 The main reason for treating loss as sham transaction was that the transaction was incestuous. The Assessing Officer was not convinced with the fact that a property that was purchased for Rs.75,00,00,000/- could be sold after about 11 months for only RS.31,50,00,000/-.

7.3.4 It is also a matter of record evident from the document that the circle rate of the property was below the sale consideration. Therefore, the provisions of section 50C was not applied by the Assessing Officer.

7.3.5 The provisions of income tax act empower the Assessing Officer to disturb the sale consideration in respect of sale of any capital asset on the two circumstances; a. When the sale consideration is below the circle rate and; b. When there is evidence to establish that the actual

consideration was more than the disclosed sale consideration. In the instant case neither of the two conditions are met. The Assessing Officer (on page 39) has stated as under:-

> *"Thus these two sale transaction were done at the mutual price determined by both the parties for their mutual benefit disregarding the market rate for Prithvi Raj Road property by determining at near to the circle rate at RS.173 cr. And for Jor Bagh Property at the market rate ignoring the circle rate valuation of the property. As the law stand u/s 50C of the I.T Act, the sale consideration has to be taken at value at which stamp duty has been paid, no adjustment could be made. These two properties sale transactions have been done Simultaneously but not conditional to one another. Though in the Mou alleged to be entered for sale of Jor Bagh property, the assessee has made a clause for interlinking the two-transactien conditional to each other but it is being done just to camfledge the tax provision and pedice the taxable capital gain."*

7.3.6 The Assessing Officer was himself convinced that the addition invoking provisions of section 50C could not have been made in the case. Therefore, the Assessing Officer could not have disturbed the sale consideration if the income/loss is assessed under the head capital gains.

7.3.7 If the transactions were treated as business transaction by the appellant, in that case, there was powers with the Assessing Officer to disturb the consideration received or paid. As per the provisions of section 40A(2)(b), if a higher consideration was paid for purchase, then the Assessing Officer could have made adjustment. However, in this case the transaction of purchase by the appellant is not between the related parties and therefore, even the provision of section 40A(2)(b) could not be invoked by the Assessing Officer.

7.3.8 The other provision leading with charging of less consideration are contained in Chapter-A dealing with General Anti Avoidance Rules (GAAR). However, the provisions were made applicable from 01.04.2018. Hence, the Assessing Officer could not have disturbed the sale consideration even when the allegation of charging of lesser sales consideration in incestuous transaction is alleged.

7.3.9 In view of the above discussion, it is evident that there was no legal provision invoking which the Assessing Officer would have disturbed the sale consideration of Jor Bagh Property. On this ground alone, the disallowance/addition is liable to be deleted.

7.3.10 It is seen that there were other reasons also which has not been considered to be a genuine by the Assessing Officer.

7.3.11 The appellant and his two co-owners had been trying arrange the balance payment of Rs.61 Crores due to be paid to the estate of late Ms. Rajamma S. Madden, otherwise their advance of Rs.10 Crore would have forfeited. The appellant has demonstrated that between August/September of 2012-2013, they tried their best to find a suitable buyer for Prithvi Raj Property and in this regard, it has given details of advertisement inserted in the newspaper of major cities and had incurred a cost of Rs.12.13 Lakhs for advertisement.

7.3.12 The appellant entered into the MOU dated 03.03.2014 with Shri Harish Ahuja for sale of Prithvi Raj Property. Another MOU of same date was entered for purchase of Jor Bagh property by the appellant from Shri Harish Ahuja. Clause 2 of this MOU states that the appellant had agreed to buy the Jor Bagh Property for Rs.75 Crores solely and the condition that Shri Harish Ahuja would be purchasing the Prithvi raj Road property from the appellant. Relevant clause is reproduced herein below:-

- *Clause 2 That the FIRST PARTY [Harish Ahuja] has offered and agrees to sell the property for the sale consideration as stated hereinabove and the SECOND PARTY [Om Prakash Arora] in turn has agreed to purchase the property from the FIRST PARTY solely on the condition that the SECOND PARTY, who is the owner of rights in the residential property bearing no. 11A, Prithvi Raj Road, New Delhi ("Prithvi Raj Road Property"), has agreed to sell Prithvi Raj Road Property to the FIRST PARTY for which purposes a separate Memorandum of Understanding has been executed between the parties today.*

- *Clause 3 That it is agreed between the parties that a further Memorandum of understanding/Agreement for sale shall be executed between the parties specifying the date(s) of payments of the sale consideration to be made by SECOND PARTY to the FIRST PARTY and specifying the date(s) manner of execution of transfer agreements etc. once the probate of the Last Testament and will concerning the Prithvi Raj property has been granted by the appropriate courts of law.'*

7.3.13 It is matter of fact that the appellant had to pay Rs. 61 Cr to the 23 people, who were the legal heir of late Ms. Rajamma S. Madden, only then the appellant could have acquired the property and then sale it. The

appellant could realize Rs.61 Crore only when the condition laid down by Shri Harish Ahuja was met.

7.3.14 There was a business logic for paying more than double the sale consideration to Shri Harish Ahuja. Even after paying Rs.75 Crores for a property worth about Rs.31 Crores, the appellant was making profit of approximately Rs.93.30 Crores from sale of Prithvi Raj property. As per the appellant, the purchase of Jor Bagh property was an unexpected and required step to earn the aforesaid gain on sale of Prithvi Raj Property.

7.3.15 The appellant and the Co-sharers had to distribute the gains from the sale of Prithvi raj Property. However, apart from sale consideration of Prithvi Raj Property, there was also a Jor Bagh property. Therefore, in order to distribute the gain, they decided to sell the Jor Bagh property and distribute among them the profit as per the ratio laid down in the MOU dated 22.03.2010.

7.3.16 Consequent to the sale of Jor Bagh property, the new buyer i.e. M/s Bookwise (India) Pvt. Ltd. re-developed the property and sold it to the three buyers as under:

Floor	Purchaser	Date of Sale	Consideration (in INR)
1st Floor	Anuj Kalra (son of Ramesh Chander Kalra, one of the co-owners)	26.08.2016	7,15,00,000
Ground Floor	Karnik Rajat	26.08.2016	7,15,00,000
Basement & 2nd Floor	Akhil Sibal	29.06.2020	16,00,00,000
3rd Floor	Akhil Sibal	03.11.2021	13,50,00,000
	Total Sale Consideration		43,80,00,000

7.3.17 Thus, even after constructing two more floors, only Rs.43.80 Crores could be realized from the Jor Bagh property. Therefore, there was a business sense in paying higher consideration to Shri Harish Ahuja

7.3.18 In view of the above discussion, it is held that the Assessing Officer was not justified in disallowing the loss of sale of Jor Bagh Property…."

37. As regard the issue of disallowance of commission paid to Shri K.P. Nair amounting to Rs.7,45,42,538/-, the same has been discussed by the ld CIT(A) on pages 43 to 44 of his order. Relevant part is extracted here under:-

Disallowance of commission paid to K.P.R. Nair: Rs. 7,45,42,538:

8. The reasons for making disallowance of commission paid to Shri Nair are as under:-

8.1 The Appellant had claimed certain expenditure in the computation of capital gain on sale of Prithvi Raj Road property, in the nature of 'Brokerage & Other Misc. expenses'. Summary of these expenditures are as under:

Particulars	*Amount (in Rs.)*
Commission to KPR Nair as Brokerage for 11A Prithviraj Road	*7,10,00,000*
Advertisement expenses towards for sale of property 11A Prithviraj Road in different newspaper from time to time	*16,12,604*
Expenses at Prithviraj Road for Security Guards paid to M/s Principal Security & Allied Services Pvt. Ltd.	*18,02,624*
Expenses at Prithviraj Road for Security Guards paid to M/s Sharp Global group	*1,27,310*
Total Payment made by Appellant & co-shares	*7,45,42,538*
Expenditure claimed by Appellant (50%)	***3,72,71,269***

8.2. AO enquired about commission paid to Sh. K.P.R. Nair and directed Appellant to furnish evidences in support of commission paid to Sh. K.P.R Nair along with his confirmation and ITR to prove the genuineness of the expenditure claimed.

8.3. Appellant furnished the agreement entered with Mr. K.P.R Nair along with details of payments made (which were through banking channel) and bank statements to verify these payments.

8.4 AO has held that the Appellant failed to file any evidence and confirmation from Sh. K.P.R Nair in respect of which said expenditure claimed.

8.5 Summon u/s 131 was issued to Sh. K.P.R Nair requiring him to attend the proceeding. He first sought an adjournment and even after that no details/ evidence were received.

8.6. In the absence of confirmation received from Sh. K.P.R Nair, expenditure of commission was disallowed from the cost while computing the Capital Gain in respect of Prithvi Raj Road Property.

8.7 While payment of only Rs. 7.1 cr was made to Sh. K.P.R Nair, however, while disallowing the commission expense, the AO has considered amount as Rs. 7,45,42,538/-, which also included other miscellaneous expenditure aggregating to Rs. 35,42,538, which were not discussed in the assessment order. Hence, Appellant has claimed it as mistake apparent from record against which the appellant has filed an application u/s 154 dated 29.01.2019 and 05.01.2022 which is not yet disposed off by the Assessing Officer.

8.8 The AO has held as under:-

- *The assessee has claimed expenditure on account of commission on purchase of Property paid to Sh. K.P.R. Nair amounting to Rs. 7.40 Cr and has claimed the same towards the cost of property. In this regard, assessee/AR vide order sheet dated 10.12.2018 was requested to furnish evidence in support of commission paid at Rs. 7.40 Cr. to Sh. K.P.R Nair alongwith his confirmation and ITR to prove the genuineness of the expenditure*

- *Assessee failed to file any evidence and confirmation from Sh. K.P.R Nair in respect of which said commission of Rs. 7.40 Cr. is claimed.*

- *Summon u/s 131 dated 15.12.2018 was issued to the Sh. K.P.R Nair requiring him to attend the proceeding on 19.12.2018 to attend for personal deposition and furnish following details:*

  ……….

  ……….

- *However, in response to summon dated 15.12.2018 none attended but adjournment was sought which was given for 24.12.2018. However even on adjourn date, no details/*

evidence were received. Here it is important to mention that Sh. K.P.R Nair is stated to be keyperson through whom assessee got the Prithvi Raj Road property being executed. In this regard, it may be mentioned that a separate Mouwas executed between Sh. K.P.R Nair and assessee in which he was appointed to assist in purchaser of Prithvi Raj Road Property and his commission was fixed at Rs. 15 Cr. and at the same time he was to receive part sale consideration as recipient of Estate of Ms. Rajamma S. Madden and also as attorney to Ms. Rajamma S. Madden, erstwhile owner of Prithvi Raj Road Property. However in the absence of confirmation on the part of recipient the exact nature of expenditure incurred is not proved hence the expenditure of Rs. 7,45,42,538/-alleged to be paid to Sh. K.P.R Nair is disallowed from the cost and not be included while computing the Capital Gain in respect of Prithvi Raj Road Property.

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9. In the instant case, the Assessing Officer has only discussed the issue of commission paid to Shri K.P.R Nair but has disallowed other items of claim without any discussion. The appellant had claimed an amount of Rs.7,10,00,000/- as having been paid to Shri Nair. However, the additional disallowance of Rs.35,42,538/- has been made without any discussion as to how the other items of claim are not allowable. It appears that the disallowance of Rs.35,42,538/- was erroneously made and therefore, the same is deleted. Accordingly, the appellant gets relief of Rs.35,42,538/-.

9.1 In this case, the payment made to Shri K.P.R Nair is not disputed by the Assessing Officer. The Assessing Officer made disallowance because Shri Nair did not furnish the required documents before him. Further, the Assessing Officer disallowed the claim because Shri Nair did not appear before him during the assessment proceedings. If the witness did not appear in response to the summons, there is provision for penalty or enforcing the attendance by use of coercive methods. Not attendance to summons by the witness (Shri K.P.R. Nair) cannot be the reason for making disallowance in the hands of the appellant.

9.2. It is seen that during the course of assessment proceedings, the appellant had submitted sufficient documents to prove the veracity of

claim made by him. The documents available with the Assessing Officer are as under:-

available with the Assessing Officer as under:

S.No.	Date of submission of document	Document	Remarks
1	10.12.2018 & 14.12.2018	Agreement dated 20.03.2010 with K.P.R. Nair	Discussed at page 8, 9, 23 & 24 of the assessment order.
2	10.12.2018 & 14.12.2018	MOU dated 20.03.2010 between appellant and Rajamma S. Madden	Discussed at page 7, 21, 22 & 23 of the assessment order.
3	10.12.2018 & 22.12.2018	Bank statement evidencing the payment to Shri K.P.R Nair	Discussed at page 8 & 23 of the assessment order regarding payment made to Shri K.P.R Nair

9.3 It is seen that there were necessary and sufficient evidences with the Assessing Officer during the course of assessment proceedings. However, based on those documents, the Assessing Officer has not formed any opinion.

9.4 It is seen that Shri K.P.R Nair was nephew of the landlord Ms. Rajamma S. Madden. In clause 8 of the MOU dated 20.03.2010 between the appellant and the landlord the following is mentioned:-

> *'That this agreement to sell is being entered into between the parties to this agreement with the efforts and recommendations of Mr. KRNair who has signed the present agreement as one of the witnesses. He is also burdened with the responsibility of looking after that all the clauses of this agreement will be given full effect.'*
>
> *In order to facilitate this transaction, the vendor has appointed Shri K.P.R Nair s/o Mr. R.P.P Pillai as her attorney for the completion of the deal on her behalf including accepting the further part payment (in the name of vendor), if any, made by the Vendee, take all steps for completion of the said requirements and generally to do all other acts deeds, matters, and things on behalf of the Vendor as envisaged herein. The vendor hereby agrees and undertakes not to revoke or cancel the said attorney without first obtaining prior written consent of the vendee. However, the execution of the said attorney deed shall not absolve the vendor from preforming her obligations in terms hereof. Further, the vendor also agrees and undertakes to come personally as and when required/asked for by the government authority including at the time of final payment, execution and registration of sale deed and completion of the deal."*

9.5. Further, in the agreement dated 20.03.2010 between the appellant and Shri K.P.R. Nair, there are references of various services to be

performed by Shri Nair in respect of the impugned property. Apparently, the services mentioned in the agreement has actually been carried out. Some of these services mentioned and carried out are as under:-

a. Introduction of the appellant to Ms. Rajamma S. Madden (clause 2).

b. Completion of all terms and conditions and obligation discussed in the agreement to sell dated 20.03.2010 between Ms. Rajamma S. Madden and the appellant (clause 3).

c. Reference to clause 7 of agreement to sell dated 20.03.2010 between Ms. Rajamma S. Madden and the appellant wherein the efforts and recommendation of Shri K.P.R. Nair has been acknowledged. Further burden of responsibility of looking after the fulfilment of aforesaid clauses has also been provided.

d. Receipt acknowledging payment of advance of Rs.3 Crores by the appellant to Shri Nair is also enclosed in the said agreement. Thus, the duties of Shri Nair as per the agreement has been discharged by him.

9.6. The bank statement evidencing the payment was also before the Assessing officer. In the assessment order, the AO has mentioned the payments of Rs.3 Crores by the appellant to Shri Nair. The confirmation regrading receipt of money by Shri Nair was submitted to the AO during the course of assessment proceedings on 28.12.2018.

9.7 The appellant during the course of assessment proceedings has furnished other evidences in support of the claim of services having been rendered by Shri K.P.R. Nair. The evidences so furnished by the appellant are as under:-

S. No.	*Evidence*	*Detailing*	*Page No.*
1	*Conveyance deed/ Conversion covering letter*	*Conversion letter issued by Land and development office on 29.03.2011 which substantiates conversion of lease hold land into free hold land. Shri K.P.R Nair is present at witness alongwith one of the co-sharers Shri Sanjeev Verma*	*32 to 36*
2	*Letter to NDMC*	*letter issued to department of agriculture of NDMC for regularising the building*	*37*

		plans by Shri K.P.R. Nair with subject plan for demolition & re-construction in respect of Plot no.11A, (1-17) Prithviraj Road, New Delhi.	
3	*Possession Letter*	*Letter substantiating possession received by the appellant on 01.09.2012. Shri K.P.R Nair present as witness.*	*38*

9.8. Thus, there is ample evidence to establish that Shri Nair had rendered services to the appellant right from signing of agreement with the landlord to the actual sale of the property. As the services were rendered therefore, the AO was not justified in ignoring the evidences and the facts and thereafter arriving at the conclusion that the amount of Rs.7,45,42,538/- (actually Rs.7,10,00,000/-) is not allowable as deduction.

9.9. In view of the above discussion, the addition of Rs.7,10,00,000/- is deleted. Thus, the amount of Rs.7,45,42,538/- (Rs.7,10,00,000/- + Rs.35,42,538/-) is deleted……"

38. The Revenue is in appeal contesting the grant of above relief accorded through order of the ld. CIT(A) extracted herein above. The Ld. CIT DR Ms Asmi Gupt fiercely argued that the relief given by the Ld First Appellate Authority is excessive, unwarranted and untenable as the same is based upon in correct and inappropriate appreciation of the facts on record. It was argued that the ld. CIT(A) has misread the order of ld. AO in the light of facts available on records. She submitted that the claims made by the assessee dwell around schematic planning of tax evasion attempted through a web of agreements and

MOUs so as to avoid true incidence of taxation arising from sale purchase of immovable properties.

39. The ld. Counsel for the assessee, Shri Ajay Vohra, vehemently argued in favour of the order of the Ld. CIT(A) by reiterating his arguments, reliance upon case laws taken before the ld. First Appellate Authority in the light of evidences produced, copies of which were produced before us through a paper book. It was submitted that the ld. AO had drawn imaginary unilateral conclusions on the basis of his conjectures and surmises and that therefore relief allowed by ld. CIT(A) is correct and does not suffer any infirmity.

40. We have heard rival submissions in the light of material placed on record. Upon detailed consideration of the controversy at hand, we have noted that the order of the ld. CIT(A), concerning three issues of disallowance of commission, reduction in share of co-sharers and disallowance of Short-Term Capital Loss, does suffer from deficiency of incorrect understanding of the facts of the case. As regards the issue of disallowance of commission of Rs.7,45,42,538/- by the ld. AO in respect of Shri K.P. R. Nair is concerned, we have noted from para-9.1 of his order (supra) that he is of the view that mere non-compliance of the party before the ld. AO including non-appearance in response to summons cannot be the reason for making impugned disallowance. He has held the view that the assessee had submitted all the document comprising agreements, MOUs, bank statement, etc. to substantiate the veracity of the commission. We

have however noted that the conclusions drawn are not correct, the ld. AO in his order at page-50 and 51 clearly narrated that he had issued several notices to Shri Nair between 12.12.2018 to 27.12.2018 including a summon dated 19.12.2018 requesting for his personal deposition as well as submission of requested details, which remained uncompiled. The AO had noted that Shri K.P. R. Nair was reported to be a key person involved in the Prithviraj property deal and it was imperative for the AO to hold enquiries with him. The ld. AO has also noted that the assessee had reduced the amount of Rs.7,45,42,538/- while calculating Long Term Capital Gains (page-7 of AO's order) as expenses towards brokerage, etc. There is no dispute on the figure of claims as well. It is trite law that an Assessing Officer is empowered to hold enquiries in respect of claims of expenses made by an assessee with the persons deemed necessary. This is the discretion available with an Assessing Officer and which cannot be challenged. It is an undisputed fact on records that in spite of being given opportunities Shri K.P. R. Nair did not appear before the ld. AO. The argument of the ld. CIT(A) while deleting the addition of the AO that this non-compliance was inconsequential, cannot therefore be accepted. It is immaterial as to whether the payments were covered by some agreements or routed through some banking channels. The onus is upon the assessee and its parties to satisfy and comply with statutory notices of the ld. AO qua justification of expenses claimed. The relief accorded by the ld. CIT(A) therefore cannot be sustained.

41. As regards the next issue of reduction in share of co-sharers whereby the ld. AO made the addition by computing the entire gain on the property as taxable in the hands of the appellant only and by not allowing 50% gains as attributable to the co-sharers, we have noted that the relief is not based on true appreciation of facts. The ld. AO in his assessment order, relevant part extracted hereinabove, has clearly pointed out the deficiencies in the agreements so as to allude that the same were engineered to be used as devices for tax avoidance. The ld. AO has thus pointed out that firstly the agreement per se contained inherent inconsistencies and shortcomings, the two co-sharers in their sworn statements before the ld. AO had categorically submitted that they had little say on the matter and that they were themselves kept in dark of the totality of transactions and understandings between the assessee and the buyers and sellers of the immovable properties. They had admitted before the ld. AO in their sworn statements that they were only promised 2-3 Crores of rupees as profit. As regards Jorbagh property, they clearly submitted that they have no ownership status qua the said property. The ld. AO has also observed that the absence of alleged co-sharers as parties, in the sale purchase agreements of the immovable properties strongly alluded that they were not the real recipients of any profits. The observation of ld. AO that the death of Smt. Rajamma S. Madden changed the entire texture of agreement between the assessee and her, since after her death assessee acquired ownership rights qua

the will of Smt. Rajamma S. Madden. We have noted that on page-16 of his order, the ld. AO has clearly brought out the infirmities and inherent contradictions in the MOU entered between the assessee and two co-sharers. We are accordingly of the view that the relief allowed by ld CIT(A) is once again based upon inappropriate understanding of the facts of the case.

42. Coming to the issue of claim of Short Term Capital Loss of Rs.43,50,00,000/- in respect of the Jorbagh property, we have noted that here again the ld. CIT(A) has misread the facts of the case. The ld. AO while analyzing the issue, extracted hereinabove, clearly brought out that the acquisition price of the Jorbagh price at Rs.75 Crores was exorbitantly high and that the loss was apparently self-created. He has suitably established that the linkages between Jorbagh property and Prithviraj road property, whereby the prospective buyer of Prithviraj road property Shri Harish Ahuja, compelled the assessee to buy his Jorbagh property at Rs.75 Crores was plagued with several inconsistencies. We find force in the argument of the ld. AO that the MOUs qua the transaction were neither registered not notarized so as to lend any credence to the hypothesis. The ld. AO has also brought on record that acquisition price of the Jorbagh price at Rs.75 Crores was far in excess of the market value which stood about Rs.28 Crores. We have also noted that reliance of ld. AO upon the decision of Hon'ble Apex Court in the case of McDowell Case 3 SCC 230, Azadi Bachao 10 SCC 1 and Mathuram Agarwal 8 SCC 667

holding that a colourable device cannot be a part of tax planning while concluding that the impugned transactions were sham transactions and lacking any legitimacy is correct. We have also noted that the sale of Jorbagh property for Rs.31,50,00,000/- so as to give rise to the impugned loss of Rs.43,50,00,000/- has been rightly noted by the ld. AO as a created and imaginary loss. The impugned property was sold by the assessee to a company namely M/s Bookwise India Pvt. Ltd., in which he alongwith his wife is a shareholder. In fact the sale of one of the floors of the constructed/redeveloped floors of Jorbagh property by M/s Bookwise India Pvt. Ltd. to Shri Anuj Kalra S/o Shri Ramesh Chandra Kalra, one of the co-sharers adds credence to the theory that the entire transactions were engineered to suit specific interest.

43. On this matter we place full reliance upon the decision of Hon'ble Supreme Court in the case of MacDowell and Company Limited vs The Commercial Tax Officer 1986 AIR 649 wherein the Hon'ble Apex held that tax planning may be legitimate provided it is within the frame work of law, colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. We deem it necessary to extract the views of Hon'ble Apex Court on the matter "……..*We think that time has come for us to depart from the Westminister principle as emphatically*

as the British Courts have done and to dissociate ourselves from the observations of Shah, J. and similar observations made elsewhere. The evil consequences of tax avoidance are manifold. First there is substantial loss of much needed public revenue, particularly in a welfare state like ours. Next there is the serious disturbance caused to the economy of the country by the piling up of mountains of blackmoney, directly causing inflation. Then there is "the large hidden loss" to the community (as pointed out by Master Sheatcraft in 18 Modern Law Review 209) by some of the best brains in the country being involved in the perpetual war waged between the tax-avoider and his expert team of advisers, lawyers and accountants on one side and the tax-gatherer and his perhaps not so skilful, advisers on the other side. Then again there is the 'sense of injustice and inequality which tax avoidance arouses in the breasts of those who are unwilling or unable to profit by it'. Last but not the least is the ethics (to be precise, the lack of it) of transferring the burden of tax liability to the shoulders of the guideless good citizens from those of the 'artful dodgers'. It may, indeed, be difficult for lesser mortals to attain the state of mind of Mr. Justice Holmes, who said, "Taxes are what we pay for civilized society. I like to pay taxes. With them I buy civilization." But, surely, it is high time for tho judiciary in India too to part its ways from the principle of Westminister and the alluring logic of tax avoidance. We now live In a welfare state whose financial needs, if backed by the law, have to be respected and met. We must recognise

that there is behind taxation laws as much moral sanction as behind any other welfare legislation and it is a pretence to say that avoidance of taxation is not unethical and that It stands on no less moral plane than honest payment of taxation. In our view, the proper way to construe a taking statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally, or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it. A hint of this approach is to be found in the judgment of Desai, J. in Wood Polymer Ltd. v. Bengal Hotels Limited(1) where the learned judge refused to accord sanction to the amalgamation of companies as it would lead to avoidance of tax.

It is neither fair nor desirable to expect the legislature to intervene and take care of every device and scheme to avoid taxation. It is upto the Court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the existing legislation with the aid of 'emerging' techniques of interpretation as was done in Ramsay, Burma Oil and Dawson, to expose the devices for what they really are and to refuse to give judicial benediction….". The conclusions drawn by the ld. CIT(A) therefore cannot be accepted.

44. Accordingly, we are of the view that the relief allowed by ld. CIT(A) of Rs.50,98,87,154/- qua additions made by the ld. AO is not correct and cannot be sustained. We therefore set-aside the order of the ld. CIT(A) and confirm the additions made by ld. Assessing Officer. Consequently, grounds of appeal nos.4, 5, 7, 8 and 9 raised by the appellant Revenue are allowed.

45. In the result, appeal of the Revenue vide ITA No.5029/Del/2024 are partly allowed.

46. In the result, appeal of the Revenue vide ITA No.5029/Del/2024 and ITA No.5031/Del/2024 are partly allowed and Cross Objection of the assessee vide CO No.42/Del/2025 is dismissed.

Order pronounced in the open court on 09TH January, 2026.

Sd/-	**Sd/-**
[ANUBHAV SHARMA]	**[AMITABH SHUKLA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 09.01.2026

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,