

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

श्री रमेश सी.शर्मा, लेखा सदस्य एवं संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 34, 35, 36 & 37/JP/2020
निर्धारण वर्ष/Assessment Year : 2014-15 to 2017-18

The DCIT Central Circle - 1 Jaipur	बनाम Vs.	Shri Jugal Kishore Garg (Derewala) 27-A, Agrasen Colony, Brahmpuri Road, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABBPG 4020 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by: Shri Ambrish Bedi, CIT- DR
निर्धारिती की ओर से/ Assessee by : Shri S.L. Poddar, Advocate

सुनवाई की तारीख/ Date of Hearing : 28/08/2020
उद्घोषणा की तारीख/Date of Pronouncement: 14 /09/2020

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

These four appeals have been filed by the Revenue against common order of Id.CIT (A)-4, Jaipur dated 07.10.2019 passed under section 143(3) r.w.s. 153C for the Assessment Year 2014-15 to 2016-17 and 143(3) for the Assessment Year 2017-18 of the Income Tax Act, 1961 (in short the "Act"). Due to prevailing COVID-19 pandemic condition, the hearing of the appeals are concluded through video conference.

The Department has raised the following grounds of appeals in the respective Assessment Years.

ITA No. 34/JP/2020 – A.Y. 2014-15

“1. The Id. CIT(A) has erred in law and on facts (independently & severally) in granting relief to the assessee.

2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the transactions found on Cloud Data and deleting the addition of Rs.70,94,000/- made by the AO on account of on money received by the assessee.

2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the fact that the entries pertaining to unaccounted capital and advances were found in the “N Trading” on Cloud Data and thus addition of unexplained unaccounted capital, advances, interest and surplus profit earned were on the basis of incriminating seized data.

3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in giving relief to the assessee on the ground that Manglam Group had owned up the entire in the “N Trading” on Cloud Data before the ISTC. The order of the Hon'ble ISTC has already been challenged in writ before the Hon'ble High Court.

ITA No. 35/JP/2020 – A.Y. 2015-16

“1. The Id. CIT(A) has erred in law and on facts (independently & severally) in granting relief to the assessee.

2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the transactions found on Cloud Data and deleting the addition of Rs. 2,82,97,500/- made by the AO on account of

unaccounted surplus profit earned by the assessee from various projects of Manglam Group.

3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the transactions found on Cloud Data and deleting the addition of Rs. 1,00,00,000/- made by the AO on account of undisclosed interest earned on cash loan/capital.

4. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the fact that the entries pertaining to unaccounted capital and advances were found in the "N Trading" on Cloud Data and thus addition of unexplained unaccounted capital, advances, interest and surplus profit earned were on the basis of incriminating seized data.

5. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in giving relief to the assessee on the ground that Manglam Group had owned up the entire in the "N Trading" on Cloud Data before the ISTC. The order of the Hon'ble ISTC has already been challenged in writ before the Hon'ble High Court.

ITA No. 36/JP/2020 – A.Y. 2016-17

"1. The Id. CIT(A) has erred in law and on facts (independently & severally) in granting relief to the assessee.

2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the transactions found on Cloud Data and deleting the addition of Rs.1,50,00,000/- made by the AO on account of unaccounted capital deployed by the assessee

3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the transactions found on Cloud Data and deleting the addition of Rs. 25,89,900/- made by the AO on account of

unaccounted surplus profit earned by the assessee from various project of Manglam Group.

4. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the transactions found on Cloud Data and deleting the addition of Rs. 14,24,800/- made by the AO on account of undisclosed interest earned on cash loan/capital.

5. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the fact that the entries pertaining to unaccounted capital and advances were found in the "N Trading" on Cloud Data and thus addition of unexplained unaccounted capital, advances, interest and surplus profit earned were on the basis of incriminating seized data.

6. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in giving relief to the assessee on the ground that Manglam Group had owned up the entire in the "N Trading" on Cloud Data before the ISTC. The order of the Hon'ble ISTC has already been challenged in writ before the Hon'ble High Court.

ITA No. 37/JP/2018 – A.Y. 2017-18

"1. The Id. CIT(A) has erred in law and on facts (independently & severally) in granting relief to the assessee.

2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the transactions found on Cloud Data and deleting the addition of Rs.70,94,000/- made by the AO on account of on money received by the assessee.

3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in ignoring the fact that the entries pertaining to unaccounted capital and advances were found in the "N Trading" on Cloud Data and

thus addition of unexplained unaccounted capital, advances, interest and surplus profit earned were on the basis of incriminating seized data.

4. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in giving relief to the assessee on the ground that Manglam Group had owned up the entire in the “N Trading” on Cloud Data before the ISTC. The order of the Hon'ble ISTC has already been challenged in writ before the Hon'ble High Court.”

2.1 First of all, we take up the appeal of the Revenue for the assessment year 2014-15 for adjudication.

3.1 Brief facts of the case are that the assessee is a partner in the firms M/s. J.K. Jewellers (3.3.34% shares), M/s. JK Jewellers International (20% shares), M/s. JK Jewells (50% shares), M/s. Upasand Colonizers (50% shares) , M/s. JK International (33.33% shares), M/s. Neemrana Developers (40% shares) and M/s. Precious Buildcon (50% shares) respectively. The assessee has declared income from house property, capital gain and interest from parties during this year. The original returns were filed as per details as under:-

A.Y.	Date of filing of return u/s 139(1) of the Act	Returned income u/s 139(1) of the Act (Rs.)
2014-15	31-01-2015	6,25,35,780/-
2015-16	29-12-2015	4,95,65,260/-
2017-18	17-10-2016	26,66,73,420/-

A search and seizure action u/s 132(1) of the Act was carried out on 4-11-2016 at the various premises of Manglam Group, Jaipur. Pursuant to this, the AO issued a notice u/s 153C of the Act for Assessment years 2014-15 to 2016-17 respectively to the assessee and in compliance of which the assessee filed his return of income as under:-

A.Y.	Date of filing of return	Returned income u/s 153C of the Act
2014-15	10-10-2018	6,25,35,780/-
2015-16	11-10-2018	4,95,65,260/-
2017-18	11-10-2018	26,66,73,420/-

The assessee filed his return of income on 31-10-2017 for the assessment year 2017-18 declaring total income at Rs. 3,32,32,940/-. Thereafter the AO completed the assessment u/s 143(3) r.w.s. 153C of the Act respectively for all the respective assessment years i.e. 2014-15 to 2017-18 thereby making additions in the respective years.

3.2 Aggrieved by the order of the AO in making the additions, the assessee preferred appeals before the Id. CIT(A) who after considering the case of both the parties partly allowed the appeal of the assessee by observing as under:-

“7.4 Thus on merits too, since the amounts which have been added by the Id. AO have already been subjected

to tax in the hands of MBDL and related entities. The Id. AO is directed to delete the additions made in the various A.Yr. in short the relief is granted to the appellant on the following additions.

Ground of appeal	A.Y. 2014-15	A.Y. 2015-16	A.Y. 2016-17	A.Y.2017-18
Unaccounted capital employed	10,34,68,000		1,50,00,000	
Surplus profit	2,46,25,600	2,82,97,500	25,89,900	
Interest earned on capital employed	85,00,000	1,00,00,000	14,224,800	
On money received				70,94,000

3.3 Against the order of the Id. CIT(A), the Revenue preferred respective appeals before us for the assessment years 2014-15 to 2017-18.

3.4 Now we take up the grounds of appeal of the Revenue for the assessment year 2014-15 as mentioned above to adjudicate.

3.5 The grounds raised by the Revenue are interrelated and interconnected and relate to challenging the orders of the Id. CIT(A) in deleting the addition.

3.6 The Id. DR appearing on behalf of the Revenue supported the order of the AO and submitted that the Id. CIT(A) was not justified in deleting the additions made by the AO on account of on money received

by the assessee . It was submitted that the ld. CIT(A) ignored the transactions found on Cloud Data and also ignored the facts that entries relating to unaccounted capital and advances were found in the N Trading Company cloud data and thus the addition of unexplained, unaccounted capital advance, interest and surplus profit earned were on the basis of incriminating seized data. The ld. DR also submitted that the ld. CIT(A) was not justified in giving relief to the assessee on the ground that Manglam Group had owned up the entire in the “N Trading” on cloud data before the Hon'ble ITSC particularly when the order of the Hon'ble ITSC has already been challenged in Writ before the Hon'ble High Court.

3.7 On the other hand, the ld. AR reiterated the same arguments as were raised by him before the ld. CIT(A) and also relied on the order passed by the ld. CIT(A).

3.8 We have heard the ld.counsel for both the parties, we have also perused the materials placed on record, deliberated upon the judgement cited by both the parties as well as the orders passed by the Revenue authorities. From the facts of the present case, we noticed that the assessee is a partner in different firms and details of which have already been submitted in preceding paragraphs of this appeal. The assessee had

declared the income from house property, capital gains and interest from the respective parties during the year under consideration and original return for the assessment year 2014-15 was filed u/s 139(1) of the Act on 31-01-2015 at Rs. 6,25,35,780/-. A search and seizure operation was carried out on 4-11-2016 at the various premises of M/s. Mangalam Group, Jaipur and pursuant to this the AO issued notice u/s 153C of the Act for the assessment years 2014-15 to 2016-17 to the assessee. In compliance of the notice, the assessee has filed his return of income which has been tabulated in preceding paragraph of this appeal. The assessee has also filed his return of income on 30-10-2017 for the assessment year 2017-18 declaring total income at Rs. 3,32,32,940/-. Thereafter, the AO completed the assessment u/s 143(3) read with Section 153C of the Act for the respective assessment years 2014-15 to 2017-18 as per the following total income tabulated as under:-

AY	Dated	Assessed income (Rs.)	Addition made by the AO
2014-15	28.12.2018	20,21,48,150/-	(i) Addition of Rs. 10,34,68,000/- u/s 69 of the Act on account of alleged undisclosed capital employed by the appellant in various projects of Manglam Group on the basis of cloud data. (ii) Addition of Rs. 2,46,25,600/- on account of surplus share profit in projects of Manglam Group on the basis of cloud data. (iii) Addition of Rs. 85,00,000/- on account of interest earned on the basis of cloud data.

2015-16	28.12.2018	8,78,62,760/-	(i) Addition of Rs. 2,82,97,500/- on account of surplus share profit in projects of Manglam Group on the basis of cloud data. (ii) Addition of Rs. 1,00,00,000/- on account of surplus interest from Manglam Group on the basis of cloud data.
2016-17	28.12.2018	28,56,88,120/-	(i) Addition of Rs. 1,50,00,000/- u/s 69 of the Act on account of alleged undisclosed capital in cash employed by the assessee in various projects of Manglam Group on the basis of cloud data. (ii) Addition of Rs. 25,89,900/- on account of surplus share profit in projects received in cash from Manglam Group on the basis of cloud data. (iii) Addition of Rs. 14,24,800/- on account of surplus interest from Manglam Group on the basis of cloud data.
2017-18	28.12.2018	4,04,51,940/-	Addition of Rs. 70,94,000/- on account of on-money received against booking of flats on the basis of cloud data of the person who owned that these transactions are only his transactions and paid tax and offered the transactions in

3.9 Before proceeding further in this case, we have also gone through the written submissions filed by the assessee before the Id. CIT(A) which is contained in para 4 and 4.2 of his order and the same is reproduced herebelow.

“Appellant's Submission

4. During the course of appellate proceedings separate identical written submissions for four AYs were made and for the sake of convenience the main portion of one of the submissions for AY 2014-15 is reproduced herein as under

Ground No. 1 -

Under the facts and circumstances of the case the Assessing Officer has erred in passing the order u/s 143(3)/153C of the Income Tax Act, 1961 which is void ab-initio and deserves to be quashed as there was no incriminating document found related to the assessee and no satisfaction was recorded before issue of notice u/s 153C of the Income Tax Act, 1961.

1. Facts of the case: -

A search and seizure operations were carried out at the business premises of Manglam Group on 09.11.2016. During the course of search various files, documents and papers and books of accounts were seized and some cloud data was also recovered. In the cloud data books of accounts of M/s N. Trading Company was found. In the cloud data of M/s N. Trading Company recovered from the office of the Manglam Group, all the transactions found in this cloud data regarding cash loan/transactions was owned up by Shri N.K. Gupta and stated that name mentioned in the data is imaginary and Manglam Group has not taken any cash loan from any person or repaid to any person as mentioned in the cloud data. They also said that these were their own affairs and to show it as to other partners they have made entries in false name and fictitious entities in cloud data.

During the course of search the statement recorded u/s 132(4) of the Income Tax Act 1961 on 09.11.2016 of Shri N.K. Gupta (Director and Key-person of Manglam Group) in reply to question no. 117 page 62 clearly stated that all the transactions of loan receipts and payments are transaction of MBDL and not related to other parties including the assessee and these are their own transactions as reproduced in assessment order in reply to question no. 117 to 119. The assessee also submitted affidavit of Shri N.K. Gupta in this regard to the learned AO that no cash loan/transaction with Shri Jugal Kishore Garg (Derewala) during the financial year 2010-11 to 2016-17 was undertaken by him or Manglam Group. The learned AO has rejected this affidavit without examining the contents of the affidavit or without making any enquiry from the person who has furnished this affidavit. The learned AO did not bring any material on record to controvert the facts stated in the affidavit and completed the assessment u/s 153C of the IT Act, 1961 by making such a huge additions which is void ab-initio deserves to be quashed. The assessee is further assailed the action of the learned AO in passing the assessment u/s 153C as under: -

2. Wrong and irrelevant satisfaction recorded or not recorded by the learned AO —

As mentioned in the assessment order that the search proceedings were contemplated and carried out in the case of Manglam Group. However the investigation wing suspected and had apprehension that the Manglam Group was having transactions with Jugal Kishore Garg and the same recorded in cloud data. Hence the action u/s 153C was

taken in the assessee's case. The assessee has denied the transactions with ManIgam Group appearing in cloud data. He has not made any cash transaction with Manglam Group. Thus there is no material for recording the satisfaction note with the investigation wing as well as the learned AO. The learned AO was incorrect to this extent because they did not even match the recorded transaction with the books of the accounts of the assessee. It is not the case of the revenue that part of the transactions are recorded in the books of assessee as well as in the books of Manglam Group and part of the transactions are recorded in the books of both. Thereafter the satisfaction can be recorded which is totally absent in the case. It is submitted that in the aforesaid circumstances the action taken u/s 153C in the assessee's case was taken wrongly and without any legal basis. The same was not supported by any document or any other material or statement that the transactions recorded in cloud data related to the assessee. The Manglam Group also did not turn out to be accepted as the transaction of the assessee. Thus to this extent the action of the investigation wing as well as the learned AO was vitiated and the action taken u/s 153C in the assessee's case was without a proper satisfaction and was illegal and unlawful. In view of this the assessment completed in wake of incomplete satisfaction deserves to be quashed.

In spite of repeated requests of the assessee the learned AO has not provided the copy of satisfaction note for issuance of notice u/s 153C of the Income Tax Act 1961. Therefore the whole proceedings are void ab-initio.

The following case laws are quoted in support —

(i) 289 ITR 341 (SC) Manish Maheshwari vs. CIT.

AO. in the assessment order at para 5 has observed that proper satisfaction has been recorded for issue of notice u/s 153C of I.T. Act 1961. AO. has not provided copy of satisfaction for issue of notice u/s 153C in the course of assessment proceedings. No incriminating documents were found in the course of search at the premises of M/s Artefact Projects Ltd. Observation of AO. that notice has been issued pursuant to incriminating evidences found during the course of search at M/s. Artefact Projects Ltd. is factually incorrect. Consequent satisfaction as well as issue of notice u/s 153C of I.T. Act 1961 is not in accordance with law.

(ii) CIT vs. Shetty Pharmaceuticals & Biological Ltd. 232 Taxman (Andhra Pradesh H.C.)

In this case it was held that section 153C and 153A mandates recording of satisfaction of the Assessing Officer(s) is a pre-condition for invoking jurisdiction and it is not a mere formality because recording of satisfaction postulates application of mind

consciously as the documents seized must be belonging to the any other person other than the person referred to in Section 153-A of the Act. It is contended that the same Assessing Officer is involved in the matter. This fact does not dispense with above requirement. It is settled position of law that when a thing is to be done in one particular manner under law this has to be done in that manner alone and not other way (See Nazir Ahmed v. King Emperor). We think the learned Tribunal has correctly followed the principle. We do not find any element of law to be decided.

(iii) Zaidun Leenq Sdn Bhd Artefact Projects Ltd. (JV) Vs DOT (ITAT Nagpur) Appeal Number :I.T.A. Nos. 382 & 383/Nag/2014 dated 22nd day of March, 2017. Assessment U/s. 153C liable to be quashed if No proper satisfaction recorded by AOPCIT Vs N.S. Software (Firm) (Delhi High Court) Appeal Number : ITA 791/2017 Date of udgement/Order : 18/04/2018

It is now a settled proposition of law that even if AO for the person from whose premises documents were seized is the same as the AO for the person to whom document belonged, separate satisfaction notes must be recorded. In the instant case, the AO's note nowhere reflected whether any document seized, on application of his mind, disclosed that it belonged to the assessee, and if so, its prima facie nature. Therefore, proceedings under section 153C were void ab initio.

(V) INGRAM MICRO (INDIA) EXPORTS PVT. LTD VS. DDIT (ITAT MUMBAI)

S. 153C search assessment is void if AO's satisfaction not recorded- A search & seizure action u/s 132(1) was carried out in the case of Ingram Micro India Pvt. Ltd. As certain documents were found which allegedly showed that the assessee (a Singapore compnay) was not paying tax in India though it had a PE, an assessment u/s 153C was made to bring such profits to tax. The assessee challenged the s. 153C assessment on the ground that the AO who had conducted the search had not recorded satisfaction that any income belonged to the assessee. HELD by the Tribunal:

U/s 153A & 153C, proceedings can be initiated only after the AO comes to the satisfaction that the seized material pertains to a person other than the searched party and comes to the conclusion that proceedings are required to be initiated in the other party's case. In Manish Maheshwari 289 ITR 341 (SC), it was held in the context of s. 158 BD that the recording of satisfaction by the AO that any undisclosed income belongs to any person, other than the person searched, is a "condition precedent" and that a notice issued without recording satisfaction and application of mind was a nullity. This principle has been applied to s. 153C in SSP Aviation 207 Taxman 260 (Delhi) & P. Satyanarayana (ITAT Chennai). On facts, as the

Department was not able to produce any material to show that the AO assessing the searched party had reached the satisfaction that any income belonged to the assessee, the assessment had to be annulled.

(v) Other decisions-

1) (2015) 155 ITO 0501 (Delhi) CIT vs. Satkar Roadlines Pvt. Ltd.]

ii) (2015) 232 Taxman 0268 (AP) CIT vs. Shettys Pharmaceuticals & Biological Ltd.

iii) Hon'ble Madhya Pradesh High Court order in ITA No. 44/2011 in the case of M/s. Mechmen vide order dated 10/10/2015.

iv) (2014) 365 1TR 0411 (All) CIT vs. Gopi Apartment

v) Hon'ble Bombay High Court in ITA No.1337 of 2013 in the case of M/s. Ingram Micro (India) Exports Pte. Ltd. vide order dated 29/04/2015

vi) Hon'ble Delhi High Court in ITA 422/2015 in the case of Nikki Drugs & Chemicals Pvt. Ltd. Vide order dated 03/12/2015.

vii) ITA No.254 of 2014 Judgement (per Hon'ble the Chief Justice Shri Kalyan Jyoti Sengupta)

viii) ITAT order in ITA 4228/De1/2011 in the case of M/s. Shield Home Pvt. Ltd. vide order dated 24/02/2016

3. Action u/s 153C unwarranted —

It is submitted that the assessment has been completed by the Learned Assessing Officer u/s 153C. Absolutely no material i.e. books of accounts documents or any other asset pertaining to the Assessment Year 2014-15 to 2017-18 was found during the course of search at Manglam Group. There was absolutely no ground for reopening the assessment it is now settled position of law that resort to provisions of section 153C is not mechanical. Such action is warranted with reference to material found during the course of search and should be directly related to the assessee. If no incriminating material is found pertaining to a particular assessment in that no action is required for reopening the same either u/s 153A or u/s 153C. The following case laws are quoted in support—

(i) Sinhad Technical Education Society Vs. ACT (2011) 57 DTR 241

Search and seizure — Assessment u/s 153C — Absence of incriminating material — Where no Assessment Year specific incriminating material or document is found, assessment of such Assessment Year cannot be disturbed by invoking the provisions of section 153C.

(ii) LMJ International Ltd. Vs. DCIT (2008) 14 DTR 540 (Kol Trib)

Where nothing incriminating is found in the course of search relating to any Assessment Year, the assessment of such years cannot be disturbed. Items of regular assessment cannot be added back in the proceeding u/s 153C when no incriminating documents were found in respect of the disallowed amount in the search proceedings.

(ii) ACTT Vs. Gambhir Silk Mills (2010) 6 ITR 376 (Ahm. Trib)

In the present case, it is seen that when the search was conducted at the premises of Shri Subhash Gambhir, no amount of money, bullion, jewellery or other valuable article or thing or books of account or documents seized belonged to the present assessee. Nothing is handed over to the AO having jurisdiction over the present assessee. No such valuable article or thing or any books of account or documents have been referred even in the assessment order for framing assessment under S. 153C of the IT Act, 1961. Since for all these years, the returns were originally filed and processed and since no additional material is found pertaining to the assessee, which is held to be belonging to the assessee the AO does not assume jurisdiction for framing assessment under S. 153C r.w.s. 153A of the IT Act, 1961. We therefore, cancel all the assessments made for all these years. Since we have cancelled the assessments, we do not propose to deal with grounds raised by the Revenue in appeals and ground raised by the assessee in cross-objections on the merits.

Ground No. 2, 3 & 4 -

2. Under the facts and circumstances of the case the Assessing Officer has erred in making the addition of Rs. 10,34,68,000/ u/s 69 of the Income Tax Act, 1961 on account of alleged undisclosed capital employed by the assessee in various projects of Manglam Group on the basis of cloud data of the person who owned that these transactions are only his transactions and paid tax and offered the transactions in settlement.

3. Under the facts and circumstances of the case the Assessing Officer has erred in making the addition of Rs. 2,46,25,600/ on account of surplus share profits in projects of Manglam Group on the basis of cloud data of the person who owned that these transactions are only his transactions and paid tax and offered the transactions in settlement.

4. Under the facts and circumstances of the case the Assessing Officer has erred in making the addition of Rs. 85,00,000/- on account of interest earned on the basis of cloud data of the person who owned that these transactions are only his transactions and paid tax and offered the transactions in settlement.

1. Facts of the case: -

A search and seizure operations were carried out at the business premises of Manglam Group on 09.11.2016. During the course of search various files, documents and papers and books of accounts were seized and some cloud data was also recovered. In the cloud data books of accounts of M/s N. Trading Company was found. In the cloud data of M/s N. Trading Company recovered from Manglam Group, all the transactions regarding cash loan was owned up by Shri N.K. Gupta and stated that name mentioned in the data is imaginary and Manglam Group has not taken any cash loan from any person or repaid to any person as mentioned in the cloud data.

*The learned AO has not considered the statement given by Shri N.K. Gupta and has worked out the addition on the basis of a ledger account of N. Trading Company found in cloud data of Manglam Group. The copy of ledger account is appearing in the assessment order on page no. 6 and 7. The same is scanned as under: - **These details are available at pages 10 and 11 of the Id. CIT(A)'s order.....***

The learned AO has come to the conclusion after worked out the addition on the basis of above table that it can be noticed that capital investment in cash was made during the F.Y. 2013-14 is the amount shown as cash received on 01.04.2013 which is Rs. 10,34,69,000/-. The assessee has made unaccounted, out of books capital investment in various projects like the Ganpati Township and Shree Krishna Construction. Interest is credited on three dates and surplus is also credited in some of the projects where Sh. Jugal Kishore Derewala is partner and has deployed his unaccounted capitol in cash. After decoding of the figures, the total cash funds deployed/credited ore found to be as under:

Sr.No.	Particulars	Amount
1	Capital - cash on 01.04.13	103468000
2	Interest credited on various dates	8500000
3	Surplus in various projects	24625600
	Total	136593600

And the above addition has been added to the income of the assessee on assumption and presumption that these transactions are pertained to the assessee.

The assessee has submitted his reply during the course of assessment proceedings which is quoted as under: -

- 1. "That in the show cause notice you have mentioned that on the basis of the seized material you are associated with M/s MBDL. In this regard you are requested to provide the copy of material or detail on the basis of which you have noticed that we are associated with MBDL.*
- 2. Further you have reproduced the ledger account in the books of N. Trading Company in the name of DJK. In this regard we would like to submit that we have not made any transactions with N. Trading Company and we are not DJK. How you have identified that the ledger account of DX is ours. You are requested to provide us the basis or material or any evidence by which you have identified that DJK is Jugal Kishore Garg because we have no connection or transactions with N. Trading Company.*
- 3. That the transactions recorded in the ledger account of N. Trading Company in the name of DJK are not relevant to us, hence we cannot offer any explanation for the same. We are not concerned with the opening balance as well as transactions during the year. We are enclosing herewith copy of affidavit of Shri N.K. Gupta of Manglam Group as well as copy of affidavit of the assessee for the fact that the transaction recorded in N. Trading Company are not related to us and Shri N.K. Gupta has also stated in his affidavit that these transactions are not related to Shri Jugal Kishore Garg or Jugal Kishore Derewala. Therefore there is no question of any relevance or any reason to relate these transactions with the assessee.*
- 4. That if the above transactions given in your show cause notice are not relevant to assessee. The person from whom possession these*

documents/material/soft data in the form of Hard Disk and other electronic storage devices were found has also given the statement and affidavit that these transactions are not related to assessee and he has considered these transactions in the application filed before settlement commission. Therefore no addition can be made on this account. "

But the learned AO has not considered the submission of the assessee. The addition made by the learned AO has not based on any documentary evidence. Shri,N.K. Gupta has also stated in his statement that he has surrendered this amount before the Income Tax Authorities and before the ITSC for purchase of peace of mind and avoid further litigation. In spite of repeated requests by the assessee the learned AO did not provide the copy of cloud data, copy of statement or other material on the basis of which learned AO has identified that the entries are related to the assessee. But he did not provide and also given any cross examination of Shri N.K. Gupta from where the actual truth can be find out. Therefore the addition was made without any leg to stand. The addition is further assailed as under: -

3. Addition cannot be without giving cross examination opportunity to the assessee The Learned Assessing Officer has made the addition on the basis of statement recorded of Shri N.K. Gupta. The assessee has requested during the assessment proceedings that an opportunity for cross examination of Shri N.K. Gupta is allowed to the assessee. But the Learned Assessing Officer has not allowed any opportunity to the assessee for cross examination of Shri N.K. Gupta. The Apex Court of the country has also held that \allowing cross examination is a serious flaw and makes the order nullity. The following case laws are quoted in support: -N The Apex Court has observed that not allowing cross examination is a serious flaw and makes the order nullity. Andman Timber Ind. Vs. Commission of Central Excise (2015) 281 CTR 211 (SC). "not allowing the assessee to cross examine the witness by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order, is a serious flaw which makes the order nullity in as much as it amounted to violation of principle of natural justice because of which the assessee was adversely affected.

(ii) COMMISSIONER OF INCOME TAX vs. BIJU PATNAIK HIGH COURT OF ORISSA 190 ITR0396 Although answers can be recorded either in favour of the Department or against it, ultimately each answer would again become inconclusive on account of the final findings of fact of the Tribunal that ITO has not given reasonable opportunity to the assessee to rebut the statements recorded ex parte under s. 131 of the Act and to furnish explanation to some of the materials. It is true that Tribunal has not given due weight to the relevant and admissible evidence while recording the findings of fact. However, the findings of the Tribunal on such fact are also vulnerable as they may require reconsideration. If answers in respect of each of the questions are indicated in the absence of reasonable opportunity being afforded to the assessee, they would be of academic interest inasmuch as the answers against the assessee would become vulnerable on account of the need to undo the absence or reasonable opportunity. A clear and conclusive finding binding on the parties can be given only after reasonable opportunity is given to the

assessee as found by the Tribunal. No answer should be given in advisory jurisdiction which would not finally decide the issue since final finding can be arrived at only after giving reasonable opportunity to the assessee and explanation given by the assessee would have material bearing on the finding. It is necessary that the Assessing Officer gives opportunity to the assessee. Tribunal has not considered the evidence in its proper perspective while rendering the decision in appeal and accordingly, the findings of the Tribunal are vitiated in law. As the final fact-finding forum, the Tribunal has to consider the same again. Since Tribunal has recorded a finding that reasonable opportunity has not been given to the assessee to give rebuttal evidence and explanation, this can effectively be done by the Assessing Officer. The reference applications are disposed of as above leaving it to the Tribunal to pass consequential orders.

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

(iii) Assessment—Validity—Opportunity of being heard vis-a-vis statements of third party—Unaccounted silver ornaments and utensils were found and seized during the search at the assessee's premises—Assessee explained that the said silver items were purchased from one R & Co.—AO made addition to the income of the assessee after recording the statement of M, proprietor of R & Co., behind the back of the assessee—Not justified—AO has heavily relied upon the statement of M and has ignored the subsequent affidavit filed by M which is in variance of his original statement—Since the statement of M was used against the assessee and an affidavit was filed controverting the same, it was obligatory on the part of the AO to allow the prayer of assessee for cross-examination of M—AO having not summoned M U.s 131 inspite of the request of the assessee, evidence of M could not have used against the assessee- Therefore the assessment order is vitiated.

(iv) HEIRS AND LRS OF LATE LAXMANBHA1 S. PATEL vs. COMMISSIONER OF INCOME TAX (HIGH COURT OF GUJARAT) (2010) 3271TR 0290

Opportunity of being heard—During search of one R, key of bank locker along with two packets containing six promissory notes were recovered—Out of those six promissory notes, one was in the sum of Rs. 8,78,358 executed by one K in the capacity of partner of firm DCI—In his statement recorded during search, R stated that the key of locker and the two envelopes were handed over to him by the assessee—K also admitted in his statement recorded on the same day at 2.00 AM midnight that he had executed the pronote and signed it on behalf of DCI after obtaining a sum of Rs. 8,78,358—Later, K filed an affidavit that his statement was recorded at late hours in the night under coercion and pressure—Subsequently, K along with two other partners of DCI, made a voluntary disclosure of a sum of Rs. 11 lacs including the amount of Rs. 8,78,358 and same was assessed in the hands of the three partners—Relying on the statement of R and the retracted statement of K, AO made addition of Rs. 8,78,358 under s. 68 in the hands of assessee also and the same was confirmed by OT(A) and

Tribunal—Not justified—Apparently, there was a violation of principles of natural justice as the statement of one of the important witnesses, namely, R on which heavy reliance was placed by the AO is neither referred to in the assessment order nor copy thereof was given to the assessee nor the assessee was given an opportunity of cross-examining the said R—Authorities could not be absolved from doing so on the ground that the facts stated by R were admitted by the assessee—K had not only retracted his earlier statement but also made a voluntary disclosure, along with two other partners of DCI, in the sum of Rs. 11 lacs which included the amount of pronote of Rs. 8,78,358—Legal effect of the statement recorded behind the back of the assessee and without furnishing the copy thereof to the assessee or without giving an opportunity of cross-examination, is that if the addition is made, the same is required to be deleted on the ground of violation of the principles of natural justice—Orders of all the three authorities set aside and addition deleted.

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

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

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

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

(i) Basant Lal & Co. vs. CIT 451TR 206 (SC).

4. Principles of natural justice has been violated: -

The Learned Assessing Officer has made the addition without providing the copy of material and other records. He also did not provide the opportunity for cross examination to the assessee of Shri N.K. Gupta. Shri N.K. Gupta has specified denied by submitting an affidavit that these transactions are not related to the assessee Shri Jugal Kishore Garg. The action of the Learned Assessing Officer is against the established principles of natural justice. If the Learned Assessing Officer had provided opportunity to the assessee, the assessee could have placed his defense before him and would have given the contrary evidence in defense. The following case laws are quoted in support: -

(i) Garai Din Jwala Prasad Vs. CIT (1974) 96ITR 97 (All)

Principles of natural justice are applicable —The principals of natural justice are applicable to assessment proceedings. The elementary principle of natural justice is that the assessee should have knowledge of the material which is going to be used against him so that he may be able to meet it.

(i) Munna Lal Murlidhar Vs CIT (1971) 79 ITR 540 (All)

The principle of natural justice involve a right in the assessee to inspect the reports and obtain the substance of the all relevant documents such as statements, orders, reports etc. so as to be able to lead evidence in rebuttal or to cross examine witness who have given evidence against him. It also means that the assessee should be given a reasonable time and opportunity to produce such evidence as he may consider necessary.

(i) Tin Box Co. Vs. CIT (2001) 115 Taxman 491 (SC)

Where the tribunal had recorded that if agreed with the assessee's submission that the ITO had not given to the assessee proper opportunity of being heard, the tribunal would not be justified in not setting aside the assessment order and remanding the matter to the assessing authority for fresh consideration after giving opportunity of hearing to the assessee.

(i) In the following it was held that the Assessing Officer can make enquiries to gather material privately and confidentially. He can also summon witnesses and record their statement in the presence of the assessee or even behind his back. However the substance of any information sought to be used against the assessee, should be put to him and he should have fare opportunity. It is upto the assessee to avail of it, constant with the principal of natural justice, to rebut the same.

(a) Chiranji Lal Steel Rolling Mills Vs. CIT (1972) 84 ITR 222 (P&H)

(b) Namasivayam Chettiar (S.N.) Vs. CIT (1960) 38 ITR 579 (SC)

(c) Abdul Razak Vs. CIT (1935) 3 ITR 361 (Pat)

(d) Balasubramanian (P.N.) Vs. ITO (1978) 112 ITR 512 (AP)

(e) Bagisu Devi Bafna Vs. CIT (1966) 62 ITR 506 (Cal)

(f) Cashmir Vastralaya Vs. CIT (1978) 112 ITR 630 (Pat)

5. Addition cannot be made on the basis of statement of a third party:

-

It is a case where the addition has been made only on the basis of statement of Shri N.K. Gupta Director and key-person of Manglam Group. The assessee further cites the following case laws justifying that the additions cannot be made on the basis of papers seized from third party without linking the same with the assessee with proper evidence: -

(i) CIT vs. Kalyan Sundram (2007) 294 ITR 94 (SC)

No addition can be made where no enquiry is made and no evidence is found during search except the conflicting statement of the third party.

ACTT Vs. Prabhat Oil Mills 52 TTJ 533 (Ahm)

Entries in the diary seized from the premises of third party were not sufficient to make addition in the hands of the assessee. The Assessing Officer was required to bring on record corroborative material.

(iii) Associated Stone Industries (Kotah) Ltd Vs. Dy. Deputy Commissioner of Income Tax 68 ITD 312 (Jaipur)

Addition could not be made in the hands of assessee company on the basis of contents of a diary on an employee.

(iii) Amariit Singh Bakshi HUF vs. Assistant Commissioner of Income Tax (2003) 263 ITR 75 (Del)

No addition can be made on the basis of notings on documents found during search at third party place, when assessee was not given any opportunity for cross examination.

(iii) PS. Venkateshan Vs. Assistant Commissioner of Income Tax 74 ITD 298 (Cal)

Addition could not be made in the hands of the assessee on the basis of statement given by third person without giving opportunity for cross examination.

(iii) Sunil Aqawral vs. Assistant Commissioner of Income Tax 83 ITD 1 (Del)

It was held that addition to income could not have been made by the Assessing Officer without confronting the assessee with statement of third party which were adverse to assessee.

(i) Jai Kumar Join Vs. Asstt. Commissioner of Income Tax (2007) 11 SOT (Jaipur) (URO).

No addition can be made on the basis of documents found from third party in the absence of corroborative evidence.

Chuharmal Vs. Commissioner of Income Tax 172 250 I 38 Taxman 190 (SC).

The revenue would not be justified in resting its case on the loose papers, diary and documents found from third party.

(ix) Prarthana Construction (P) Ltd. Vs. Deputy Commissioner Of Income Tax (2001) 118 Taxman 112 (IT AT- Ahmedabad) (Mag)

It has been held that loose papers and documents seized from premises of third parties and statement recorded at back of assessee without it being afforded opportunity to interrogate said documents and without bringing on record any supporting evidence, could not be made basis for adding undisclosed income in hands of assessee

(ix) Additional Commissioner of Income Tax Vs. Miss Lata Mangeshkar (1974) ITR 696 (Mumbai)

It has been held that on appreciation of evidence on record, that entries in the ledger of a firm (third party) did not represent assessee's income from undisclosed sources, was *finding of the fact not giving rise to any referable question of law.*

(xi) CIT Vs. SMC Share Broker Ltd. 288 ITR 345 :- It was held that in absence of witness being made available for cross examination, his statement could not be relied upon to the detriment of the assessee. Tribunal was justified in setting aside block assessment.

(i) CIT Vs. S M Aqqarwal 293 ITR 43

It was held that statement made by the assessee's daughter, cannot be said to be relevant or admissible evidence against the assessee, since the assessee was not given any opportunity to cross examine her and even from the statement, no conclusion can be drawn that the entries made on the relevant page belongs to the assessee and represents his undisclosed income.

6. Conclusion -

In view of the above facts and circumstances of the case your honor is requested to delete the addition made by the learned AO.

4.2 Latter on, A/R of the appellant has submitted further submission which are reproduced here in as under:

Additional submission:-

In constitution of our earlier submission in this regard we would like to submit as under:

1. That as per the tally data of N trading company found in the cloud data during the course of search of MBDL Group. All the entries related to loans and capital were accepted by Manglam Group before the settlement commission and the settlement commission has also accepted the stand taken by Manglam Group. It is in the settlement order on page no. 121 in para 7.2 where in the order of settlement the submission of the applicant's reply in rule 9A report was reproduced and it has been accepted that DKJ being the partner of the group and all the transaction in his capital account has been considered in the peak working statement and the peak of the same has been offered as income of the appellant.
2. In para 2.2 the peak statement prepared by the group Manglam Group has been explained. On page 141 of the settlement order in para 2.5 it has been mentioned that the Pr CIT has accepted the correctness of peak working and on page 143 in para 7.3 the verification report dated 06.02.2019 was accepted. In para 7.4 verification report dated 18.02.2019 was discussed and finally the commission finding is on page no. 149 in para 7.7 the same has been accepted.''

3.10 After meticulously going through the facts of the case and submissions of the parties at length, we found that the transaction recorded in the cloud data of N Trading was owned up by the main person of the company MBDL with regard to the transactions like transactions under the heading of unsecured loans (receipt and payment) and consequent interest payment thereof. We have also gone through the order of the Hon'ble Settlement Commission dated 16-05-2019 passed in the case of MBDL and have also gone through the statement of Shri N.K. Gupta, main person of MBDL group wherein we found that M/s. Mangalam Builder & Developer Ltd.(MBDL) had already owned up all

the data found in cloud as belonging to them. On the basis of the same, it filed settlement petition before Settlement Commission on 28.03.2018. As per the petition filed by MBDL before the Hon'ble Settlement Commission the 'peak deposit' of unaccounted Capital introduced, loans and advances and interest paid and received was considered for computing the income. Accordingly income of Rs.15.10 cr. was offered on the basis of cloud data of N. Trading Company. The same is accepted by the Settlement Commission at page 151 of the order dated 16.05.2019. The relevant extract of the final order wherein this issue is discussed is reproduced as under:-

“Para I of Page. 137-138 of the Hon'ble Settlement Commission order

"UNACCOUNTED CASH LOANS - CHAPTER VII OF THE RULE 9 REPORT: (page no. 128-180 of the Report):-As offered by the Applicants: Cash Peak Of Cash Loans And Capital Transactions: Rs.15,10,77,500/- .As was the case with the capital introduction by the partners, in the Data found in tally P1 and P2 and also in the seized cash book, all seized pursuant to search, there were found recorded entries with regard to cash loans introduced in the business shown to have been received from various persons directly as well as through certain finance brokers. Repayment of the said loans along with interest on the same was also all found recorded in the Tally data. The line of business of the Applicant group, as has been discussed earlier, was such that required huge sums of cash. For purposes of the said, huge sums of unsecured loans in cash were thus taken from the market to meet the requirements and as cash was generated from booking of flats/units/plots, the said loans were periodically repaid. Interest on the loans all in cash, were also paid. In the search conducted, in the seized data, all such complete recordings of loan received, repaid and interest paid was all found. However, during the course of the search itself, since these entries could not be explained by filing confirmation of parties, these cash loans were accepted to be the undisclosed income of the Applicant group in order to buy peace. Thus based on the above, therefore, to determine the net funds generated in business, peak of the loan accounts (including the capital cash entries)

was worked out. It was the contention of the Applicant that the loan introductions/repayment and the capital introduction/withdrawals all represented inflow/ outflow of funds in the business and thus in the spirit of settlement, the peak of the same was offered as the undisclosed income of the Applicant group. In the working of such peak, the following cash entries relating to loans were considered: (the peak working is enclosed at pages 422-439 of the P/B).

- *Receipt of unsecured loans.*
- *Repayment of unsecured loans.*
- *Interest paid or received on cash loans. The same being settled in cash, the same is included in the peak calculations.*

Thus based on the above, the peak of the cash transactions was arrived at Rs. 15,10,77,6001 and the same, being the business income of the Group was thus offered as the Additional income of the group."

Para 2.5 Page No. 141 of the Hon'ble Settlement Commission order

"Thus, based on the above, the Applicant, in the event of loan confirmations being not readily available, in the spirit of settlement, has considered all these loan transaction as his own transaction. In the tally data both receipt of loan as well as repayment of loan is recorded. The loans raised from one party is utilised in the business activities of the group and out of such business receipts or further loan raised, repayment is made of the earlier loan."

Para 7.7 (Findings of the Commission) Page No. 151 of the Hon'ble Settlement Commission order

"The Commission has considered the submissions made by both parties. After going through the facts of the case the commission finds merit in the contention of the applicants that in computation of Peak the debit entries must also be considered. The contention of the Pr. CIT that the applicants are not entitled for any benefit of debit entries in calculation of peak values does not hold ground. The position of the Applicants get further force from the fact that the entries based on which applicants have computed the Peak value, are recorded in the data found in search and seizure.

Based on the above the contention of the applicants on the quantum of the peak as offered as undisclosed income of Rs. 15,10,77,600/- is hereby accepted."

3.11 In respect of surplus, the Id. CIT(A) observed that it may point out that as per the petition filed by MBDL before the Hon'ble Settlement Commission the 'on money' of received by the Group on its various projects was considered for computing the income. In its admissions made before the Hon'ble Settlement Commission, MBDL has explained the nature of such 'surplus' which was credited to the partner's accounts. In fact the same represent 'on money'. Accordingly income of Rs.80.07 cr. (Rs.72.33 cr. + Rs.7.75 cr.) was offered on the basis of cloud data of N. Trading Company. The same is accepted by the Hon'ble Settlement Commission at page 57 of the order dated 16.05.2019. The relevant extract of the final order wherein this issue is discussed is reproduced as under:-

Para 21.2 of Page. 11 of the Hon'ble Settlement Commission order

21.2 Amount of Settled Booking Advances in Tally Data

The Applicant Group received booking advances from its various customers in various projects in cash, which got "settled" when the entire 'on-money' due from the customer was received. In the tally data, such receipts have been distributed in capital account directly with account description 'surplus'. The nature of these booking advances was identical to unsettled booking advances as explained above, however, in

such cases, no money remained further due from customers as far as 'cash component' was concerned, though, projects remains yet to be delivered to the customer. In the Tally Data, the said information is available with account head 'Surplus' for various schemes like "Surplus Ananda", 'Surplus Ajmer Road, 'SurplusVaishali Estate'. All such bookings are termed as Settled bookings for ready reference since in such cases, cash component has already been received/settled with customers. These advance bookings are also not revenue of the year of receipt, however, to determine overall profitability/cash profit, the said amount has been considered as 'revenue' in computation of additional income. The total of such Settled Booking received in cash as available in Tally data comes at Rs.382.89 Crores. Thus in total there has been receipt of booking advances in cash ('on money') of Rs. 684 Crore (301.11 cr. + 382.89 cr.), which is treated as revenue for the purpose of offer of additional income though the same is amount representing liability of the Applicant(s) is given in Enclosure1.

Para 6.4 of page. 33 of the Hon'ble Settlement commissioner order

- *In the Tally Data, on the date on which the on money was all settled, the earlier cash receipts against "booking advances" were all deleted and on the said date of final settlement, a fresh consolidated cash entry was passed wherein cash was debited and the "Surplus - Project Name" Account was credited.*
- *After transfer of the settled receipts to the Surplus A/c, the said on money was transferred to the partners/directors of the Group by debiting the said Surplus Account and crediting the Partners Accounts with the description "being surplus after deletion credited to partners". Thus the Partners were given control of the funds for its proper utilisation for purposes of the Projects. The Term "Surplus" was a nomenclature used to identify the Settled on money which was put under the control of the Partners/Directors.*
- *These entire receipts thus are booking receipts, which are revenue in nature and have already been considered and offered as revenue on-money income in our working.*
- *Further regarding the utilization of the funds as pointed out the Ld. PCIT, it is submitted that above-mentioned surplus, being revenue in nature (earned by way of on money), was utilized was meeting various expenditures like utilization of land, for other construction cost and all other expenses related to business.*

Para 6.8 of Page. 57 of the Hon'ble Settlement Co mmission order

Based on the above the total undisclosed income of the applicants of the Group is settled at Rs.80,07,69,,990/- on the issue of cash profit. The amount of undisclosed income settled in respect of the applicants in the respective assessment years are given in the following table.’’

In view of above, the Id. CIT(A) observed that it is evident that the surplus being referred to by the Ld. AO is not profit from the projects but the receipts of 'on money' credited to the capital accounts of the partners which has been considered in the additional income offered by MBDL and accepted by the Hon'ble Settlement Commission.

3.12 Thus on merits also since the amounts had already been added by the AO and the same had already been subjected to tax in the hands of MBDL and related entities, therefore, the Id. CIT(A) after considering all those facts had correctly deleted the addition made in various assessment years. The Bench also noted that no new facts have been brought by the Revenue in controverting the order of the Id. CIT(A) to the issue in question. In this view, of the matter, we find no reason to interfere with the order of the Id. CIT(A). Thus the appeal of the Revenue for the assessment year 2014-15 is dismissed.

4.1 As regards the appeals of the Revenue for the assessment year 2015-16 to 2017-18, the Bench noted that the grounds raised by the Revenue are similar and the facts are also similar to the case of the

Revenue for the assessment year 2014-15 wherein the appeal of the Revenue for the assessment year 2014-15 is dismissed, hence taking into consideration the similar facts and circumstances of the case, the decision taken by the Bench for the assessment year 2014-15 shall be applicable mutatis mutandis in the appeals of the Revenue for the assessment year 2015-16 to 2017-18. Thus the appeals of the Revenue are dismissed.

3. In the result, the appeals of the Revenue are dismissed
Order pronounced in the open court on 14 /09/2020.

Sd/-

(रमेश सी.शर्मा)
(Ramesh C. Sharma)

लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14/09/2020.

*Mishra

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

1. अपीलार्थी / The Appellant- The DCIT, Central Circle-1 , Jaipur
2. प्रत्यर्थी / The Respondent- Shri Jugal Kishore Garg (Derewala), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 34 to 37JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar