

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.1840/Del./2017
Assessment Year 2011-2012

Shri Navin Kumar Agarwal, Dehradun. C/o. Verendra Kaira & Co., Chartered Accountants, 75/7 Rajpur Road, Dehradun – 248001. Uttarakhand.PAN ADEPK2818H	vs	The DCIT, Central Circle, Dehradun.
(Appellant)		(Respondent)

ITA.No.3136/Del./2017
Assessment Year 2011-2012

The DCIT, Central Circle, Ground Floor, 16A-Cross Road, Dehradun – 248 001.	vs	Shri Navin Kumar Agarwal, Dehradun. C/o. Verendra Kaira & Co., Chartered Accountants, 75/7 Rajpur Road, Dehradun – 248001. Uttarakhand.PAN ADEPK2818H
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Garg, Advocate and Shri Mirdel Aggarwal, C.A.
For Revenue :	Ms. Shefali Swaroop, CIT-D.R.

Date of Hearing :	14.03.2018
Date of Pronouncement :	13.04.2018

ORDER**PER BHAVNESH SAINI, J.M.**

Both the cross-appeals are directed against the order of the Ld. CIT(A)-IV, Kanpur, dated 28th February, 2017, for the A.Y. 2011-2012.

2. The assessee in his appeal, challenged the addition of Rs.1,26,48,849/- and addition of Rs.69,97,218/-. The Revenue in its appeal challenged the order of Ld. CIT(A) in reducing the addition to Rs.7,35,75,589/- from Rs.8,62,24,238/-.

3. Briefly, the facts of the case are that assessee is an individual and deriving income from business and other sources. The assessee is engaged in the business of construction work, mainly carrying construction business in the name and style of M/s. Gupta & Co. A search, under section 132 of the I.T. Act, 1961 was initiated and took place on 21st November, 2013, in the business and residential premises of the assessee at Dehradun and in case of Graphic Era Society

Group, Dehradun. The assessee filed return of income declaring income of Rs.13,08,540/- which was revised to Rs.25,40,840/- under section 153A of the I.T. Act.

3.1. During the course of search, certain incriminating documents have been found at the residence of the assessee. During the course of search proceedings, statement of assessee was recorded in which he has admitted to have carrying on construction business being in his personal capacity and in the name of his family members i.e., Smt. Neelam Agarwal, Shri Ashmeet Agarwal, Shri Karun Agarwal and Shri Navneet Agarwal, in the name of proprietary concern in different names. All these persons are engaged in the business of construction work mainly carrying construction work for M/s. Graphic Era Educational Society and Shri Kamal Ghanshala, Proprietor of M/s. Graphic Era. The main source of income of assessee and his family members is by way of carrying out main civil work of Shri Kamal Ghanshala and M/s. Graphic Era Institute. During the course of search, no books of account of assessee were

found. The assessee explained that he never maintained muster roll or purchase register or any bills/vouchers. Whatever documents the assessee got from the suppliers were provided to the Chartered Accountant who prepared the details. The Chartered Accountant when examined, asserted that he is not in possession of books of account of the assessee. However, he has explained that assessee maintained cash book, ledger and other details along with bank statements, which were returned to the assessee after filing of the return of income. During the course of search, books of accounts were not found. The assessee was confronted with statement of C.A. and in post search investigation assessee admitted that no books of account are maintained by him. The statement of assessee was recorded during the course of search which is reproduced in the assessment order in which he has explained that on the basis of bills, bank statement etc., available with him, the income is computed on that basis. On the basis of the seized material, A.O. asked for explanation of assessee regarding work done for Graphic Era Society up to 14.11.2010 for a sum of

Rs.25,61,13,398/-, out of Rs.15.15 crores has been received and Rs.10.45 crores is payable. The assessee replied that the work was done up to 2013. It is a rough slip. The assessee was not having other details. The explanation of assessee was called for maintaining books of account at the assessment stage in which he has mentioned that to purchase peace of mind, assessee is offering his contractual income at the deemed rate of 8% of the gross receipts. The details of the same from A.Ys. 2008-2009 to 2013-2014 was filed offering the income in these assessment years @ 8%. The A.O however, noted that there is a contradiction in the statement of the assessee and his Chartered Accountant regarding maintenance of the books of account and noted that it is evident that no books of account and supporting documents have been maintained by assessee. The A.O. referred to the incriminating material in the assessment order. Page-95 of Annexure-A24 is referred to show particular receipts from the year 2005 to 31.03.2011 of various concerns of the assessee and his family members in a sum of Rs.22,98,08,709/- and in case of Gupta & Co. it is

Rs.17,61,91,897/- (PB-63). The A.O. also referred to other details, other year's papers and called for explanation of assessee whether entries made in these papers have been taken into account in return under section 153A. The assessee explained that details could be verified from the bank statement and submitted the details of amount already declared in the original return of income with gross turnover of assessee from F.Ys. 2007-2008 to 2013-2014 and similarly, the gross receipts surrendered along with income surrendered after the search, the details of the same is noted at page-21 of the assessment order in which the assessee declared undisclosed gross receipts offered under section 153A of the I.T. Act in a sum of Rs.32,03,17,116/-, on which, profit have been offered @ 8%, other income are also added and total income is declared for all these years in a sum of Rs.3,12,71,654/-. The net surrendered income has been Rs.1,50,15,262/-. For assessment year under appeal i.e., 2011-2012, the gross turnover declared by assessee is Rs.3,00,61,785/- on which profit @ 8% declared and after adding other income, the income is declared in the

return of income at Rs.26,22,840/-. The A.O. therefore, noted that since assessee did not maintained books of account, therefore, penalty proceedings were initiated. Further, seized paper also referred in the assessment order on which explanation of assessee was called for with regard to work awarded for construction by M/s. Graphic Era and other details mentioned in the seized paper. The statements of the assessee have been referred to by A.O. The A.O. therefore, noted that whatever explanation was given by assessee and statement given in search is contradictory and has not been supported with any kind of documentary evidences. A perusal of the bank accounts shows that there were frequent and heavy cash withdrawals. The assessee was required to explain purpose of the cash withdrawals. The assessee stated that amount have been withdrawn for business expenses. However, it was not substantiated with evidences of actual bills of expenses. The assessee declared profit @ 8% of receipts. The receipts are taken as per seized paper in revised computation of income. The A.O. noted that issue of cash return and back recorded on various

seized documents against the entries is being examined in the hands of the Society.

3.2. The A.O. further noted that during the course of search proceedings, Page-9 of A4, was found and seized from the residence of the assessee, which is account statement of 14.11.2010, on which, certain working of Rs 25,61,13,398/- have been made, out of which, a sum of Rs 15,15,54,956/- has been deducted to arrive at a figure of Rs.10,45,58,442/-. When confronted during the course of search, assessee replied that the slip is in his hand writing and is the amount of work done by him up to 14.11 2010. Out of the payment of Rs.25.61 crores, he admitted having received the payment of Rs.15.15 crores and further stated that Rs.10.45 crore is balance which he had not received till recording of the statement during the course of search. It was further admitted that Rs.21,05,13,398 mentioned on that paper is the amount as per measurement which is related to M/s. Graphic Era and a sum of Rs.4.56 crore mentioned below as miscellaneous expenses, for which, no bills

have been prepared. The total amount is Rs.26,61,13,398/- related to the construction of M/s. Graphic Era group which has been struck-off as the total was wrong. After re-calculating the same amount is of Rs.25,61,13,398/-. The sum of Rs.15.15 crore is advance payment received from M/s. Graphic Era and balance is Rs.10.45 crores. The seized paper is noted and reproduced at page-34 of the assessment order. Further, explanation of assessee was called for, in which, he has stated that balance amount have not been received from M/s. Graphic Era Educational Society. The assessee further explained that work for M/s. Graphic Era Educational Society was done till March, 2013. This slip contains only rough working. The assessee again referred to page-95 of A-24, (PB-63) to show that the assessee executed work along with his family members for M/s. Graphic Era Educational Society till 31st March, 2011 and according to it, proprietary concern of assessee Gupta & Co. till 31st March, 2011 has done the work of Rs.17.61 crores. He has, therefore, submitted that work of Rs.25.61 crore was done till March, 2013, which also match with the details of receipts of

Rs.27.77 crores recorded in the books of account, details of which, were filed before A.O. Therefore, taking gross receipt of Rs.25.61 crore till 14.11.2010 is incorrect and inconsistent with other documents seized. The date mentioned on top of page contain segregated receipt of two parts.

3.3. The A.O. however, did not accept the contention of assessee and by referring to Section 292C of the I.T. Act, noted that since the documents were found from the possession of the assessee, it is presumed to be correct and transactions carried-out though slip pertains to him. Statement is an afterthought. The A.O. has taken the entire gross receipts of Rs.25.61 crores till 14.11.2010 and by considering short receipts and applying profit rate of 8% made the addition of Rs.69,96,218/- on account of income earned on suppressed sales outside the books of account. A.O. asked for source of investment of Rs.10.45 crores. It was explained M/s. Graphic Era made payment upon measurement of work done which is recorded in their books of account. So, there is no unexplained investment.

The A.O. further noted that assessee has received Rs.15.15 crores from M/s. Graphic Era Group against work done of Rs.25.61 crores and balance amount is Rs.10.45 crores. The A.O. noted that the availability of the source of capital of assessee has been from own capital, O.D. facility, loans, sundry creditor is in sum of Rs.1,83,34,204/- which was reduced from the balance amount of Rs.10.45 crore and balance of Rs.8,62,24,238/- was added to income of assessee, having the receipts and investments outside the books of account of assessee.

4. The assessee challenged both the additions before the Ld. CIT(A). The submissions of the assessee are reproduced in the appellate order in which the assessee briefly explained that additions are made on mere calculation on a rough paper and assessee and his family has already offered gross receipts and taxable income for each year separately. The A.O. has not appreciated and considered page-95 of Annexure-A-24 of seized material which explain amount already offered to tax. A.O.

relied on rough and cryptic paper. The addition on account of unexplained capital deployed is wholly unjustified which is without any basis or evidence on record. The assessee completed the work up to March, 2013 and offered the income in different years which have been accepted by the A.O. The A.O. therefore, should not have believed the rough working. Both the seized papers page-9 of Annexure-A4 and Page-95 of Annexure-24, should be read together. No further addition should have been made by the A.O. The remand report from the A.O. was called for in which he has reiterated the same facts as mentioned in the assessment order. Assessee also filed rejoinder in which assessee re-affirmed the submissions made before the authorities below.

5. The Ld. CIT(A) considering the explanation of assessee and material on record, partly allowed the appeal of assessee. His findings in paras 5.1 and 6 of the order are reproduced as under :

5.1. *I have carefully gone through the assessment order, written submission filed, remand report and rejoinder filed by the appellant. It may be seen from the assessment order that the material fact is that the paper marked as page 9 of annexure A-4 was seized from the residence of Shri Naveen Kumar Agarwal.*

I agree with the finding given by the AO in respect of this paper in para 9 of the assessment order. The plain reading of this paper shows that it is dated 14/11/2010 on which work, as given in many terms is written fts. 25,61,13,398/. The various contentions of the appellant in the written submissions are self contradictory, the noting's made on this paper are work done by appellant for graphic Era. The appellant made attempt to explain that it pertains to work done in 2013. This contention of the appellant is not acceptable and is only after thought. Date put on the paper is 14/11/2010. No prudent business man will make noting of work done in the year 2013 in advance; it is against human probability so the contentions of the appellant in this regard lack merit.

On the basis of his detailed finding given in the assessment order, the AO has assessed total income on the gross receipts has reduced by the gross profit already disclosed by the appellant in his return. He calculated the rate of 8% on this basis of gross profit shown by the appellant in the return income, therefore, I do not find reasons to interfere with the addition made by the AO in this respect and the addition of fts 69,97,218/- is confirmed.

6.2. Ground No.1 to 4 are inter linked, therefore they are taken together. These pertain to the addition of Rs.8,62,24,238/-. This addition has been specifically dealt in para 10 and the 10.1 page no. 38 of the assessment order. It is seen from the assessment order that AO has discussed that there was total turnover of the appellant of Rs.25,61,13,398/- as per page 9 of annexure 4-4 (seized document). As per this paper there is balance amount of Rs.10,45,58,442/-. The AO rightly considered it to be part of total turnover of the appellant for this year. Now, the AO proceeded to calculate the capital employed on this undisclosed turnover in para 10 and 10.1 of

the assessment order. According to the AO the capital employed in the books of account was only Rs.1,83,34,204/- for disclosed turnover as per return. The AO calculated the undisclosed capital employed by reducing the disclosed capital of Rs.1,83,34,204/- from the amount of Rs.10,45,58,442/- and the resultant figure of Rs.8,62,24,238/- was added as unexplained capital of the appellant. In my opinion, the AO should have calculated capital employed on amount of Rs.10,45,58,442/- (being part of turnover) in the same ratio to which the disclosed capital is related to the disclosed turnover. Meaning, thereby that the AO should have calculated the undisclosed capital employed on the basis of formula that if, for the disclosed turnover of Rs.15,15,54,956/- capital required is of Rs.1,83,34,204/- then how much capital will be required for undisclosed turnover Rs.10,45,58,442/-. The AO is directed to calculate the undisclosed turnover on this basis. In this way the capital employed on undisclosed turnover comes to Rs.1,26,48,849/-. Thus, the addition to this extent of Rs.1,26,48,849/- is confirmed and balance of Rs.7,35,75,389/- is hereby deleted.

6. Result :

In the result, for statistical purposes, the appeal is partly allowed.”

5.1. Both parties are in cross appeals.

6. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has referred to page-32 of the assessment order in which seized paper page-9, A-4 is reproduced, which is dated 14.11.2010. He has referred to PB-63 which is another seized paper, Page-95 of Annexure-24 in which total work done from year 2005 to 31st March, 2011 of assessee and all his family concerns have been shown in a sum of Rs.22.98 crores and against the name of assessee's concerns Gupta & Co. a sum of Rs.17,61,91,897/- have been mentioned. Learned Counsel for the Assessee submitted that both the documents should be read together which would clearly show that work was done up to March, 2013. He has referred to page-21 of the assessment order, in which, the surrender made by the assessee in various years

including assessment year under appeal have been reproduced by the A.O. He has submitted that A.O. has taken into consideration details from the seized paper and accepted the surrendered amount as disclosed in the return of income for various years including the assessment year under appeal. Copies of I.T. return for A.Ys. 2008-2009 to 2014-2015 are filed. So, there was no justification to make further additions against the assessee, which would amount to double addition. It is tax neutral exercise only. Page-9, A-4 is, therefore, not relevant. PB-63 another seized paper have not been disputed by the A.O. Therefore, there was no justification to make addition against the assessee. The assessee has already declared profit @ 8% of the total undisclosed receipts and A.O. has also applied 8% for computing the income of assessee. Therefore, no further addition should be made in assessment year under appeal. There is no basis for making both the additions. There is no evidence of undisclosed capital deployed by assessee in making undisclosed sales. He has filed copy of the appellate order of the Ld. CIT(A)-4, Kanpur in the case of M/s. Graphic Era

Educational Society dated 21st December, 2017 for A.Y. 2011-2012 to A.Y. 2014-2015 in which the Ld. CIT(A) similarly deleted the addition. He has submitted that assessee was engaged in construction work of M/s. Graphic Era Educational Society for Dehradun Campus which was referred by the Revenue Department to DVO to ascertain the cost of investment/unexplained expenditure, in which, the difference was reported by DVO at Rs.47,88,442/- from F.Ys. 2007-2008 to 2013-2014 which was only 0.47% and ultimate difference in valuation reported by DVO in case of M/s. Graphic Era Educational Society was 2.87%. Therefore, Ld. CIT(A) deleted the entire addition. He has submitted that similar page-9, A-4 is referred to and considered by the Ld. CIT(A) in case of M/s. Graphic Era Educational Society and addition have been deleted. Therefore, there is no basis to make any addition against the assessee. He has referred to PB-92 which is balance-sheet ending 31st March, 2011 to show that assessee has to pay Rs.6,27,085/- to M/s. Graphic Era Educational Society which account have been accepted by the A.O. The A.O.

accepted the turnover and profit declared by assessee for assessment year under appeal as well as for other years surrendered by assessee. He has filed copy of assessment order under section 143(3) dated 07.07.2017 in case of assessee for A.Y. 2013-2014 where part surrender have been accepted. So, no further addition should be made.

7. On the other hand, Ld. D.R. relied upon the orders of the authorities below and submitted that since seized document was found from the possession of assessee, therefore, presumption under section 292C is available against the assessee. The seized documents are correct. He has, therefore, submitted that appeal of assessee may be dismissed and departmental appeal may be allowed.

8. We have considered the rival submissions and perused the material on record. According to Section 292C of the I.T. Act there is a presumption that the seized document may be presumed to belong to assessee because it was found from possession of the assessee and the documents are true.

However, such presumption is rebuttal. The A.O. has referred to several documents in the assessment order and ultimately, heavily relied upon page-9 of Annexure-A4 for the purpose of making the above additions against the assessee. According to the seized paper, it is dated 14.11.2010 and assessee has done the work for M/s. Graphic Era Educational Society for a sum of Rs.25,61,13,398/- out of which, it is stated that assessee has received advance of Rs.15,15,54,956/- and balance payable is Rs.10,45,58,442/-. The A.O's. presumption is that assessee has completed the work up to 14.11.2010 and enhanced the receipts and computed the turnover and profit of the assessee till that date though accepted the surrendered income in A.Ys. 2008-2009, 2009-2010 and 2010-2011. The A.O. has also referred to another seized paper Page-95 of Annexure-A-24 in which particulars of receipts from the year 2005 to 31st March, 2011 in respect of various business concerns of assessee and his family members are mentioned for a sum of Rs.22,98,08,709/- (PB-63) of Graphic Era Group.. As against M/s. Gupta and Co. a sum of Rs.17,61,91,897/- have been

mentioned. Copy of the seized paper is also filed at page-63 of the paper book. The assessee submitted that both the seized documents may be read together. We find justification in the submissions of the Learned Counsel for the Assessee that both the documents should be considered together because according to Department both were seized during the course of search. When one document speaks that work is done for M/s. Graphic Era Educational Society from the year 2005 to 31st March, 2011 by assessee for a sum of Rs.17.61 crores, there is no reason to believe that assessee would have completed the contract work of Rs.25.61 crores up to 14.11.2010. Explanation of assessee is, therefore, acceptable to say that the entire work have been done up to March, 2013 for a sum of Rs.25.61 crores. Thus, the explanation of assessee should not have been disbelieved by the authorities below. The assessee declared profit rate of 8% on the entire gross receipts in the return filed under section 153A of the I.T. Act for A.Ys. 2008-2009 to 2014-2015. The details of the same are noted at page-21 of the assessment order in which from F.Y. 2007-2008 to 2013-2014

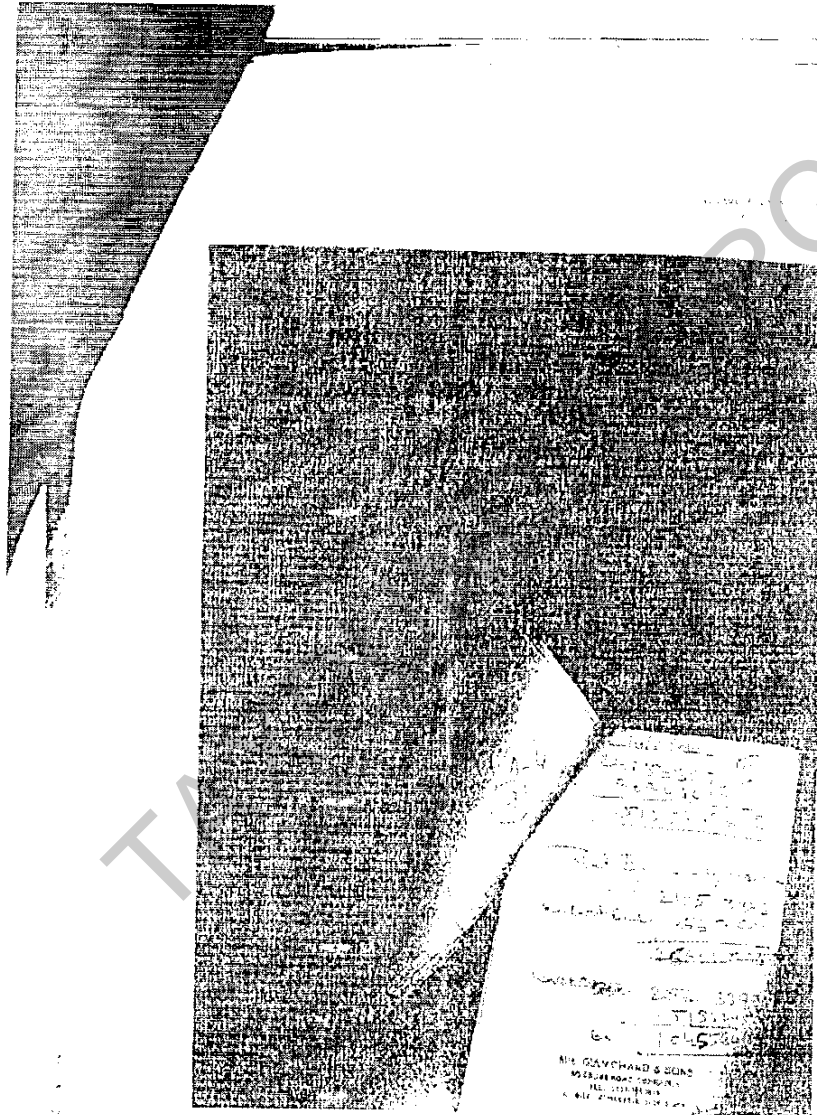
assessee has declared gross receipts offered for taxation under section 153A in a sum of Rs.32,03,17,116/-, on which, profit @ 8% have been declared. Thereafter, other income have been added and assessee has surrendered the total income of Rs.3,12,71,654/- in A.Ys. 2008-2009 to 2014-2015. Whatever income was declared in the original return of income have been reduced therefrom. The assessee has filed copies of the returns of income for all these years along with computation of income to show that actual additional income have been surrendered on which taxes have been paid. The assessee also filed copy of the assessment order for A.Ys. 2013-2014 dated 07.07.2017 under sections 153A/143(3) in which the A.O. accepted the returned income of Rs.59,77,010/- which includes additional deemed profit @ 8% of gross receipts in a sum of Rs.42,49,347/-. Learned Counsel for the Assessee also submitted that in all these assessment years, the Income Tax Department has accepted returned income of the assessee. It is, therefore, proved on record that assessee made surrender of gross turnover of Rs.32.03 crores in various years as against

the gross receipts of Rs.25.61 crores found on the basis of the seized paper. Therefore, assessee has declared more undisclosed turnover and declared more additional income on the same. There is thus no justification to make any further addition against the assessee separately on account of profit rate. Learned Counsel for the Assessee rightly contended that it is only a tax neutral exercise because no case is made out that if revenue have been deprived of any taxes. The Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd., 358 ITR 295 held that *"there is no dispute that in subsequent accounting year, assessee did make imports and did derive benefits under the advance licenses and duties entitlement pass book and paid taxes, therefore, it is not as if the revenue has been deprived of any tax. We are told that rate of tax remains the same in the present assessment year as well as in subsequent assessment years. Therefore, the dispute raised by the Revenue is entirely academic or at the best, may for minor tax effect."*

9. The Hon'ble Supreme Court in the case of CIT vs. Realist Builder and Services Ltd., 307 ITR 202 held that "A.O. must give facts and figures that the impugned method of accounting adopted by the assessee results in under estimation of profits, for changing the method of accounting under section 145 of the Act. Otherwise, it will be presumed that entire exercise is revenue neutral." Since the assessee declared more gross turnover and declared more income in the returns filed for various years including assessment year under appeal and paid the taxes which have been accepted by the Department, it would amount to tax neutral exercise and no further addition would be justified. Even otherwise the facts noted above, clearly justify the contention of assessee that if both the seized papers are taken together, the addition made by the A.O. on account of further gross profit applying profit rate of 8% would not be justified. The presumption is, therefore, rebutted by assessee. There is thus no basis to make the addition of Rs.69,97,268/- to the income of assessee on account of undisclosed profit.

10. It may also be noted here that the A.O. on the basis of seized paper noted that there is balance payable to the assessee in a sum of Rs.10,45,58,442/-. The A.O. has further noted that the capital available with the assessee is for a sum of Rs.1,83,34,209/- and this amount was reduced from the payable amounts and made the addition on account of undisclosed investments in a sum of Rs.8.62 crores. The Ld. CIT(A), however, in the ratio of the capital available to assessee, reduced the addition to Rs.1.26 crores. Learned Counsel for the Assessee submitted that the same seized paper page-9, A4, has been considered by the Ld. CIT(A) in the case of M/s. Graphic Era Educational Society vide order dated 21st December, 2017. The findings of the Ld. CIT(A) in paras 6.3 to 6.7 are reproduced as under :

“6.3. Undersigned has carefully gone through the assessment order, written submission and the verbal argument of the Ld. A.R. It is seen that the A.O. has made addition on the basis of an incriminating document at page 9 of annexure A-4 found and seized from the residence of Shri Naveen Agarwal, Dehradun. Thus, the only basis of addition is this incriminating document at page 9 of annexure A-4 which is reproduced hereunder for the better appreciation of its contents.”



6.4. *It appears from the document that this is an account statement prepared on 14.11.2010 wherein certain working of amount of Rs.25,61,13,393/- have been made. Out of which a sum of Rs.15,15,54,956/- has been deduced to arrive at a figure of Rs.10,45,58,442/-. This may be noted that this incriminating document was found from the residence of Shri Naveen Aggarwal who is a contractor for construction of the buildings of the appellant society. When confronted with this incriminating document Shri Naveen Aggarwal replied to question no.57 and stated that the slip is written in his hand writing and it shows the amount of worked done by him up to 14.11.2010, Out of the payment of Rs.25,61,13,398/- he received the payment of Rs.15,15,54,956/- and Rs.10,25,58,442/- is the balance amount which has not been received till the date of search. He further admitted that the sum of Rs.25,61,13.398/- relates to the construction of*

Graphic Era Group which has been struck off as the totaling was wrong. After recalculation sum amounts to Rs.25,61,13,398/- the sum of Rs.15,15,54,956 is the advance payment received from the appellant society and the balance of Rs.10,45,58,442/- is the balance payment. After specifically been asked whether he has received the balance payment to which Shri Naveen Aggarwal categorically replied that the balance payment has not been received by him till the recording of statement i.e. 17.04.2015. AO has considered the contention of the contractor Shri Naveen Aggarwal regarding the total work done as on 14.11.2010 at Rs.25,61,13,398/-. AO has also observed that as per books of the appellant society made total payment of Rs.16,07,72,700/- to Shri Naveen Aggarwal up to the A.Y. 2011-12, hence the balance payment of Rs.09,53,40,698 (25,61,13,998-6,07,72,700) was considered as unexplained payment in the hands of appellant society.

6.5. *It is pertaining to mention here that AO has made addition of Rs. 10 54 crores on the basis of same incriminating documents in the hands of Shri Naveen Aggarwal by concluding that the difference in worked done of Rs.25,61,13,398 and the payment received of Rs.15,15,54,956/- represents the unaccounted expenditure made by Shri Naveen Aggarwal. It is also interesting to note that the same addition has been made by the AO in the case, of appellant society treating it as unexplained expenditure incurred out of undisclosed income. From the detailed scrutiny of the incriminating documents mentioned here-in-above and the statement of Shri Naveen Aggarwal, following facts emerges:*

- i. The seized document at page 9 of annexure A-4 was not found from the premises of appellant society but was found from the residential premises of Shri Naveen Aggarwal, the contractor of appellant society.*

- ii. *The entire addition is based only on this one page document inventorised as page 9 of annexure A4.*
 - iii. *The document is in the hand writing of Shri Naveen Aggarwal contractor of appellant society.*
 - iv. *During the course of search Shri Naveen Aggarwal explained the document as the account statement as on 14.11.2010 relevant to A.Y 2011-12.*
 - v. *According to the statement on oath of Shri Naveen Aggarwal which was recorded on 29.02 2015, the entry of amount Rs.25,61,13,398/- represents gross work done by the contractor for the appellant society.*
 - vi. *It was admitted by Shri Naveen Aggarwal that there is a balance of Rs.10,45,58,442/- from the appellant trust as on date of recording of the statement.*
- 6.6. *From the above discussion and also considering the totality of the facts and the circumstances of the case undersigned is of the view that the addition made by*

the A.O. is not justified because of the following reasons.

- a) *Appellant is the society registered with the Registrar of Society under the Society Registration Act, 1860, having its registered office at 56676, Bell Road Clement Town, Dehradun. A search operation u/s. 132 of the I.T. Act, 1961 was initiated in the business and the residential premises of the appellant society and its governing body members and others on 21.11.2013. Appellant society also enjoys the registration u/s 12AA of the I.T. Act, 1961 by virtue of permission granted by Commissioner of Income Tax, Meerut vide order No. F.No.40(98)/Nirbhan/Dehradun/98-99/4048 dated 31.05.1999. Further, approval u/s.10(23C) of the I.T. Act, 1961 was granted to the appellant society by Chief Commissioner of Income Tax, Dehradun vide his letter F.No. CCIT/DDN/Tech/10(23C)/4/2010-11/2924*

dated 05.08.2010. It is pertaining to note that the appellant society continues to enjoy the benefits of 12AA and to (23C) of the I.T. Act, 1961 till date.

- b) It is not disputed that as per document seized total work done by the contractor till 14.11.2010 stands at Rs.25,61,13,398/-, it is also not disputed that Shri Naveen Aggarwal has not received the entire amount for the contract work executed by him for the appellant trust. The very fact that the balance amount of work done has not been paid by the appellant society is undisputed. Shri Naveen Aggarwal, Contractor of the appellant society also confirms this fact that the balance payment has not been received by him from the appellant society. In such circumstances, the addition made by the A.O. is nothing but a figment of imagination without any cogent and corroborative evidence.*

- c) *During the course of search no evidence was found to substantiate the fact that the unaccounted payment was made by the appellant society to its contractor, Shri Naveen Aggarwal. No sale or purchase bills were found during the course of search evidencing that so called transaction of Rs 10.54 crore was carried out by the contractor till that period. Surely, the construction to tune of Rs.10.45 crore cannot be carried out in thin air without leaving its foot prints of evidences. The AO has failed to bring on record any independent evidence to substantiate the addition.*
- d) *It is pertaining to note that the addition of Rs.10.45 Crore on the basis of same incriminating document has been made in the hands of Shri Naveen Aggarwal which has been partly confirmed by the Hon'ble CIT (Appeal)-IV, Kanpur vide his appeal order no CIT (A)-IV/4!2/DCIT-CC/DDN/ 2015-16/300*

dated 28.02.2017. Therefore, the same addition again in the hand of appellant society would tantamount to double addition which is the against the tenants of the law.

- e) *No unexplained cash expenditure were found during the course of search in the case of appellant society which would support the additional deployment of funds to support work earned out to the magnitude of 10.45 Crore out of undisclosed funds. Further, no unexplained deposits or withdrawal in the bank accounts of the appellant society were discovered during the course of search or assessment proceedings by the AO. On the contrary the payment made by the appellant society were found duly incorporated in the books of the contractor and no adverse inference whatsoever is pointed out by the AO, therefore, the addition made by the AO remains unsubstantiated.*

f) *Even though, for a moment it is imagined that the addition is to be made in the hands of the appellant society then the same would be revenue neutral because proceeding hypothetically, the impact of any such investment by the contractor will only have the effect of increasing the cost of the building on the assets side and increasing the outstanding liability of the contractor on the liability side in the books of the appellant society and hence this difference will not constitute any addition in the hands of the appellant society and more so as to the contrary it has already been added in the hands of the contractor and attempt to make the similar addition in the hands of appellant society will be completely contradictory to the own findings of AO. Further, case laws cited by Ld. A.R. strengthens the case of the appellant society, as the same are squarely applicable to the facts of the present case.*

g) It is a settled preposition of law that no addition can be made on the diary or documents found from the third party without any corroborative evidence for making such addition. In the case of CBI Vs V.C.Shukla (Jain Hawala Case), Hon'ble Supreme Court has held that the contents of incriminating material impounded from the third party could not lead to proving the charge against the respondent. Further, Hon'ble Supreme Court has ruled in the case of Common Cause Vs Union of India (Birla and Sahara Case) that loose sheets of paper found and seized from third party are wholly irrelevant as evidence as per section 34 of the Evidence Act,

6.7. In view of the detailed discussion and the reasoning mentioned hereinabove undersigned is of the opinion that the addition made by the AO is unjustified and unsustainable on the facts and in the eyes of law.

Hence, the same is deleted and the ground of appeal of the appellant is allowed.”

11. No evidence was found during the course of search if assessee had deployed any capital from undisclosed sources for conducting the turnover of Rs.10.45 crores. In the absence of any evidence found against the assessee for deployment of any capital to conduct the business of construction for M/s. Graphic Era Educational Society, it would be difficult to believe that assessee would have made investment out of undisclosed sources. The assessee explained before A.O. that assessee used to make request the Society to make advance against contract and after measurement and verifying the work executed, payments were made. The explanation of assessee was not found false. Under these circumstances, there was no need to make undisclosed investment. It may also be noted here that in the order of the Ld. CIT(A), in the case of M/s. Graphic Era Educational Society (supra), with regard to work done by assessee for them, valuation of the properties was referred to

the DVO, who has reported that there is a difference of Rs.47,88,442/- between the cost of construction reported by Society and as estimated by the DVO in respect of property constructed by assessee, which was found to be 0.47% only. It was negligible difference. Therefore, Ld. CIT(A), deleted the addition. Therefore, similarly in the case of assessee when nothing was found against the assessee of making any investment out of unknown sources and that whatever value was reported by the Educational Society have been accepted by the Ld. CIT(A), as such, there is no basis to make further addition against the assessee. Ultimately, the case had been that as per the seized paper the total turnover was taken at Rs.25.61 crores on which profit have been estimated by A.O. at 8% which is also disclosed by assessee in different years, which have not been disputed by the Revenue Department. Similarly, valuation have been done by the DVO in the case of M/s. Graphic Era Educational Society against the valuation so done from F.Y. 2007-2008 to 2013-2014 as is mentioned in para 5.2 of the appellate order in the case of M/s. Graphic Era

Educational Society. The contention of assessee is, therefore, correct that entire turnover is to be distributed in these different years. Therefore, whatever amount was surrendered by assessee in different years gets corroborated from the order passed by the Ld. CIT(A) in the case of M/s. Graphic Era Educational Society. The assessee has however, declared more gross turnover and more income. So, what remains to make further addition against the assessee ? The Ld. CIT(A) was, therefore, not justified in confirming the addition of Rs.69,97,218/- on account of gross profit. The Ld. CIT(A) is also not justified in calculating the addition of Rs.1,26,48,849/- on account of capital deployed on undisclosed turnover because there were no evidence was found during the course of search so as to make the addition.

12. Considering the totality of the facts and circumstances of the case in the light of amounts surrendered by the assessee in various years and accepted by the Revenue Department which was similarly considered in the case of M/s.

Graphic Era Educational Society and addition deleted by Ld. CIT(A), we do not find any justification to sustain any addition in this case. We, accordingly, set aside the orders of the authorities below and delete both the additions in entirety.

13. In the result, Appeal of Assessee is allowed and Appeal of the Department is dismissed.

Order pronounced in the open Court.

Sd/-
(LP SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated April, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.