

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**IT(SS)A Nos.85 to 87/Ind/2014  
A.Y. : 2006-07 to 2008-09**

Shri Kailash Rijhwani, Indore	<b><u>बनाम/</u></b> Vs.	ACIT,1(2), Indore
(Appellant)		(Revenue )
P.A. No.ABGPR7951L		

**IT(SS)A Nos.75 & 76/Ind/2014  
A.Y. 2007-08 & 2008-09**

Shri Keshav Rijhwani Indore	<b><u>बनाम/</u></b> Vs.	ACIT,1(2), Indore
(Appellant)		(Revenue )
P.A. No.ABEPR2142M		

**IT(SS)A Nos.80/Ind/2014**  
**A.Y. : 2008-09**

Shri Gurmukh Rijhwani, Indore	<b>बनाम/</b> Vs.	ACIT,1(2), Indore
(Appellant)		(Revenue )
P.A. No.ABTPR3257N		

**IT(SS)A Nos.92 to 94/Ind/2014**  
**A.Y. : 2006-07 to 2008-09**

Shri Kheraj Rijhwani Indore	<b>बनाम/</b> Vs.	ACIT,1(2), Indore
(Appellant)		(Revenue )
P.A. No.ADJPR3389K		

Appellant by	Smt. Richa Parwal, C.A.
Revenue by	Shri Lal Chand, CIT-DR
<b>Date of Hearing:</b>	<b>15.02.2018</b>
<b>Date of Pronouncement:</b>	<b>09.03.2018</b>

**आदेश / O R D E R****PER BENCH:**

This bunch of nine appeals arising from the same search in respect of different assesses against the separate orders passed by the Commissioner of Income-tax (Appeals)-I, Indore,( in short "CIT(A)" ) all dated 26.12.2013 . A search action was carried out u/s 132(1) of the Income-tax Act, 1961, on 18<sup>th</sup> July, 2008, at the residential and business premises of the assesses. Since all the assesses are of same group and are connected with the same search, all these appeals were heard together and we dispose of the same by this common order for the sake of convenience.

**I.T.(SS)A.Nos. 85 to 87/Ind/2014 : A.Ys.2006-07 to 2008-09:  
Shri Kailash Rijhwani :**

2. The assessee has taken following grounds of appeal in respect of house-hold expenses in respective years : -

**A.Y. : 2006-07 :**

*That the AO has estimated withdrawal at Rs. 1,60,000/- for family but he has deducted the withdrawal of only individual and not considered the withdrawal of wife and HUF and added Rs. 60,000/- in the income which is unfortunate.*

**A.Y. : 2007-08 :**

1. *That the AO has estimated withdrawal at Rs. 1,70,000/- for family but he has deducted the withdrawal of only individual and not considered the withdrawal of wife and HUF and added Rs. 60,000/- in the income which is unfortunate.*

2. *That an addition of Rs. 7,47,450/- is made on account of expenses is unjustified, unreasonable and bad in law.*

**A.Y. : 2008-09 :**

1. *That addition of Rs. 50,000/- on account of unexplained cash is unjustified and likely to be deleted from assessment order.*

2. *That addition on account of jewellery of Rs. 6,20,000/- is unjustified, unreasonable and bad in law.*

3. Facts relating to ground no.1 in respect of assessment year 2006-07 is that the assessee has shown house hold expenses at Rs. 75,000/-. It was claimed that his wife also made expenses at Rs. 25,000/-. The AO considered that the children of the assessee were school going and paying handsome fee and AO estimated the annual expenses at Rs. 1,42,000/- in the preceding year. The AO after considering increase in fees and cost of day to day annual expenses estimated at Rs. 1,60,000/- and made the addition of Rs. 60,000/- to the income of the assessee. Similarly, in assessment year 2007-08, the assessee had shown house hold expenses at Rs.

93,000/- . Considering the expenses declared by the assessee appeared to be low in view of the fact that the children of the assessee were school going and paying handsome fees. Considering increase in fees and cost of day to day expenses, the AO estimated the annual expenses at Rs. 1,70,000/- and made an addition of Rs. 67,000/- to the income of the assessee. In appeal, the Ld. CIT(A) confirmed the additions.

4. The Ld. Counsel for the assessee contended that during the assessment year 2006-07, the assessee has made total withdrawals of Rs. 75,000/- in individual capacity and withdrawals of Rs. 40,000/- by wife and Rs. 36,000/- for HUF status and during assessment year 2007-08, the assessee has made total withdrawals of Rs. 92,363/- in individual capacity and withdrawals of Rs. 48,000/- by wife and Rs. 36,000/- for HUF status. The AO in assessment year 2006-07 has estimated the house hold expenses at Rs. 1,60,000/- and the assessee has incurred Rs. 1,51,000/- and in assessment year 2007-08, the AO has estimated the house hold expenses at Rs. 1,70,000/-, whereas the assessee has already incurred Rs.1,76,363/-. The Ld. Counsel for the assessee further

contended that the additions on account of house hold expenses were made on estimate basis and the withdrawals by the wife and the HUF of the assessee were not considered during the assessment as well as in the appellate proceedings. The Ld. Counsel for the assessee further contended that the aggregate drawing of the family are sufficient to meet the domestic needs of the family and in majority of the cases is higher than the estimate of drawings by the AO. The Ld. Counsel for the assessee further pointed out that in the case of Shri Ramesh Rijhwani, eldest brother of the assesseees, additions were made on account of low house hold withdrawals. However, in the first appeal Ld. CIT (A), vide his order dated 26.02.2010 had allowed the credit of withdrawals made by his Wife and HUF. Two different views were taken by the Ld. CIT (A) when the facts of the cases are entirely the same. He concluded the arguments that since the additions are made purely on estimate basis and considering the fact that drawings made by the family is higher than that estimated by the Ld. AO, the additions so made be deleted.

5. The Ld. Departmental Representative could not controvert the submissions made by the Ld. Authorized Representative of the assessee.

6. We have considered the facts, rival submissions and perused the material available on record. We find that the assessee during the assessment year 2006-07, has made total withdrawals of Rs. 75,000/- in individual capacity and withdrawals of Rs. 40,000/- by wife and Rs. 36,000/- for HUF status and similarly during assessment year 2007-08, the assessee made total withdrawals of Rs. 92,363/- in individual capacity and withdrawals of Rs. 48,000/- by wife and Rs. 36,000/- for HUF status. The AO in assessment year 2006-07 has estimated the house hold expenses at Rs. 1,60,000/- and the assessee has incurred Rs. 1,51,000/- and in assessment year 2007-08, the AO has estimated the house hold expenses at Rs. 1,70,000/-, whereas the assessee has already incurred Rs. 1,76,363/-. We also find that the assessee has submitted all the supporting documents before the AO. We find that the additions are made purely on estimate basis and considering the drawings made by the family is higher than that estimated by

the AO. We, therefore, direct the AO to delete the additions made at Rs. 60,000/- for assessment year 2006-07 and Rs. 67,000/- for the assessment year 2007-08. Both the grounds are allowed on this count.

7. Ground no. 2 taken in the assessment year 2007-08 relates to addition of Rs. 7,47,450/- made on account of expenses.

8. The facts relating to this ground are that on perusal of balance sheet found during the search, it was noticed that in the books of Monica Galaxy, Orbit Plaza value of the shop has been shown at Rs. 11,58,550/- only in regular books of account whereas the shop was shown to have been purchased at Rs. 14,20,000/- by the assessee. Thus, the amount of difference at Rs. 2,61,450/- has been taken as concealed income by the AO. Similarly, a sum of Rs. 3,42,030/- has been shown against furniture and fixtures in the show room. The evidences went to prove that in addition to above furniture and fixtures, the assessee had taken services of architect, viz. Shri Atul Joshi & Associates, who had raised bill of Rs. 4,50,000/- for designing and Rs. 36,000/- as consultancy charges. The AR of the assessee was asked to explain the discrepancy. The AR of the

assessee stated that the difference amount of Rs. 2,61,450/- was paid but could not be entered in the books. It was accepted that there was cash payment of Rs. 50,000/-. Regarding bill of Shri Atul Joshi, the AR of the assessee submitted before the AO that it was estimate and out of Rs. 4,86,000/-, he has shown Rs. 3,90,000/- as furniture expenses. The payment of the furniture was made to the other parties. The reply of the assessee did not find favour with the AO and AO added Rs. 7,47,450/- to the income from undisclosed sources. The assessee went in appeal before the Ld. CIT(A), who after considering the submission of assessee confirmed the addition. The assessee is in appeal before us.

9. The Ld. Counsel for the assessee contended that the assessee purchased a shop at Orbit Plaza, Indore, through an agreement at Rs. 14,20,000/-. During the search proceedings, the amount mentioned in the Balance Sheet showed an amount of Rs. 11,58,550/- as the value of the shop. A sum of Rs. 11,50,000/- was taken as term loan and Rs. 8550/- as cash for mis. Exp. The AO added the difference of Rs. 2,61,450/- (14,20,000 (-) 11,58,550) as unexplained expenditure. The Ld. Counsel for the assessee

further contended that a bill of Architect Shri Atul Namjoshi amounting to Rs. 4,86,000/- was also found and seized and addition was made for that amount. Hence, a total addition of Rs. 7,47,450/- was made as unexplained expenditure. The Ld. Counsel for the assessee further submitted that the payment of Rs. 50,000/- was paid in cash at the time of agreement from personal savings, Rs. 11,50,000/- was paid by Pay Order No.107925 from term loan taken from SBI and Rs. 2,20,000/- was paid by cheque no. 1148 from Saving Account. The assessee maintained separate books of account for his Proprietorship Business and his personal affairs were recorded separately. During the finalization of return of income, books of account and personal accounts were tallied and mutual entries are made in the business books of account through journal entry. On the date of Search since the return for the year 2006-07 was not prepared and finalized, entries having effect from the personal accounts were not incorporated in the business books of account. During the assessment as well as appeal proceedings, it was explained that the payment of Rs. 50000/- was made through cash and a payment of Rs. 220000/- was made through cheque from saving account which was to be incorporated in the books of

account and thus there would be no difference in the value of the property once a Journal Entry to this effect is so made. It was further contended that an amount of Rs. 2,00,000/- was received on 04-10-2006 from Smt. Anuradha Rijhwani and from that loan and other available balance, payment of Rs.2,20,000/- was made. Hence the source of Rs. 2,20,000/- also stood explained and accounted for. The explanation so made were not given regard to and the difference between the cost entered in the books as on the date of search and the cost mentioned in the registry/agreement was added. Since it was only a timing difference in the recording of the transaction without there being any difference in the amount of the consideration, we pray to delete the additions so made.

Regarding the addition of Rs. 4,86,000/-, Ld. Counsel for the assessee contended that the assessee engaged M/s Atul Namjoshi & Associates for the interior works for the above mentioned shop. As a general practice the Architects design the interiors and then entrust the work to their fixed set of agency of Painter, Carpenter, electrician etc. This is so done as the Architect Firm and the workers develop an understanding over the period of time thus

enabling timely completion of the project with the desired quality and standards. The payment to these workers or agencies is made according to the Payment Request Slip made by the Architect Firm on the basis of the cost incurred and estimation of work completed. The payment to the Architect Firm is determined as a percentage of the total cost of the project and project cost includes cost of material and fixtures labour cost and other costs related with the project. Similar practice was adapted in the present case also. The Architect Firm designed the project as material to be procured by the assessee and the work was undertaken by the Architect's Agencies and agreed to charge 8% of the project cost as their fees. Payment entries related to material procurement or for labour payment based on request slips by the Architect Firm were done separately in the account Furniture & Fixture A/c and Electric Installation account. The total cost thus recorded by the assessee without charging depreciation as on 31-03-2007 ,thus, comes to

<i>Furniture &amp; Fixture Account</i>	<i>374289/-</i>
<i>Electric Installation</i>	<i>52340/-</i>
<i>Neon Sign Glow Board</i>	<i>30125/-</i>

<i>Office Equipments</i>	<i>111135/-</i>
<b>Total</b>	<b>567889/-</b>

The total project cost for the purpose of charging their fees as a % of the cost of the project was estimated at Rs. 450000/- by the Architect Firm and Rs.36000/- being 8% of the project cost was charged by them as their consultation charges through their bill dated 12-03-2007. These facts were explained during the assessment proceedings as well as in the Appeal but no regard were given to the same. The Ld. AO observed that the Bill of Rs.4,86,000/- is over and above the expenses as shown by the assessee in the books under the head F/F and proceeded to add the entire amount. The bills of material, payment request slips by the Architect, the Bill clearly explains that the expenditure is already booked and there was no unrecorded expenditure. In the light of the above explanation and enclosures, we pray your honour to kindly delete the addition of Rs.4,86,000/- so made. Hence, the total addition made at Rs. 7,47,450/- may please be deleted.

10. The Ld. Departmental Representative could not controvert the submissions made by the Ld. Authorized Representative of the assessee.

11. We have considered the facts, rival submissions and perused the material available on record. We find that the payment of Rs. 50,000/- was paid in cash at the time of agreement from personal savings, Rs. 11,50,000/- was paid by Pay Order No.107925 from term loan taken from SBI and Rs. 2,20,000/- was paid by cheque no. 1148 from Saving Account. The assessee maintained separate books of account for his Proprietorship Business and his personal affairs were recorded separately. During the finalization of return of income, books of account and personal accounts were tallied and mutual entries are made in the business books of account through journal entry. We also find that regarding the addition of Rs. 4,86,000/-, the assessee engaged M/s Atul Namjoshi & Associates for the interior works. It is a general practice the Architects design the interiors and then entrust the work to their fixed set of agency of Painter, Carpenter, electrician etc. As the Architect Firm and the workers develop an understanding over the period of time thus

enabling timely completion of the project with the desired quality and standards. The payment to these workers or agencies was made according to the Payment Request Slip made by the Architect Firm on the basis of the cost incurred and estimation of work completed. We find that the payment to the Architect Firm was determined as a percentage of the total cost of the project and project cost includes cost of material and fixtures labour cost and other costs related with the project. Similar practice was adapted in the present case also. The Architect Firm designed the project as material to be procured by the assessee and the work was undertaken by the Architect's Agencies and agreed to charge 8% of the project cost as their fees. Payment entries related to material procurement or for labour payment based on request slips by the Architect Firm were done separately in the account Furniture & Fixture A/c and Electric Installation account. We find that the bills of material, payment request slips by the Architect, the Bill clearly explain that the expenditure was already booked and there was no unrecorded expenditure. We find that the expenditures were well established. We, therefore, direct the AO to delete the total addition of Rs. 7,47,450/-.

12. Ground no. 1 for the assessment year 2008-09 relates to addition of Rs.50,000/- on account of unexplained cash.

13. Facts relating to this ground is that during the course of search proceedings, cash of Rs. 70,820/- was found from the possession of the assessee. During the course of assessment proceedings, the assessee was asked to explain the source of this amount. The assessee stated that the amount of Rs. 50,499/- was related to proprietorship concern M/s. Monica Galaxy Orbit Mall and balance amount was his self saving. The AO did not rely on the books of the assessee as the assessee was not maintaining the books of account. The assessee is a retail traders and making cash purchases of goods, there is no possibility of having huge cash with him. The AO after considering the facts of the case out of Rs. 70,820/- a sum of Rs. 50,000/- treated as unexplained and added the same to the income of the assessee, which was confirmed by the Ld. CIT(A).

14. The Ld. Counsel for the assessee contended that the cash found in the search was Rs. 70,820/-, out of which Rs. 20,820/- was explained. As per the return filed for the financial year 2006-

07, the assessee had cash balance with wife at Rs. 1,03,783/- and HUF had Rs. 10,758/- i.e. total Rs. 1,97,811/-. Considering that the assessee's family had an adequate opening cash balance and cash was withdrawn from bank or was earned as monthly income explains the cash so found. We pray your honour to kindly delete the addition so made with regard to unexplained cash.

15. The Ld. Departmental Representative could not controvert the finding of the Ld. Authorized Representative of the assessee.

16. We have considered the facts, rival submissions and perused the material available on record. We found that the assessee had cash balance with wife at Rs. 1,03,783/- and HUF had Rs. 10,758/- i.e. total Rs. 1,97,811/-. Considering that the assessee's family had an adequate opening cash balance and cash was withdrawn from bank or was earned as monthly income explained the cash so found. We direct the AO to delete the addition of Rs. 50,000/-

17. Ground no. 2 in assessment year 2008-09 relates to addition on account of jewellery of Rs. 6,20,000/-.

18. During the course of assessment proceedings, the assessee was asked to explain the sourced of investment in jewellery. It was stated that the same is belonged to his wife and she is holding the same since their marriage. It was claimed that the jewellery was received from her father-in-law. The assessee also produced a Will of his mother and claimed that they have much jewellery since 1990s. This version of the assessee did not find favour with the AO and he did not rely on the Will as if the lady had owned such property in 1990s, she would have given wealth tax but the assessee could not give any evidence in this regard. The assessee also could not give any evidence for receiving gold at the time of his marriage. It was also accepted that some jewellery was also given by the parents and relative of the bridegroom to the bride. After considering the facts and status of the case jewellery of 200 gms. Is treated as genuine and excess of it i.e. 761.790 gms. Is treated as unexplained and the value of it amounting to Rs. 6,20,000/- is made to the income of the assessee for unexplained investment in jewellery. On appeal the Ld. CIT(A) confirmed the same.

19. The Ld. Counsel for the assessee contended that the jewellery belonged to his wife and is either ancestral or they have got it at the time of their marriage or from their parents and is owned by them since 1990s. Wealth Tax Return of the wife has been filed and was assessed for three years. Jewellery received through Will of father in law and mother in law. Assessee submitted affidavit, which substantiates that the jewellery was old and was received at the time of marriage or from Will. Copy of returns from the assessment year 1994-95 to 2007-08, substantiated that except Smt. Sunita W/o Gurmukh, none of ladies have sold gold up to date of search. Jewellery found is within the limits of Instruction No.1916 dated 11.05.1994 issued by CBDT. Addition on account of Jewellery was also made in the case of Mr. Ramesh Rijhwani, eldest brother of the assessee. The Ld. CIT(A) vide his order dated 26.02.2010 has deleted the entire addition. The Ld. Counsel for the assessee further contended that the Department did not resort to appeal or did not file a cross objection against this order and the appeal filed by the assessee on other grounds was decided by the I.T.A.T., Indore Bench vide order dated 23.07.2011. Copy of order is placed on pages 101-111 of paper book. The Ld. Counsel for the assessee

concluded that in the light of the above facts, the addition of Rs. 6,20,000/- may be deleted.

20. The Ld. Departmental Representative could not controvert the submissions made by the Ld. Authorized Representative of the assessee.

21. We have considered the facts, rival submissions and perused the material available on record. We find the jewellery is explained and substantiated with the supporting documents such as Will and returns. We, therefore, direct the AO to delete the addition of Rs. 6,20,000/-.

**I.T.(SS)A.Nos. 92 to 94/Ind/2014 : A.Ys. 2006-07 to 2008-09 : Shri Kheraj Rijhwani :**

22. The grounds taken in assessment years 2006-07 & 2007-08, read as under :-

**A.Y. : 2006-07:**

*"That the AO has estimated withdrawal of Rs. 1,30,000/- for family but he has deducted the withdrawal of only individual and not considered the withdrawal of wife and HUF and added Rs. 50,000/- in the income which is unfortunate.*

**A.Y. : 2007-08 :**

*"That the AO has estimated withdrawal of Rs. 1,40,000/- for family but he has deducted the withdrawal of only individual and not considered the withdrawal of wife and HUF and added Rs. 62,000/- in the income which is unfortunate."*

23. Similar grounds to these grounds have been taken in the case of Shri Kailash Rijhwani in I.T.(SS)A.Nos. 85 & 86/Ind/2014. Following the same reasoning given in para 6 above, we allow both these grounds in assessment years 2006-07 and 2007-08. As the facts of these grounds are similar to the grounds taken in Shri Kailash Rijhwani, we direct the AO to delete the additions made at Rs. 50,000/- for assessment year 2006-07 and Rs. 62,000/- for the assessment year 2007-08 in the case of Shri Kheraj Rijhwani. Both the grounds are allowed on this count.

**I.T.(SS)A.No. 94/Ind/2014 – A.Y. 2008-09 :**

24. The following grounds have been taken :-

1. *That addition on account of estimated sale of Rs. 30,000/- is unjustified, unreasonable and bad in law.*
2. *That addition on account of unexplained jewellery of Rs. 2,71,500/- is unjustified, unreasonable and bad in law.*

25. Facts regarding ground no. 1 is that from the perusal of books, the AO noticed that from 20.11.2008 to 22.11.2008 the assessee has purchased ice cream of Rs. 24,172/-, but during this period declared sales of Rs. 12,720/- only and thereafter till the end of the year no sale has been declared. The ice cream purchased should be sold for more than Rs. 27,000/-. As such it is clear that the assessee has made the sales of balance ice cream but not recorded in the books. During the search also it was found that the assessee family was engaged in unrecorded sales. After the considering the facts of the case a sum of Rs. 30,000/- is added to the income of the assessee. On appeal, the Ld. CIT(A) confirmed the same.

26. The Ld. Counsel for the assessee stated facts in the statement that during the year, the ice cream was purchased from 20.11.2008 to 22.11.2008 of Rs. 24,172/- but the sale of ice cream was Rs. 12,720/-. The reason behind the lower sale was that out of total ice cream purchased during above period, almost 50% ice cream was melted due to power failure and the same ice cream was not in condition to sale and completely wasted.

27. The Ld. Departmental Representative could not controvert the submissions of the Ld. Authorized Representative of the assessee.

28. We have considered the facts, rival submissions and perused the material available on record. We find that the ice cream was purchased from 20.11.2008 to 22.11.2008 at Rs. 24,172/-, but the sale of ice cream was Rs. 12,720/-. The reason behind the lower sale was that out of total ice cream purchased during above period, almost 50% ice cream was melted due to power failure and the same ice cream was not in condition to sale and completely wasted. We find merit in the submission of the Ld. Authorized Representative of the assessee. Once the ice cream is melted, it is not fit for human consumption, also because of long failure, it may deteriorate the condition of ice cream. We, therefore, direct the AO to delete the addition of Rs. 30,000/-.

29. We have already dealt with the issue of jewellery in the case of Shri Kailash Rijhwani in I.T.(SS)A.Nos. 87/Ind/2014 for assessment year 2008-09 in foregoing paras. Following the same reasoning as given in para 21 above, we direct the AO to delete the addition of Rs. 2,71,500/- in the case of Kheraj Rijhwani.

**I.T.A.Nos. 75 & 76/Ind/2014 – A.Ys. 2007-08 and 2008-09-  
Shri Keshav Rijhwani.**

30. The assessee has taken following grounds of appeal in I.T.(SS)A.No. 75/Ind/2014 for assessment years 2007-08 :-

1. That addition on account of rent is unjustified, unfortunate and bad in law.
2. The addition on account of Capital Gain u/s 50(c) is unjustified, unfortunate, bad in law and on estimation basis.

31. Apart from the above, the assessee has given an application for permission to modify the ground no. 2 for the assessment year 2007-08, and taken as ground nos. 3.1 & 3.2, which read as under :-

- 3.1 *That the appellant denies his liability to be assessed u/s 50C since the transaction of sale was done through agreement the appellant was not covered in its ambit and the Id. AO exceeded his jurisdiction and revoked the said provision.*
- 3.2 *That the Id. AO has grossly erred in law by applying Section 50C whereas the assessee does not fall in its purview as the law in the assessment year under consideration did not govern transactions made through an agreement of sale.*

The permission to modify the grounds is granted.

32. Facts regarding ground no. 1 are that the assessee has declared rental receipts in the earlier year for Rs. 1,38,000/- while during the year, the assessee declared only Rs. 72,000/-. The assessee could not give satisfactory reasons for reduction of rent. As the assessee has not produced any evidence in respect of the rent from the property and as per provisions of Section 22 of the Act, fair rental value would be annual value. The rent received from the same property in preceding year can be said reasonable fair market value. The AO made an addition of Rs. 66,000/- to the income of the assessee out of which deduction u/s 24 was also allowed. On appeal, the Ld. CIT(A) confirmed the same.

33. The Ld. Authorized Representative of the assessee reiterated the submission filed before us, which reads as under :-

*"The Appellant owns a property at Rajani Bhawan and earns rental income there from.*

*During the Assessment proceedings the Ld. AO compared the rental income over the years and observed that during the year 2005-06 (A.Y. 2006-07) the Appellant has shown Rs. 138000 as rent whereas in the year 2006-07 (A.Y. 2007-08) and*

*2007-08 (A.Y. 2008-09) rent is shown at Rs. 78000/- & Rs. 126000/- respectively.*

*The Ld. AO observed that since the Appellant is not able to give explanations for reduction in rent and also can't prove that the property remained vacant hence taking 2005-06 rentals as a fair estimation of the Annual Let Value added the difference as rental income for these years.*

### ***Submissions of Appellant***

*We would like to mention here that the aforesaid property is a commercial property and was not given on rent as a whole to a single person but to different individuals. Part of the portion was given on rent to M/s Monica Galaxy Pvt. Ltd. that was the fixed rental whereas remaining portion was given as and when a tenant approached for taking the property on rent.*

*Owing to the fact that the property had to be shared with another tenant and looking at the viability of the commercial success of the shop, not many persons showed interest in taking the property on rent, hence the shop used to remain vacant for a long period of time.*

*Since these tenancies depended upon the success of the shop of the tenant formal rent agreements etc. were not drafted and rent and other terms were decided on mutual understanding only.*

*Owing to such peculiarities of the case proof as to vacancy of the shop, rent agreements etc. could not be furnished.*

*We would like to mention here that over the years the Appellant has shown such fluctuating rental income. The table appended below shows the rental income over past years.*

<b>Assessment Year</b>	<b>Rental shown</b>
2002-03	84000/-
2003-04	135000/-
2004-05	103000/-
2005-06	103000/-
2006-07	138000/-
2007-08	78000/-
2008-09	126000/-

*It is pertinent to mention here that the Appellant has shown actual rent earned over the years irrespective of the quantum of rent.*

*It is also unfortunate that the Ld. AO has taken the maximum rental income year as the base year and has calculated annual let value from it. Whereas in the preceding years the rental income was considerably low.*

*Sir, the genuineness and the constraints of the Appellant should be given regard to and we thus request your honour to kindly delete the addition so made in rental income."*

34. The Ld. Departmental Representative could not controvert the submissions made by the assessee.

35. We have considered the facts, rival submissions and perused the material available on record. We find that the property was a commercial property and was not given on rent as a whole to a single person but to different individuals. We also find that part of the portion was given on rent to M/s Monica Galaxy Pvt. Ltd. and that was the fixed rental, whereas the remaining portion was given on rent as and when the tenant approaches. The fact that the property had to be shared with another tenant and looking at the

viability of the commercial success of the shop, many persons did not show interest in taking the property on rent, hence the shop remained vacant for a long period of time. Since these tenancies depended upon the success of the shop of the tenant, formal rent agreements etc. were not drafted and rent and other terms were decided on mutual understanding only. We also find that over the years the assessee has shown such fluctuating rental income. The assessee has also submitted the information regarding actual rent earned over the years irrespective of the quantum of rent. We find that the AO has taken the maximum rental income as a base year, whereas the rental income was considerably low in the preceding years. We, therefore, direct the AO to delete the addition made in the rental income.

36. Regarding ground no.2, the Ld. Counsel for the assessee reiterated the submission made in the written submissions, which reads as under :-

***“Ground Raised:** The addition on account of capital gain u/s 50C is unjustified, unfortunate and bad in law.*

***Modified Ground:***

*Whether the revenue was justified in revoking the provisions of Section 50C, to elaborate-*

*That the Appellant denies his liability to be assessed u/s 50C since the transaction of sale was done through agreement the Appellant was not covered in its ambit and the Ld AO exceeded his jurisdiction and revoked the said provision.*

*That the Learned AO has grossly erred in law by applying Section 50C whereas the assessee does not fall in its purview as the law in the A.Y. under consideration did not governed transactions made through an agreement of sale.*

*The appellant jointly owned a shop at Siddhi Vinayak Palace, Indore with three other family members. The property was purchased through an agreement dated 16.03.1999.*

*This property was sold through a Sale Agreement and entire consideration for the property of all the co-owners was received through banking channel in the month of March 2006.*

*Since consideration was received in the month of March, detail of sale of property was shown in the return of income for the year ending 2006 in all the cases.*

*In the Appellant's case Capital Gain arising out of such sale was computed at Rs. 48680/- and proper disclosure were so made in the return.*

*The Ld. AO during assessment observed that since agreement of sale is executed in July 2006 and no mention of transfer of possession at an earlier date is mentioned therein, the transaction should be taxable in the A.Y. 2007-08. He further resorted to Section 50C and took the fair market value of Rs.731850/- as the sale consideration (Appellant's Share) and hence computed Rs.321784/- as capital gain in 2007-08.*

*The below chart explains the transaction:*

<b>Particulars</b>	<b>Assessee (06-07)</b>	<b>Order (07-08)</b>
<i>Total Sale Consideration</i>	<i>458766.00 (Actual)</i>	<i>731850.00 (As per 50C)</i>
<i>Less: Indexed Cost</i>	<i>410066.00</i>	<i>410066.00</i>
<i>Taxable Capital Gain</i>	<i>48680.00</i>	<i>321784.00</i>

*In this addition thus there are two issues:*

*The year of Taxability to elaborate should it be 2006-07 as shown by the Appellant based on the receipt of sale consideration or should be 2007-08 as taken by the Ld. AO based on the Agreement of sale executed in July 2006.*

*Resorting to Section 50C considering that the sale was made on the basis of an agreement and not through Registered Sale Deed in the Year 2006 and thus was out of the purview of the erstwhile Section 50C.*

*As regards year of taxability we would like to submit that-*

*The Appellant along with other co-owners duly declared the transaction in the year 2006-07 based on their understanding of the facts.*

*Since entire sale consideration was received their actual rights in the property were relinquished and execution of an agreement was just an after event, they proceeded to declare the sale in the year 2006-07.*

*Also on receipt of sale proceeds conditions as contemplated in Section 53A of the Transfer of the Property Act are complied hence transfer within the meaning of Section 2(47) of the IT act is also achieved.*

*During the assessment proceedings the Ld. AO observed that since agreement to sale the property was executed in the month of July 2006 and no specific mention of transfer of possession at an earlier date is there, the capital gain shall be taxable in the A.Y. 07-08 and not A.Y. 06-07.*

*We would like to mention here that majority of the agreements and deeds are prepared over a standard Performa and new clauses are not entered or the standard clauses are not modified unless specifically asked for. In the present case also the Agreement was made accordingly.*

*Sir, a common man or a layman like the appellant cannot understand the importance of such specific clauses that they can change the year of taxability or can entail other repercussions.*

*Since, the Appellant based on his understanding has declared the transaction in the year 206-07 and so also transfer within the meaning of the Act is achieved in the year ending March 2006 only; we request your honour to kindly delete the addition so made in the year 2007-08.*

*As regards applicability of Section 50C, we have to submit that:*

*The Ld. AO resorted to the provisions of section 50C and taxed the appellant on the basis of guideline value in the year 2007-08.*

*We would like to mention here again that it is an undisputable fact that the transaction of sale of property was done through an Agreement of Sale and not through a Registered Sale Deed.*

*Since there is no sale deed the consideration of the transaction is neither adapted nor assessed, hence Section 50C cannot be invoked to compute the value of the property.*

*Attention is invited to the fact that the scope of section 50C was extended w.e.f 01/10/2009, by inserting the word "assessable" along with words "the value so adopted or assessed", to the transactions which were executed through agreement to sell or power of attorney.*

*Since the transaction took place prior to this amendment, this section can't be invoked.*

*In the case of CIT v. R. Sugantha Ravindram (2013) 214 Taxman 543 (Mad), the Madras High Court held that: -*

*The insertion of the words "or assessable" in section 50C of the Income-tax Act, 1961, w.e.f. 1st October, 2009, is neither a*

*clarification nor an explanation to the existing provision and it is only an inclusion of new class of transactions, namely, the transfer of properties without or before registration.*

*Before the amendment, only transfer of properties where the value was adopted or assessed by the stamp valuation authority was subjected to section 50C application. However, after introduction of the words "or assessable" such transfers where the value is **assessable** by the valuation authority are also brought into the ambit of section 50C. Thus such introduction of a new set of class of transfer would certainly have prospective application only. The amendments have been made applicable w.e.f. 1st October, 2009 and will apply only in relation to transactions undertaken on or after such date.*

*Since the transfer in the appellant's case was admittedly made prior to the amendment, section 50C, as amended w.e.f. 1st October, 2009, is not applicable we request to kindly delete the entire addition so made. "*

37. The Ld. Departmental Representative could not controvert the submissions made by the Ld. Authorized Representative of the assessee.

38. We have considered the facts, rival submissions and perused the material available on record. We have also gone through the provisions of Section 50C. We have also gone through the case law cited by the Ld. Authorized Representative of the assessee in the case of CIT v. R. Sugantha Ravindram (2013) 214 Taxman 543 (Mad), which is squarely applicable in the case of the assessee. We find that the transfer in the case of the assessee was admittedly made prior to the amendment, section 50C, as amended w.e.f. 1st October, 2009, would not be applicable in the assessee's case. We, therefore, direct the AO to delete the addition of Rs. 3,21,784/-.

39. The following grounds have been taken in I.T.(SS)A.No. 76/Ind/2014 for the assessment year 2008-09 :-

1. That addition on account of rent is unjustified, unfortunate and bad in law.

2. The addition on account of cash found is unjustified, unfortunate and bad in law.
3. The addition on account of jewellery found is unjustified, unfortunate and bad in law.

40. The facts regarding ground no.1 are that the assessee has declared rental receipts in the earlier year for Rs. 1,38,000/- while during the year the assessee declared only Rs. 1,26,000/-. The assessee could not give satisfactory reasons for reduction of rent. As the assessee has not produced any evidence in respect of the rent from the property as per provisions of Section 22 of the Act fair rental value would be annual value. The rent received from the same property in preceding year can be said reasonable fair market value. The AO made an addition of Rs. 12,000/- made to the income of the assessee out of which deduction u/s 24 was also allowed.

41. The Ld. Authorized Representative of the assessee stated that during the year, the assessee has received the rental income of Rs. 1,26,000/-, but due to vacancy of shop no. G-5 by the tenant, the receipt has come downward.

42. We have already decided the similar ground in the assessment year 2007-08. Following the same reasoning, we direct the AO to delete this addition of Rs. 12,000/-.

43. Facts relating to ground no. 2 are that the during the course of search proceedings, cash of Rs. 29,300/- was found from the possession of the assessee. During the course of assessment proceedings, the assessee was asked to explain the source of this amount. The assessee has stated that the amount of Rs. 29,300/- was his personal saving and his wife's saving. The assessee could not give evidence from where the amount was received as he has no source of income other than interest and rent. The AO after considering the facts of the case out of Rs. 29,300/- a sum of Rs. 25,000/- is treated unexplained and the same is added to the income of the assessee. On appeal, the Ld. CIT(A) confirmed the same.

44. The Ld. Counsel for the assessee stated that during the search, the Income Tax Department found Rs. 29,300/- cash from the bed room, which belonged to assessee and his wife. The AO

made the addition, inspite of the proper explanation given by the assessee.

45. The Ld. Departmental Representative could not controvert in support of the above.

46. We have considered the facts, rival submissions and perused the material available on record. We find merit in the explanation given. We direct the AO to delete the addition.

47. During the course of search proceedings, jewellery of 580.510 gms., valuing Rs. 4,10,530/- were found at the residence of the assessee. During the course of assessment proceedings, the assessee was asked to explain the source of investment in jewellery. After considering the facts, the jewellery of 200 gms. was treated as explained and 380.51 gms. was treated as unexplained and the value of it amounting Rs. 3,61,160/- was made to the income of the assessee for unexplained investment in jewellery.

48. We have already decided this issue in detail in the case of Shri Kailash Rijhwani in I.T.(SS)A.Nos. 85 to 87/Ind/2014.

Following the same reasoning, we delete the addition of Rs. 3,61,160/-.

**I.T.(SS)A.No.80/Ind/2014 - A.Y. 2008-09 - Shri Gurumukh Rijhwani:**

49. The following grounds have been taken in this appeal :-

1. That addition of Rs. 25,000/ cash which is belonged to my wife is unjustified and likely to be deleted from assessment order.
2. That addition on account of jewellery of Rs. 2,46,800/- is unjustified, unreasonable and bad in law.

50. During the course of search proceedings, cash of Rs. 78,230 was found from the possession of the assessee. During the course of assessment proceedings, the assessee was asked to explain the source of this amount. Assessee stated that the amount of Rs. 53,543/- was balance as per books and balance is saving. After considering the facts of the case out of Rs. 78,230/- a sum of Rs. 25,000/- was treated as unexplained and the same was added to

the income of the assessee, which, on appeal, the Ld. CIT(A) confirmed.

51. The Ld. Authorized Representative of the assessee stated that the Income Tax Department found cash of Rs. 78,230/- from the bed room of the assessee, which belonged to his shop M/s. Poonam Ice Cream and his wife. In spite of proper explanation given by the assessee, the Id. AO has made the addition.

52. The Ld. Departmental Representative could not controvert anything against the submission of Ld. Authorized Representative of the assessee.

53. We have considered the facts, rival submissions and perused the material available on record. We find merit in the explanation given. We, therefore, direct the AO to delete the addition.

54. Ground No. 2 relates to addition on account of jewellery of Rs. 2,46,800/-.

55. During the course of search proceedings, jewellery of 501.540 gms. valuing Rs. 4,10,530/- were found at the residence of the assessee. After considering the facts and status of the case,

jewellery of 200 gms. was treated as explained and 301.540 gms. Amounting to Rs. 2,46,800/-was treated as unexplained investment in jewellery and added to the income of the assessee.

56. We have already decided the similar in detail in the case of Shri Kailash Rijhwani in I.T.(SS)A.Nos. 85 to 87/Ind/2014. Following the same reasoning, we delete the addition of Rs. 2,46,800/-.

57. In the result, all the appeals of the assesses are allowed.

Order was pronounced in the open court on 09 .03.2018.

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 09/03/2018

**CPU/SPS**

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Private Secretary/DDO, Indore**

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