

INCOME TAX APPELLATE TRIBUNAL  
**DELHI BENCH "G": NEW DELHI**  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6815/Del/2014  
(Assessment Year: 2010-11)

ACIT, Central Circle-18, New Delhi	Vs.	Sanjay Taneja, 198/1, Ramesh Market, East of kailash, New Delhi PAN: AAEPT8805A
(Appellant)		(Respondent)

Revenue by :	Shri S.S.Rana, CIT DR
Assessee by:	Shri S.C. Matta, CA
Date of Hearing	17/09/2018
Date of pronouncement	31/10/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the Id CIT(A)-XXXII, New Delhi dated 15.09.2014 for the Assessment Year 2010-11.
2. The revenue has raised the following grounds of appeal: -
  - “1. *The Id. Commissioner of Income-tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 6,81,55,760/- u/s 69A of the Act, 1961 made on account of unexplained investment.*
  2. *The learned Commissioner of Income-tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 16,25,500/- made on account of interest income.*
  3. *The learned Commissioner of Income-tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 1,21,951/- made u/s 14A of the IT Act and also ignored the fact that the expenditure incurred in relation to exempt income is more than the exempt income.*
  4. *(a) The order of the Id CIT(Appeals) is erroneous and not tenable in law and on facts.”*
3. Brief facts of the case is that the assessee is an individual carrying on business through two proprietary concerns M/s. Taneja Paint and Hardware store and Taneja Construction. It is engaged in the business of

trading in paint, hardware and sale and purchase of properties. Survey u/s 133A was carried out on 24.02.2010 and cash of Rs. 76.24 lakhs was found and therefore, search u/s 132 of the Act was initiated. During the course of survey the assessee was asked to explain the source of cash and assessee submitted that he offers Rs. 60 lakhs as undisclosed income because out of total cash found of Rs. 6157719/- the assessee could not explain this sum. For balance of sum of Rs. 1.57 lakhs it was stated that it represent the sale of past 1 and 2 days. There was an excess stock was also found which was admitted by the assessee as unexplained investment.

4. The assessee filed his return of income on 30.09.2010 declaring income of Rs. 28518570/-. The Id AO found that the assessee has earned dividend of Rs. 100 and therefore, disallowance u/s 14A read with Rule 8D of Rs. 121951.0 was made. The assessee did not make any disallowance. During the course of search at the residence certain long books marked as Annexure A-2 was seized. The assessee explained in the statement with these documents are written by his wife, however, page Nos. 23 to 24 are written by the assessee. The Id AO on the basis of those pages found that the assessee has given loans and advances to various parties and interest is also charged. Neither the loan amount nor the investment is disclosed in the books of account. The assessee was asked to explain these documents and also to submit the complete address and PAN of the persons named therein. The assessee submitted that these are dumb documents and no meaning can be ascribed to them. The assessee stated that he was contemplating construction of a house and therefore, certain funds were required. He has mentioned the name of these persons from whom the loan could be available later on. However, later on no borrowing was made and therefore, no such transactions has taken place. The Id AO disbelieved the contention of the assessee and made the addition of Rs. 68155760/- to the total income of the assessee vide para No. 15 and 16 of the assessment order as under: -

"15. The reply was assessee considered but cannot be accepted in the light of the following:-

1. *The assessee has contradicted himself. This contradiction is apparent from the plain reading of the statement of the assessee and his submission in the assessment proceedings. The assessee has admitted in his statement on oath recorded on 21.04.2010 that , "Our showroom is located on a road k which is ot a commercial street or mix land use street as per MCD norms. Due to recent ceiling drive by MCD we were facing a threat of closure of our shops. I was planning to shift my entire shop to a fully commercial area in the vicinity. It came to my knowledge that a shop in fully commercial location equivalent in area to my present shop will cost 5 to 6 crores. Since I was not having that much fund and in a very distressed state of mind, I just noted down the names of probable persons who can extend me loans to the extent possible in round figures with the interest burden thereof. Since the interest burden as per my calculation was working out to be very high considering profit of my exiting business so dropped the idea as such and I preferred to continue from the existing office shop".*

*Clearly the assessee has himself ascribed motives and meaning to the contents written on pages referred above. During assessment proceedings the assessee has submitted that it is a dumb document and no meaning can be ascribed. Thus, assessee has contradicted his own statement.*

2. *At least following aspects are clear from a cursory glance at the pages referred above.*
  - a) *There are names of human beings written on those pages.*
  - b) *There are two amounts written against each name.*
  - c) *The amounts written have been suffixed with lac or crore (written as "*  
*C"). This establishes that these amounts refer to*  
*monitory transactions.*
  - d) *A particular ratio/percentage can be seen between the amounts written in column No.4 to*

*the amounts written in column No.3 and this percentage has been repeated. For example in case of Prem Ji, Ajay ji and Bubba the amount written in column no.4 is 3% of amount written in column no.3. Similarly, in some cases the percentage is 2.5%.*

3. *From the percentages mentioned in column no. is apparent that these are interests upon the amounts of loan given/investment made by assessee which are reflected in column No. 3.*
4. *The submission of the assessee that these are the amounts which the assessee was thinking to borrow from the persons mentioned in these pages cannot be accepted as the percentage of Interest is very low as compared to the percentage rate of interest paid by the assessee on other loans used by him. Had there been a possibility to obtained loan at such lower, the assessee would not have taken loans at the rates as high as 15%.*
5. *Further, the wife of the assessee in her statement recorded on oath on 24.02.2010 her residence, in response to question no.16 has stated, these pages were written by my husband 10 to 12 days ago. These transactions are related to loan taken from the persons noted on page NO. 23 I do not know the address these persons. My husband told me that I have taken loan from these persons as mentioned at 23. Further, he told me that if anything happen to my husband I have to return amount of loan?"*

*It is clear from the statement of the wife of the assessee that these are not old documents as they were written only 10 to 12 days ago. Therefore, the contention of the assessee that he only faintly remembered cannot be accepted. Similarly, the contention of the assessee that these are dumb documents, stand nowhere. It is also clear from the statement of the wife of the assessee that these are loan transactions as told by the assessee himself to his wife.*

6. *Regarding the veracity of the claim of the assessee that these amounts represent the prospective loans that the assessee was contemplating to take, it is pertinent to note that any rational economic person would keep and*

*preserve the records about the moneys receivable by him with greater degree of care and concern than the records about the moneys payable by him. Hence, in the facts and circumstances of the case the preponderance of probabilities suggest that these amounts are, more likely than not, the moneys receivable by the assessee.*

7. *Even if the contention as stated and admitted by wife of the assessee, that these are the loans taken by the assessee is accepted, these amounts shall be added to the income of the assessee as the assessee has not filed any confirmation, bank statement and other documents to establish identity and capacity of the persons mentioned and genuineness of these transactions. In such an alternative situation, if at all the interest has been paid by the assessee, the same shall not be allowed as deduction for two simple reasons -1), the assessee has not claimed it in his ITR, and 2) the assessee has not used these funds for any of his disclosed business activities.*
8. *The assessee has failed to produce these persons and has not even furnished their address and PAN. Thus, the assessee has failed to discharge his onus to establish, with supporting evidences, his version about -the contents written on these pages.*
9. *The case laws quoted by the assessee do not help the case of the assessee as in the instant case there is no uncertainty about the contents written on these pages.*

*There are no letters like 'H S.', 'T.2' and 'D- Shop' which cannot be explained, and the figures can also be explained. Clearly, the judgment in the case Mahavir Wollen Mills vs. CIT (2000) 245 ITR 297 has been based on the basis of entirely different facts and hence is not applicable to the facts of the instant case. The facts in the case of CIT vs S.M. Agarwal 293 ITR 43, are different from this case as the assessee has himself admitted, albeit after being confronted with the difference in stock and presence of unaccounted cash, of having made undisclosed investment in stock and of having other disclosed incomes. It cannot be held that the assessee had no undisclosed income.*

10. Moreover, as the assessee has himself admitted (his wife has also supported the same) that he has written these pages, the provisions of section 132(4A) of Income-tax Act, 1961 clearly apply. As per provisions of Section 132(4A) of Income-tax Act, 1961 these amounts belong to the assessee and the contents of these pages are true. The onus to prove that contents of the documents found at the premises of assessee or not proof lies of the assessee. Assessee has failed to discharge his onus. The assessee has not produced any evidence to substantiate that these transactions are not true or that the amounts mentioned, does not belong to assessee.

16. Thus, it is clear that assessee has made an investment of Rs. 6,81,55,760/- which has not been explained by the assessee, hence the same is added to the income of the assessee u/s 69 A of Income-tax Act, 1961."

5. He further added interest income of Rs. 1625500/- as interest earned.
6. The assessee also could not explain the source of the cash found and it was found out of Rs. 6157719/- Rs. 533745/- remains to be explained which the assessee could not explain and therefore, the addition to that extent was made. Certain other additions were made and consequently assessment u/s 143(3) of the Act was passed on 09.12.2011 of Rs. 99233190/-.
7. The assessee preferred an appeal before the Id CIT(A) who deleted the addition of Rs. 68155760/- on accounts of loans and Rs. 1625500/- on account of interest income vide para No. 9:-

"9. I have considered the facts of the case, written submissions of the appellant, remand report of the Assessing Officer and the rejoinder filed by the appellant and also perused the various case laws relied upon by the appellant in support of his case. I have also called for the assessment record, and also the copy of the seized document i.e. page no. 23-25 of annexure A-2 seized from the premises of the appellant's residence at E-302, 1st Floor, East of Kailash, New Delhi-65. The content of the above seized pages was reproduced by the Assessing Officer in his order as under:

1	2	3	4
Sri No.	Name of Party	Amount	Interest

1.	Mahesh Ji	50,00,000/-	1,12,500/-
		63,00,000/-	94,500/-
2.	Love Choudhary	10,00,000/-	25,000/-
3.	Prem Ji	32,00,000/-	96,000/-
4.	Gupta Ji	20,00,000/-	45,000/-
5.	Rajesh Chawla	25,00,000/-	62,500/-
6.	Ajayji	35,00,000/-	1,05,000/-
7.	Bubba	30,00,000/-	90,000/-
8.	Jaswani	2,55,760/-	3,68,000/-
9.	Ram Sahab	10,00,000/-	20,000/-
10.	Jijaji	38,00,000/-	57000/-
		56,00,000/-	-
11.	Saudagar	2,00,00,000/-	4,00,000/-
12.	Bebu	1,00,00,000/-	1,50,000/-
13.	Nemimama	10,00,000/-	-
	Total	68155760	1625500

9.1 Vide notice u/s 142(1) of the It Act, 1961 dated 26.08.2011, the appellant was asked to explain the transactions found recorded on the above pages and was also asked to produce the persons whose names were mentioned on it. The appellant did not produce these persons nor did he furnish the complete address or PAN of these thirteen persons referred in the above list.

9.1.2 Vide dated 2.12.2011, the Assessing Officer issued a show cause notice to the appellant to explain as to why the amounts mentioned against thirteen persons on page 23-25 of Annexure A-2 be not taken as income of the appellant. In response to the same, the appellant submitted the following:

"I informed search/survey officer that scribbling in diary of my wife Smt. Sharda Taneja.

1. Dumb documents
2. No meaning can be ascribed
3. I faintly remembered that I was contemplating to buy or construct and I may require funds.
4. Name scribbled or amount was my imagination.
5. I made while enquiries and I was informed funds can be arranged at high rate of interest and sufficient security. I ignored idea and nothing further was done.
6. Barring these scribbling nothing was found and the scribbling are dumb document and no meaning can be ascribed."

*In support of the above, the appellant cited the judgments of Hon'ble Delhi High Court in the case of CIT Vs D K Gupta 308 ITR 2013, CIT Vs S M Agarwal 293 ITR 43, and Mahavir Woolen Mills Vs CIT (2000) 245 ITR 297.*

*9.1.3 The reply of the appellant was considered but was not accepted by the Assessing Officer for the reasons quoted by him in para 15 of the assessment order dated 9.12.2011. In the said para, the Assessing Officer referred to the statement of the appellant recorded on 21.04.2010 wherein he stated as under:*

*"Our showroom is located on the road which is not a commercial street or mix land use street as per MCD norms. Due to recent ceiling drive by MCD we were facing a threat of closure of our shops. I was planning to shift my entire shop to a fully commercial area in the vicinity. It came to my knowledge that a shop in fully commercial location equivalent in area to my present shop will cost 5 to 6 crores. Since, I was not having that much fund and in a very distressed state of mind, I just noted down the names of probable persons who can extend me loans to the extent possible in round figures with the interest burden thereof. Since the interest burden as per my calculation was working out to be very high considering profit of my exiting business so I dropped the idea as such and I preferred to continue from the existing office shop "*

*According to the Assessing Officer, the above statement was an admission and at the same time he found it to be contradicting with his own reply given in response to the show cause notice.*

*9.1 4 Further, reference was made by the Assessing Officer to the statement recorded on oath on 24.02.2010 in the case of Smt. Sharda Taneja, wife of the appellant. In response to question no. 16 she stated as under:*

*"These pages were written by my husband 10-12 days ago. These transactions are related to loan taken from the persons noted on page 23. I do not know the address of these persons my husband told me that I have taken loan from these persons as mentioned at 23. Further, he told me if anything happen to my husband I have to return amount of loan."*

*From the above statement of the appellant's wife, the Assessing Officer had drawn an inference that these were the loans taken.*

*9.1.5 Further, in reply to question no. 18 Smt. Sharda Taneja stated as under:*

*"This loan was taken for the purchase of plot and construction of the showroom in the name of M/s Taneja Home Solutions adjoining to M/s Taneja Paints and Hardware Stores, 198 Ramesh Market, Near Sapna Cinema, New Delhi."*

*In reply to the question no. 19 she replied as under:*

*"We purchased built up building six months ago and demolish it and constructed showroom thereafter."*

*9.1.6 From para 15 of the assessment order, it is evident that the Assessing Officer was pre-determined to assess the transactions found on the seized pages as undisclosed income of the appellant for the reasons-*

*a) In para 15 sub para 2, the Assessing Officer stated that the names of the human beings were written on the seized pages, and two amounts written against each name, and these amounts were suffixed with lac or crore. Therefore, according to him these amounts were monetary transactions. It was also stated that a particular ratio/percentage could be seen between the amounts recorded in column 3 and column 4 which established that apparently this is the percentage of interest. The Assessing Officer did not accept the submission of the appellant wherein it was stated that he was contemplating to borrow funds from the persons mentioned on the ground that percentage of interest was very low as compared to the percentage of rate of interest paid by the appellant on other loans used by him. At the same time, the Assessing Officer contradicted his own judgment by stating that "Had there been a possibility to obtain loan at such low interest, the assessee would not have taken loans at the rates as high as 15%."*

*b) Again in sub para 6 of para 15, the Assessing Officer stated as under:*

*"Regarding the veracity of the claim of the assessee that these amounts represent the prospective loans that the assessee was contemplating to take, it is pertinent to note that any rational economic person would keep and preserve the records about the moneys receivable by him with greater degree of care and concern than the records about the moneys payable by him. Hence, in the facts and circumstances of the case the preponderance of probabilities suggest that these*

*amounts are, more likely than not, the moneys receivable by the assessee."*

c) *Again in sub para 7 of para 15, the Assessing Officer stated as under:*

*"Even if the contention, as stated and admitted by wife of the assessee, that these are the loans taken by the assessee, is accepted, these amounts shall be added to the income of the assessee as the assessee has not filed any confirmation, bank statements and other documents to establish identity & capacity of the persons mentioned and genuineness of these transactions. In such an alternative situation, if at all the interest has been paid by the assessee the same shall not be allowed as deduction for two simple reasons-1), the assessee has not claimed it in his ITR, and 2) the assessee has not used these funds for any of his disclosed business activities."*

*As the appellant failed to produce these persons and did not furnish their PAN and address, to substantiate that these transactions did not belong to him, the Assessing Officer resorted to make a definite addition, without ascertaining the nature of transactions whether they constitute "loans and advances" or "investments".*

*9.1.7 In the background of the above facts, the Assessing Officer made an addition of Rs. 6,81,55,970/-, which is an aggregate of the amounts recorded on the seized pages mentioned against the 13 persons as 'loans and advances' or 'investments' on which interest amount of Rs. 16,25,500/- was earned by the appellant*

*9.1.8 From the contents of the above para 15 and also on perusal of the statement given by Sh. Sanjay Taneja and Smt. Sharda Taneja, I find, that there was an inconsistency while explaining the nature of the transactions found recorded on the seized pages, and also the interpretation of nature of transactions asserted by the Assessing Officer. In the statement of Sh. Taneja there was a probability, but same cannot be translated into an evidence as the same was not supported by any corroborative material. The statement of Smt. Sharda Taneja, wife of the appellant portrayed a liability. Both these contradictions did not concede with the assertion of the Assessing Officer that the said transactions were either "loans and advances" or "investments" on which interest was earned by the appellant. In the background of this incoherent analysis of statements and assessment, the Assessing Officer was unjustified in treating the amount of Rs. 6,81,55,760/- as unexplained investment u/s 69A of the I T Act, 1961 without*

*identifying the nature of the transactions that were found recorded on the seized page 23-25 with substantiating evidence.*

*9.1.9 On perusal of the material on record, I find that in the course of the assessment proceedings, the Assessing Officer did not even make any attempt to bring on record the nature of the transactions and simply determined the income of the appellant based on the facts and interpretation of the evidences. According to the Assessing Officer, the details mentioned on these pages were related to an undisclosed income of the appellant which could not be identified by him as to whether these qualify for (A) loans and advances given by him to various persons on which interest was earned or (B) the investments which were unexplained and qualified for addition u/s 69A of the I T Act, 1961. Instead of adducing evidence from the above transactions, he went ahead with a presumption that the amounts found recorded in the second column could have been accrued to the appellant. The Assessing Officer also mentioned in his order that these transactions were investments which were not found recorded in the books of account of the appellant and therefore the same was not offered for taxation.*

*9.1.10 As per the provisions of section 69A, the Assessing Officer did not bring any material on record to demonstrate that the appellant was the owner of the money that was found recorded on the seized pages 23-25. Addition was made on a mere imagination without bringing any material on record and such addition cannot be sustained. There is also a legal presumption u/s 110 of the Evidence Act that possession is the prima facie proof of ownership. The Assessing Officer is empowered to assess the income of the appellant on the basis of the material which was required to be considered for the purpose of assessment and ordinarily not on the basis of*

*statements alone that were recorded on various occasions, unless there is a material to corroborate that statements. The mere fact that the appellant and his wife had made such statements by itself cannot be treated as having resulted in an irrebuttable presumption against the appellant.*

*9.1.11 Since there was no clarity and in the absence of a definite finding not given by the Assessing Officer in the assessment order, regarding the nature of transactions found recorded on the seized pages, my predecessor in the course of the appeal proceedings, vide letter dated 1.2.2013 issued directions under section 250 (4) of the I T Act, 1961 to the Assessing Officer to conduct necessary enquiries and to submit a report on the following issues:*

1. *Identify the thirteen persons whose names appear on page numbers 23 and 24 of Annexure-2 seized from the residence of the appellant and to examine them on oath so as to find out the details of the transactions between each of the said 13 persons and the appellant.*
2. *Ascertain the nature of transactions between the aforesaid persons and the appellant as to whether the amounts mentioned represent loans taken or given by the appellant.*
3. *Ascertain the market value of the property which as stated by Smt. Sharda Taneja, was constructed out of the funds mentioned in Annexure A-2.*

9.1.12 *In compliance to the above directions, the Assessing Officer issued a notice to the appellant. In response to the same the appellant appeared during the remand proceedings and submitted the following documents:*

1. *Affidavit filed by the appellant dated 15.06.2013. An extract of the same is reproduced below:*

1. *Taneja Completed Home Solutions Pvt Ltd. was incorporated on 16.03.2010.*
2. *Taneja Complete Home Solutions Pvt. Ltd. neither purchases nor constructed any property during 01.04.2009 to 31.03.2010.*
3. *I confirm no plot was purchased or constructed in the name of M/s Taneja complete Home Solutions Pvt,. Ltd. at 198/1 Ramesh Market, near Sapna Cinema, New Delhi.*
4. *That I purchased a constructed property having Plot Area of 66.88 sq. meter and constructed area on Ground, First and second floor (totaling 200.67n Sq. mt) at 198/1 Ramesh Market, Garhi East of Kailash on July 2009 for Rs. 37,25,000/- . This property is adjoining to our existing showroom at 198/l\*Runiesh Murket, GurhhEast'Of Kailash,*
5. *No valuation Report is available and no approved sanctioned map has been obtained since building is already constructed.*

2. *Affidavit filed by Smt. Sharda Taneja, dated 15.06.2013 is extracted below:*

- "1. I am not conversed with business affairs of my husband, Mr. Sanjay Taneja.*
- 2. I misunderstood his business plans of my husband in purchasing a shop in commercial area adjoining our shop by taking loans in case his existing shop gets sealed and demolished.*
- 3. I linked the above planning to the building recently purchased by him and stated the same in my statement."*

*From the above statement, it is evident that she was not conversant with the business affairs of the appellant and misunderstood the business plans of the appellant in purchasing shop in ^commercial area adjoining the existing shop by seeking loans in case if the existing shop was closed or demolished. The Assessing Officer in the course of the remand proceedings did not impeach the contents of these affidavits and did not bring any adverse material on record.*

*9.1.13 Reference is made to the statement recorded on 24.02.2010 of Smt. Taneja where in reply to question no. 18 she mentioned the name of Sh. Ravi Malhotra identified as "Jijaji" in the list of 13 persons mentioned above. An amount of Rs.38,00,000/- and an amount of Rs. 57,000/- was found noted. Another amount of Rs. 56,00,000/- was mentioned against "nil" figure. During the remand proceedings, the Assessing Officer summoned Sh. Ravi Malhotra on 30 04.2014 and recorded his statement or oath. In the said statement Sh. Ravi Malhotra denied giving or taking any loan from the appellant and also denied that he ever helped the appellant in acquiring the property in any manner.*

*9.1.14 During the year under consideration, relevant to the financial year 2009-10, the appellant purchased a property in July, 2009 having plot area of 66.88 square meters and constructed area on the ground first and second floor aggregating to 200.67 square meters at 198/1, Ramesh Market, East of Kailash for an amount of Rs. 37,25,000/-. On the directions of my predecessor CIT (A) u/s 250(4) on this issue, the said property was referred to the DVO for the valuation by the Assessing Officer. As per the report of the DVO which is on record, the market value of the property was determined at Rs. 1,09,40,700/-. The Assessing Officer failed to ascertain the nature of transactions found recorded on the seized pages 23-25 and relate the same to the purchase of the property. The difference between the value declared by the appellant and that which was estimated by the DVO cannot be considered as an investment as the same is not supported by any material seized at*

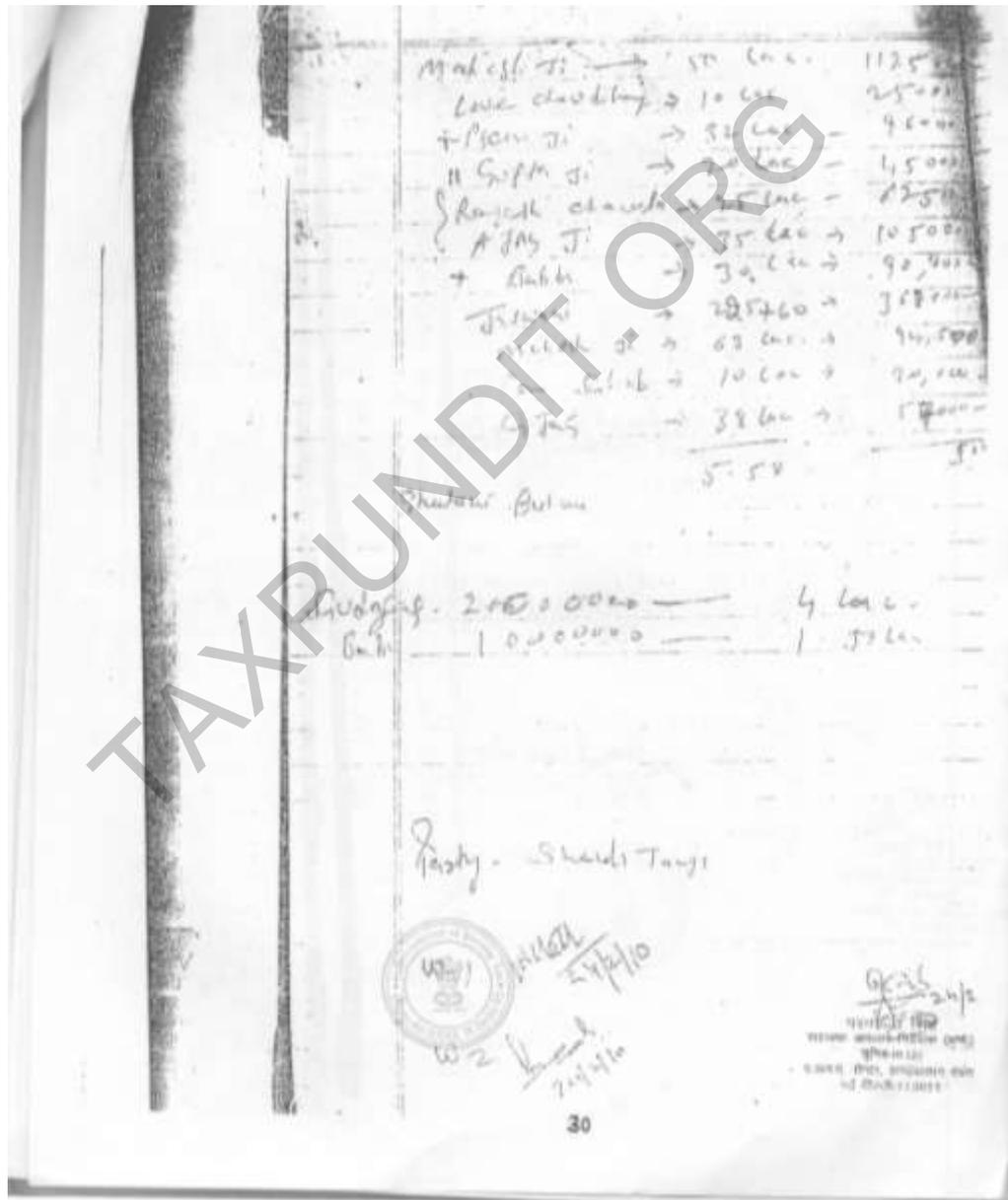
*the time of search for purchasing the property. Valuation of the property depends on the location of the property, nature of the property and the purchase for which the property was meant. The difference between the two does not represent the unexplained investment, in the shape of unexplained expenditure until and unless it is corroborated with a cogent evidence as section 69 is a deeming provision. However, it is the prerogative of the Assessing Officer to go beyond the purchase price declared by the appellant to find the correct and fair valuation of the property, if there was a direct evidence established or gathered by him from the transactions that were found recorded in the seized pages. The Assessing Officer is a fact finding authority and nothing was ascertained by him from the seized material. Respectfully, I differ from the opinion of my predecessor on the issue to remand the case for referring the matter to the DVO to ascertain the market value of the property purchased as in my view no addition can be made exclusively relying only the value arrived at or determined by the DVO, as it is only an estimation as there was no material found in the search and seizure proceedings at the residence of the appellant, and as the Assessing Officer failed to give a finding that the amount found recorded on the seized pages represented the undisclosed income of the appellant, the valuation arrived at by the DVO would be of no consequence as the difference between the declared value and value determined by the DVO cannot be treated as investment or unexplained expenditure without any supporting evidence. The appellant also vehemently argued that the Assessing Officer did not reject the books of accounts and he also pointed out to certain shortcomings and defect in the valuation of the property. It was categorically stated that the property was a residential building with no parking place and restriction in high and the comparison of the property by the DVO with the properties in East of Kailash commercial area by the approved valuer was differentiated by him. The valuer has not taken into consideration the objections raised by the appellant and other relevant factors. The property is not situated in East of Kailash, Commercial Area but in Garhi which is just like a re-settlement colony. The property was purchased in financial year 2009-10 relevant to assessment year 2010-11 and during this year and also in subsequent years the appellant incurred expenditure on further improvement and value addition. The property was valued in February, 2014 and therefore, there is bound to be some difference in the valuation of the property as done by the appellant and that of the DVO which resulted in escalation in the estimate of the DVO.*

9.1.15 In the course of the appeal proceedings, it was further submitted by the appellant that in a zeal to make unwarranted and unlawful additions the Assessing Officer altered the contents of

page 23 (and its back) of Annexure A-2 seized at the time of search. It was alleged that in para 13 of the assessment order he inserted the following heading to the seized document

Name of the party      Amount      Interest

It was categorically denied by the appellant that no such words/heading was found written on that seized paper. I have called for the said seized document and found that no such details were found recorded. A copy of the said document is reproduced below for necessary analysis.



Pg 23

Mahesh Ji	→ 170 lac.	112500
Love choudhary	→ 10 lac	25000
+ Psen Ji	→ 82 lac	96000
11 Gupta Ji	→ 70 lac	45000
Rajesh chavda	→ 25 lac	62500
Ajay Ji	→ 35 lac	105000
+ Babli	→ 30 lac	90000
Jitendra	→ 225+60	368000
malik Ji	→ 63 lac	94500
"an. Bab	→ 10 lac	20000
Ajay	→ 38 lac	57000
		5.58
Shantanu But me		
Shilpa	20000000	4 lac
Babli	10000000	1.5 lac

Party - Shantnu Taneja

24/2

24/4/10

24/4/10

30

*It was a ruled page with names of 13 persons and amounts mentioned against each one in two columns. No details like 'name of the party' 'amount' or interest' was written on it. Again on page 25 the names were mentioned as under:*

Name	Rs.
Mahesh	62 lac
Jijaji	56 lac
Nemi mama	10 lac
Saudagar	2 lac

*It is a point to mention that the Assessing Officer considered the amount of Rs. 50 lac found recorded against the name of 'Maheshji' (si. no. 1) page 23, and left out Rs. 62 lac found against his name on page 25. No reasons were given by the Assessing Officer why an amount of Rs. 62 lac was included in the name of Maheshji.*

*9.1.17 The assertion of the Assessing Officer that a particular percentage can be seen between the two columns is contrary to the contents of the seized pages. Before the names like Jijaji and Nemi mama (mentioned at si. no 10 & 13) only one amount was recorded and against the corresponding column no amount was mentioned. The observation of the Assessing Officer in para 15.2 of the assessment order that there was a percentage recorded at 2% and 3% is also factually incorrect due to the fact in case of Jaswani (mentioned at serial no. 8) the percentage recorded was more than 100%. Therefore, the recordings on the above mentioned pages are incoherent and it cannot be conclusively said that they represented investment on which interest income was earned by the appellant. It is also pertinent to mention here that in sub para 4 of para 15, the Assessing Officer himself stated that had there been a possibility to obtain loan at such low interest, the appellant would have not taken loans at the rates as high as 15%. On the same logic, if the appellant was the owner of the money, he would not have given loans to the persons at such low rate of interest and without any security, when he could get better return of higher rate of interest offered by financial institutions.*

*9.1.18 Even for an academic discussion if the observation of the Assessing Officer is accepted regarding the ratio between the column three and column four which represented the amount (investment) and interest thereon, the aggregate of such percentage worked out to 2.38% per annum (1625000/ 68155760). The prevailing bank rate of interest is 9-10% per annum on fixed deposits, and it is beyond my comprehension as to why anyone would give their monies for such low return of interest. This outrageous reading of the seized pages and assuming that the appellant invested funds at 2.38% per annum is unjustified by the Assessing Officer when the appellant himself borrowed more than*

2.5 crores at 15% interest, the fact that was accepted by the Assessing Officer in para 15.4. Therefore, in my view the attempt of the Assessing Officer to decipher the paper on the basis of preponderance of probability is devoid of natural justice and principle of liberal construction in turning the contents to details of investment and interest earned thereupon. The very fact that the wife of the appellant in her statement on 24.2.2010 stated that loan was taken for purchasing the property for their company M/s Taneja Complete Home Solutions Pvt. Ltd. when the fact is as per the record the company was incorporated on 6.3.2010. It is also pertinent to mention that the appellant purchased the property in his individual name in July, 2009 the fact which Smt. Sharda Taneja was not aware and the business transactions of the appellant to the extent that she did not know the cost of the property and ownership thereof.

9.1.19 After the above detailed discussion pertaining to the addition of Rs.6,81,55,470/- by the Assessing Officer, I am of the view that no evidence was adduced or collected by the Assessing Officer in the course of the remand proceedings also to explain the nature of the notings found on the seized pages where certain names were scribbled against the amounts (There is no name written on these pages to whom they belong) or the year of transactions or the dates to which they pertain was not mentioned. No hidden assets were found in the course of search that indicated that the amounts mentioned on these pages were utilized for such purchase. No materials were seized that suggested that the amount found recorded were linked to the appellant in these transactions. No evidence was brought on record to connect the 13 persons to the appellant. The Assessing Officer could not connect these transactions to the purchase of the property by the appellant during the year by extensive enquiry or investigation. Other than one person who is the brother in law of the appellant no other person could be identified or summoned by the Assessing Officer. The brother in law of the appellant was examined and he categorically denied having any link to the transactions on the document. Therefore, the Assessing Officer failed to prove the investment made in the property nor brought any material on record to substantiate that the amount found recorded against the 13 names belong to the appellant and interest was earned thereon. I place reliance on the judicial precedents of the following cases:

1. *Amar Natvar Lai Shah Vs ACIT (1997) 60ITD 560, 564-565 (Ahd)*
2. *ACIT Vs Shailesh S Shah (1997) 63 ITD 153 (Bombay)*

3. *Malabar Marketing Company Vs ACIT (2004) 91 TTJ 348 (Mumbai)*
4. *DD Malhan Vs. DCIT (2004) 91 TTJ 947 (Del)*
5. *Bansal Strips Pvt. Ltd. Vs ACIT (2006) 99 ITD 177 (Del)*
6. *CIT Vs Girish Chaudhary (2008) 296ITR 619 (Del)*

*Therefore, this document is nothing but a dumb document in the absence of any other material that was brought on record by the Assessing Officer to show that the appellant made investment in the property or extended loans to other or sought loans to buy the property. In such circumstances, the addition made by the Assessing Officer cannot be sustained as there is no cogent evidence to justify the addition. The Assessing Officer also did not bring any evidence to show that the appellant was advancing any money and interest or had any funds for lending the same. Estimation of notional income on mere surmises and conjectures is opposed to law and circumstances of the case and therefore the addition of Rs. 6,81,55,670/ and Rs. 16,25,500/- made by the Assessing Officer on account of unexplained investment and interest thereupon is hereby deleted*

8. Therefore, revenue aggrieved with the above order has preferred appeal before us.
9. The Id CIT DR vehemently submitted that during the course of search the documents were found which clearly shows that assessee has given a loan to the parties. The provisions of section 292C and section 132(4A) of the Act clearly says that the presumption is available even with respect to assessment proceedings that such documents belong to the assessee and the contents of such documents are true. He further submitted that despite being given adequate opportunity, the assessee failed to explain the nottings on the above seized documents. Despite specific query from the Assessing Officer the assessee did not furnish name and address as well as the permanent account number of the persons mentioned in the seized documents. He further stated that the Id CIT(A) has held that addition was made on

a mere imagination without bringing material on record is devoid of merit because the assessee was given opportunities to explain the documents. The assessee failed to explain them and therefore, addition was made. He further submitted that as per direction u/s 250(4) of the Act the Assessing Officer was required to examine the 13 persons mentioned in the above document and make necessary enquiries. However, the assessee did not provide any information about the whereabouts of those 13 persons and therefore, AO could not examine them or make requisite enquiries. Further no addition was confirmed by the Id CIT(A) on the basis of cost of construction as per valuation report. He further stated that the Id CIT(A) has overlooked the provisions of section 132(4A) and 292C of the Act while dealing with document found during the course of search. He further stated that affidavit submitted before the Id CIT(A) is a self serving document which does not have any evidentiary value

10. He further relied upon the decision of the Hon'ble Delhi High Court in CIT Vs. Sonal Construction and CIT Vs. Naresh Kumar Agarwala along with host of other cases. He submitted a detailed note on the issue. He further submitted the copy of the seized material in a separate paper book.
11. The Id Authorised Representative reiterated the submission made before the Id CIT(A). He further referred to page No. 30 and 31 of the paper book which is copy of the seized material and submitted that it does not contain name of the assessee, it does not have date and the figures are also in two digits. He further stated that this document is a dumb document and does not have any commercial value. He further relied upon the decision of Hon'ble Supreme Court in case of Common Cause Vs. Union of India 394 ITR 220 to support

his case. He stated that loose sheets of paper are wholly irrelevant as evidence being not admissible u/s 34 of the Evidence Act.

12. We have carefully considered the rival contentions and also perused the orders of the lower authorities. It is apparent that during the course of search page NO. 23 and 24 was found. The above pages shows the name of the person against which the figures are written **in two digits and word 'lacs' is mentioned thereafter. Further,** against those figures certain amounts are mentioned which are in thousands. Therefore, the Id AO asked the assessee to explain the same. The assessee did not give the requisite detail of those transactions before the Id Assessing Officer. the assessee also during the course of search did not explain those papers. According to the provision 132A of the Act and Section 292C of the Act where any document are found in the possession and control of the person during the course of search, the revertible presumption is available that such document belongs to such person and are true. Further presumption is available that the signature and every other part of such documents which may presumably be in handwriting of the assessee then they are in the handwriting of that person. Such presumption is also available for all the proceedings under this Act. admittedly, the documents were found during the course of search the impugned pages were found to have been written by the assessee as per para No. 13 of the assessment order, therefore, assessee has bound in duty to explain those papers before the Id Assessing Officer. On careful examination of those documents it is apparent that those are not dumb documents. A man of ordinary prudence will not write such figures against the name of the person and such figures would further not be suffixed with lacs. Further, after those figures certain smaller figures are also mentioned. If the

explanation of the assessee is accepted that these are the estimate figures then what is the reason of writing smaller figures after those figures. The assessee has also not explained that if these are not the advances given by the assessee then what are those figures and what are the smaller figures. Furthermore, the assessee has also duty to explain who are those persons whose names are written. If the assessee has not given advances to them the assessee could have produced all of them before the Id AO and got them examined. The assessee did not do that. Even otherwise assessee did not provide the name and address of the those persons. The Id CIT(A) as deleted the addition stating that the AO has not collected any evidence in the remand proceedings. It is to be noted even in the remand proceedings the assessee did not provide the complete name, address of those persons. In fact it would have been the duty of the assessee to produce those person whose name appear on those pages and also ascertain the transaction with them. Such was also the mandate given by the Id CIT(A) in remand proceedings. This is evident from para No. 9.1.11 of the CIT(A). In remand proceedings the assessee submitted two affidavit of the assessee and her wife but did not comply with the direction contained in order of the Id CIT(A). Further the decision cited by the Id AR does not pertain to the Income Tax Act but the evidence Act. The document found during the search is already erred by us are to be examined under the provisions of Section 132(4A) and section 292C of the Act. In view of this we do not agree with the order of the Id CIT(A) in deleting the addition of Rs 68155470/- contested in ground No. 1 and consequent addition of Rs. 1625500/- contained in ground No. 2 of the appeal. In view of this we set aside ground No. 1 and 2 of the appeal back to the file of the Id Assessing Officer

with a direction to the assessee to comply with direction of the Id CIT(A) in para No. 9.1.11 of his order. On submission of the information the Id AO may conduct enquiry in accordance with the law and decide the issue after giving assessee proper opportunity of hearing. Accordingly, ground No. 1 and 2 of the appeal of the AO are allowed with above direction.

13. With respect to ground No. 3 of the appeal against the disallowance of Rs. 121951/- u/s 14A of the Act. The Id CIT(A) decided the issue deleting the addition following the order of the Id CIT(A) in **assessee's own case for AY 2005-06 to AY 2009-10**. Even otherwise the assessee has earned dividend of only Rs. 100/-. Therefore, disallowance also cannot exceed the amount of exempt income. Therefore, we do not find any infirmity in the order of the Id CIT(A) in deleting the above addition. Accordingly, ground No. 3 of the appeal is dismissed.
14. Accordingly, appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 31/10/2018.

-Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 31/10/2018  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi