

IN THE INCOME TAX APPELLATE TRIBUNAL, "C" BENCH, KOLKATA

Before : **Shri M. Balaganesh, Accountant Member, and
Shri S.S. Viswanethra Ravi, Judicial Member**

I.T.A No. 1142/Kol/2012 A.Y 1994-95

A.C.I.T, Central Circle-XX, Kolkata Vs. M/s. Prem Lal Jain
(Appellant/Department) PAN: ACVPJ 2348D
(Respondent/Assessee)

For the Appellant: Shri Uday Kumar Sarkar, JCIT, Id.AR
For the Respondent : Shri S.M Surana, Advocate, Id.AR

Date of Hearing: 15-10-2015

Date of Pronouncement: 27 -11-2015

ORDER

SHRI M.BALAGANESH, AM

This appeal of the revenue arises out of the order of the Learned CIT(A), Central-III, Kolkata in Appeal No. 219/CC-XX/CIT(A)C-III/2006-07/Kol dated 31-05-2012 for the Asst Year 1994-95 passed against the order of assessment framed by the Learned AO u/s.147/144/254/143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The first issue to be decided in this appeal is that whether an addition in the sum of Rs. 1,95,93,435/- towards investment in shares could be made u/s 69 of the act in the facts and circumstances of the case.

3. The brief facts are that the assessee is an individual and was subjected to search and seizure operation in his residential and business premises on 26.7.1994. There was a family partition on 25.1.1991 , partition deed of which was found in the course of search

of the assessee's premises and another copy in the premises of the assessee's father which was also searched. This fact was duly accepted by the department as mentioned in assessment order for Asst Year 1995-96 wherein it was also mentioned that the assessee received the business of M/s Jain Finance Corporation (JFC) in family partition which had substantial capital investment of its own. Accordingly, the assessee became the proprietor of JFC pursuant to partition. Initially the assessee was of the opinion that the said income from JFC would be taxed only in his HUF capacity and not as Individual. Later on he agreed to the correct position of law and accepted to the fact that the income from JFC (a proprietary concern of assessee) shall be taxable only in his Individual capacity. M/s Jain Finance Corporation is engaged in the business of providing finance for hire purchase transactions in relation to automobile industry. The assessee claimed that the capital at the beginning of the Asst Year 1992-93 came from the partition and the same was recorded in the regular books of account related to Asst Year 1992-93 to Asst Year 1995-96 of JFC, which were seized in the course of search. The said capital was not accepted by the Learned AO in the assessment proceedings but the same were accepted by Learned CITA in Asst Years 1992-93 ; 1993-94 and 1995-96. It was further claimed that there are no appeals pending for these asst years and matter has reached finality.

3.1. The Learned AO made an addition of Rs. 1,95,93,435/- on account of unexplained investment in shares and share application money during the assessment year under appeal. This addition was primarily made based on the seized document reference JFC 14 and JFC 15 representing exercise books containing details of investment in shares which was further corroborated by seized documents vide PJ 38 and PJ 43. On first appeal, the Learned CITA deleted this addition appreciating the contentions of the assessee that the entire investment in shares have been duly accounted for in the books of Jain Finance Corporation which is also part of the seized records and which was also verified by the Learned AO in remand proceedings. Aggrieved, the revenue is in appeal before us on the following ground:-

“1. That on the facts and circumstances of the case, ld.CIT(A) erred in deleting the addition of rs.1,95,93,435/- made by the AO u/s. 69 of the Income Tax Act towards investment in shares when the assessee failed to establish the genuineness of the transactions representing inflow of funds so invested and also the identity and creditworthiness of the persons paying such amount to the assessee.”

3.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR stated that the entire investments in shares were duly accounted in the books of JFC and which is also reflected in the cash book, bank statements and journal vide seized document reference JFC 1 and JFC 2 . He further argued that the Learned AO despite being given another opportunity to examine the seized documents during remand proceedings arrived at the same conclusion even after verification of the relevant seized documents which are quite staring and conclusive that the entire investment in shares have been duly accounted in the books of JFC. This attitude of the Learned AO only goes to prove that the entire assessment has been approached by the Learned AO with a preconceived notion to make an addition somehow or other which only reflects the total biased and prejudicial approach of the Learned AO. The Learned AR also relied on the detailed general written submissions made before the Learned CITA in pages 3 to 5 of his order to explain the entire additions made in the assessment.

3.3. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a proprietor of M/s Jain Finance Corporation and that the regular books of account namely, cash book and ledger for assessment year 1992-93 to 1995-96 of the concern were seized by the Department during the course of search and seizure action. It was submitted that in he original returns filed before the date of search in his individual capacity by the assessee, the income or the capital lying invested with M/s. Jain Finance Corporation was not disclosed in any of the assessment years i.e in assessment 1992-93 to 1995-96 nor the figures of capital and balance sheet of Jain Finance Corporation were incorporated or attached. This, as per the assessee, was

because Jain Finance Corporation was earlier a family business and the assessee received the business of Jain Finance Corporation and the capital therein, on family partition during the period relevant to the assessment year 91-92. It was further submitted that the said family partition deed also seized in the course of search and that the family partition on the basis of the said partition deed has been accepted by the Department in the case of Sri K.P. Jain, brother of the assessee and another member of HUF (assessed by the same AO), who also received substantial sum on partition of the HUF in 1991-92. A copy of ITAT's order in the case of Sri K.P Jain was also filed in that respect. The A/R submitted that the books of account of M/s. Jain Finance Corporation from assessment year 1992-93, after it was taken over by the assessee, were regularly maintained but since the assessee felt that the income from Jain Finance Corporation shall be assessable in the status of HUF, the return of the said HUF has to be filed separately, therefore, he did not include the income and the capital in the said proprietorship concern in the return filed by him in individual capacity. It was submitted that all the regular books from assessment year 1992-93 to 1995-96 were seized in the course of search and when the department assessed the said income in his individual hands on the basis of the seized books of account of Jain Finance Corporation from assessment year 92-93, the assessee did not object to it.

3.4 The A/R contended that additions on account of unexplained investments were made in assessee's case for the assessment year 1992-93 also, however, the CIT(A), in his order dated 11.4.2002 for that assessment year in appeal No.53/CCXX/CIT(A)/C-III/98-99, took note of the fact that as on 01.04.91 the opening capital of the assessee, as per the seized books of accounts of Jain Finance Corporation, was Rs.5,55,51,130/-, having substantial Investment therein though the original return filed before the date of search for the assessment year 1992-93 was without including the business income and capital in the balance sheet of Jain Finance Corporation. The capital of the assessee, apart from the capital in Jain Finance Corporation, was only Rs.3,05,767/- as on 31.3.92. It was submitted that while deleting the addition in assessment year 1992-93 the CIT(A) looked into the cash book for that year and also looked into the receipts and payments of

the business Jain Finance Corporation in the seized cash book and ledger. Therefore, the capital of the assessee in Jain Finance Corporation was duly accepted by the department in assessment year 92-93. It was, therefore, contended that such capital continued in the following years also. It was also submitted that a trial balance for the assessment year 1993-94 was also prepared from the seized books of account and as per such trial balance the capital of the assessee was Rs.6,61,96,925/- as on 31.3.93. The said trial balance was filed before the CIT(A) during the course of appellate proceedings in the first round for the assessment year in question, as is apparent from page 5 of the CIT(A)'s order dated 14.8.02 in appeal No.52/CC-XX wherein the CIT(A) has specifically observed that the opening capital of the assessee as on 01.04.93 was Rs.6,61,96,925/-. It was stated that the said trial balance was also filed before the AO on 28.4.2005 in the course of present assessment proceedings and the veracity and correctness of the same has not been disputed by the AO. It was, submitted that the opening capital of the assessee, which was Rs.6,61,96,925/-, remained undisputed. It was further submitted that the books of account, being cash book and ledger for the assessment year 94-95, were also lying seized with the Department and it was on examination of those books of account that the CIT(A) found that all the investments, which were considered by the AO as unrecorded and unexplained, duly recorded in the cash book and ledger for the assessment year 1994-95. The CIT(A), therefore, deleted the additions. It was further submitted that as per the observations and directions of the ITAT the assessee filed copies of all the papers that were filed before the CIT(A) even though the same were copies of the seized papers only which were lying with the AO himself. It was submitted that the details of date wise investment duly recorded in the seized books of accounts of Jain Finance Corporation were also filed (which investments were treated by the AO as undisclosed in the original assessment as well as in the reassessment). Copies of the details of investments were again filed in the course of appellate proceedings. It was submitted that the AO has repeated the very same additions on exactly identical grounds that the source of these investments were not explained. It was submitted that while doing so the AO has ignored the details filed before him as well as those available with him and duly recorded in the

seized books of accounts being cash book and ledger. It was submitted that the AO has not controverted the contention of the appellant that all these investments were duly recorded in the cash book of Jain Finance Corporation. It was submitted that similar additions on exactly same grounds were made in assessment for assessment year 1992-93 as well as in assessment year 1995-96 and relying on the seized cash books of Jain Finance Corporation for those years, the CIT(A) deleted the additions and the said order of the Id.CIT(A) was confirmed by the ITAT. It was submitted that the capital of over Rs. 6 crores was accepted in assessment year 1992-93, 1993-94 and 1995-96, therefore, there was no reason not to accept the said capital in assessment year 1994-95. The assessee also filed details of date-wise investments as recorded in the seized cash book and ledger and submitted that the AO has not brought on record any evidence to show that those details, prepared from the seized books and which were also examined by the CIT(A) in the first round, were incorrect even though the AO had adequate time and opportunity to examine and compare such details with seized documents and books lying with him and for which specific directions were given by the ITAT.

3.5 We find that the Learned CIT(A) had deleted the addition by making the following observations :-

“As per the assessee, the investment were recorded in the cash book marked JFC/1, bank statement and journal marked JFC/2 that were seized by the Department during the course of search. The investment in shares was made in various names and the entire funds for acquisition of shares and share application money were claimed to be out of the funds of Jain Finance Corporation and recorded in the regular cash book lying seized with the Department. The assessee’s counsel argued that examination of the above mentioned seized documents and books of account would establish that source of all investments made in shares and the share application money stood explained, and therefore, the shares and the share application money could not be treated as unexplained investment. The A/R also explained that his opening capital for the relevant year, as per the balance sheet prepared on the basis of seized ledger marked JFC/3, was Rs.6,61,96,925/- and the receipts in the cash book represented realization for the debtors which was received by way of installments in respect of the loans given under hire purchase agreement to the debtors. It was also

contended that as investments were duly recorded in the books and have been explained from the seized books of accounts, there is no reason for treating the said investments as “unexplained investment” under the provisions of section 69 or 69B.

From the perusal of the assessment order it is observed that though the AO found the transactions of investment in shares and share application money totaling to Rs.1,95,93,435/- recorded in the books of account of the assessee’s proprietorship concern, viz. M/s. Jain Finance Corporation , seized during the course of search but since, no separate profit and loss account and balance sheet of that concern were filed alongwith the return of income, he deemed such investments not to have been recorded in the books of account, hence, added u/s. 69 of the Act the amount of such investments to assessee’s income for the year under appeal.

In this regard, it is pertinent to have a look at section 69 of the Act, which reads as follows:

Section 69-UNEXPLAINED INVESTMENTS.

“Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, AND the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”

I find that section 69 takes into its fold the investments as unexplained where in a financial year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and the source of the investment or the explanation offered by him is not, in the opinion of the AO satisfactory.

As already stated above, the same addition was subject matter before the CIT(A), vide grounds no.4 & 5, in the first round of appeal where the assessee had contested the first assessment order dated 24.03.1998 made u/s. 147/144 for the same assessment year. After taking into consideration the facts of the case and the seized material the CIT(A) deleted the addition made by the AO. Relevant observations of the CIT(A) in respect of this issue, made by him in his order dated 14.08.2002 in appeal no.52/CC-XX/CIT(A)C-III/98-99 in the first round of appeal in this case, are found to be relevant. The relevant observations of the CIT(A) contained in para 12 on pages 19 of his order are reproduced herein below:

“12. The above details give information regarding the name of shares applied for by the assessee and the date on which the application was made. The chart also gives information regarding the name of the bank on which the cheque was drawn and the amount for which the cheque was issue. The page Nos. of the journal and ledger account have also been given. The page No. in the Rokar is also indicated in the above chart. Further, the date on which the cheque came for clearing and the amount available in the bank account as on that date is also given. Further, the assessee is also given information about the cheques which were returned by the banks due to insufficiency of funds. This happened in the case of shares such as Alfa Jeoli Ltd, Altos India Ltd, Bantol Chemical Ltd, Fabworth India Ltd, Fidelity India Ltd, IPCA Laboratories, Jeray India Ltd, Nirma Ltd and Pearl Global Ltd. From the above details, it is evident that the assessee had funds available to him in his bank accounts whenever the cheques, which he had issued for acquisition of shares or for making share application were issued. The monies which were deposited in the bank accounts came from his business of financing in vehicles on hire purchase basis. Since all the transactions detailed above have been recorded in the assessee’s regular books of accounts, and the source of investment in shares is explained by receipts from the business, there is no question of making any addition U/s. 69(Emphasis supplied).

In para 14 on page 20 of his order dated 14.08.2002 the CIT(A) further observed as follows:-

“14. It may be mentioned here that the investments made by the assessee in the shares have been recorded in the books of accounts maintained by him and which were seized by the Department. This proves that these investments cannot be considered as those investments which were not disclosed or would not have been disclosed to the Department because by making entries in the regular books of accounts the assessee has indicated its intention to disclose these investments to the Department. Further, the assessee has also explained the nature and source of the investments. The ultimate source of the investment in its business carried on in the name and style of Jain Finance Corporation. The funds generated by the business are deposited in the bank account on which cheques are drawn for investing in shares or for applying for shares by sending share application money to the issuing company. In view of the above, the addition made of Rs.1,95,93,435/- is deleted.”

In Department’s appeal against the above reproduced decision of the CIT(A), the ITAT had remanded the matter back to the file of the AO only for the reason that it was of the view that the CIT(A) should have called for remand report in respect of the details and explanation filed by the assessee before him while deciding the issue because it felt that the AO should also had an opportunity to verify the detailed documents and the

explanation relied upon by him. In the assessment order framed consequent to the directions of the ITAT, where all the details filed before and relied upon by the CIT(A) in the first round of appeal were before the AO, the above quoted observations of the CIT(A) have not been controverted by the AO. The balance sheet and the cash flow statement, relevant to the assessment year under appeal, which were prepared from the books of account seized during the course of search in this case and were produced before the CIT(A) in the first round of appeal, were also produced before the AO during the assessment proceedings, which are subject matter of this appeal, and the same has not been discredited or disputed by the AO. The assessee also brought fact to the notice of the AO that the investments in shares and share applications totaling to Rs.1,95,93,435/- were duly recorded in the books of account of M/s. Jain Finance Corporation, which were seized during the search and lying in the AO's possession. From perusal of the assessment order under appeal, it is observed that the AO has not disputed the fact that in respect of his proprietorship business M/s. Jain Finance Corporation, the assessee was maintaining books of account, which were seized during the course of search and that the impugned transactions of investment in shares and share application totaling to Rs.1,95,93,435/- were recorded in those books of account. Further, the AO has not controverted the findings of the CIT(A) in the first round of appeal that from the above details before him it was evident that the assessee had funds available to him in his bank accounts whenever the cheques, which he had issued for acquisition of shares or for making share application, were issued. The monies which were deposited in the bank accounts came from his business of financing in vehicles on hire purchase basis.

As discussed above, all the explanations and details considered by the CIT(A) in his order dated 14.08.2002 were placed before the AO by the assessee during the assessment proceedings which are the subject matter of this appeal and the AO has not controverted or contradicted the facts noted by the CIT(A) in his that order. This implies that the facts observed and noted by the CIT(A) in his above referred to order were correct and true. If those facts are correct and true, then the decision of the CIT(A) in his order dated 14.08.2002 was correct. Since, the AO has not refuted the facts mentioned by the CIT(A) in his above referred to order and he has not brought any fresh facts on record to prove that the investment of Rs.1,95,93,435/- made by the assessee was out of unexplained sources, I see no reason to deviate from the decision taken there. In the light of the undisputed finding given by the CIT(A) in that appeal that the monies which were deposited in the bank accounts came from his business of financing in vehicles on hire purchase basis and that the impugned investments were duly recorded in the books of accounts of the assessee,

the impugned addition u/s. 69 of the Act made by the AO is found to be unjustified and deserves to be deleted. “

We find from the paper book filed by the Learned AR before us containing various appellate orders of the assessee for the earlier years , subsequent assessment year and also the appellate order for the Asst Year 1994-95 (i.e the year under appeal) in the first round of appeal, wherein the assessee had filed a detailed chart explaining each and every investment made by him in the shares with specific reference to the various seized documents and explaining the respective sources thereon. It is not in dispute that these papers were also filed before the Learned AO in the second round as per directions of this tribunal. We find that the Learned DR did not controvert any of the findings recorded by the Learned CIT(A) in his order before us. We hold that the Learned AO had not properly appreciated the contents and explanations of the seized documents in proper perspective and resorted to repeat the same addition as was made in the first round of proceedings. In view of these facts and circumstances, we hold that the sources for investments in shares are explained by the assessee beyond doubt. We are in agreement with the arguments of the Learned AR that the business income from the said proprietary concern M/s Jain Finance Corporation has been accepted by the Learned AO and hence there is no need to dispute the various investments recorded in the books of accounts of the said proprietary concern. We also hold that no addition could be made u/s 69 of the Act as the entire investments in shares made by the assessee have been duly recorded in the books of accounts of the assessee which are part of the seized documents and sources for the same are also explained from the same seized documents and hence we do not find any infirmity in the order of the Learned CIT(A) in this regard. Accordingly, the ground no.1 raised by the revenue is dismissed.

4. The next two issues to be decided in this appeal is that whether an addition in the sum of Rs. 6,19,735/- and Rs. 72,97,613/- towards investment in shares and

investment in flat at Ballygunge Circular Road, Kolkata respectively, could be made u/s 69 of the act in the facts and circumstances of the case.

4.1. The brief facts are that the Learned AO resorted to make this addition based on seized document reference JFC 3 containing certain investment in shares to the tune of Rs. 6,19,735/- and investment in flat at No. 24 /1, Ballygunge Circular Road, Kolkata to the tune of Rs 72,97,613/- and proceeded to make an addition as unexplained investment u/s 69 of the Act. On first appeal, the Learned CIT(A) deleted this addition appreciating the contentions of the assessee that the investment in shares and investment in flat have been duly accounted for in the books of Jain Finance Corporation which is also part of the seized records and which was also verified by the Learned AO in remand proceedings. Aggrieved, the revenue is in appeal before us on the following grounds:-

“2. That on the facts and circumstances of the case, ld. CIT(A) erred in deleting the addition of Rs.6,19,735/- made by the AO u/s. 69 of the Income Tax Act towards investment in shares when the assessee failed to establish the genuineness of the transactions representing inflow of funds so invested and also the identity and creditworthiness of the persons paying such amount to the assessee.

3. That on the facts and circumstances of the case, ld.CIT(A) erred in deleting the addition of Rs.72,97,613/- made by the AO u/s. 69 of the Income Tax Act towards investment in flat when the assessee failed to establish the genuineness of the transactions representing inflow of funds so invested and also the identity and creditworthiness of the persons paying such amount “to the assessee.

4.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR stated that the arguments advanced by him for the first addition would equally hold good that the entire investment in shares and flat at Ballygunge Circular Road have been duly accounted for in the books of accounts of his proprietary concern M/s Jain Finance Corporation which are part of the seized records and also stated that these facts have been clearly laid out in the Learned

CIT(A) order in detail and accordingly placed heavy reliance on the order of the Learned CIT(A).

4.3. We have heard the rival submissions and perused the materials available on record. We find that these additions of Rs. 6,19,735/- towards investment in shares and Rs. 72,97,613/- towards investment in flat at Ballygunge Circular Road, Kolkata have been made by the Learned AO based on seized document reference JFC 3. We find that the Learned CITA had deleted the addition by making the following observations :-

“This issue had also come up for consideration of the CIT(A) in the first round of appeal of this case in appeal no.52/CC-XX/CIT(A)C-III/98-99. In that appeal the CIT(A) decided the issue as follows:-

“ This ground of appeal pertains to the addition of Rs.61,91,735/- being the investment in purchase of shares from secondary market. The aforesaid purchase of shares in the secondary market, according to the assessee, is duly shown and reflected in the ledger marked JFC/3. The assessee argued that as the nature and source of the acquisition of shares from the secondary market stood explained there was no scope for making an addition to the aforesaid amount in his hands as unexplained investment”.

For the same reason as are given in respect of ground No.4 & 5, the addition of Rs.6,19,735/- is also deleted.”

Since the impugned addition of Rs.6,19,735/- was made by the AO for the same reasons for which he had made the addition of Rs.1,95,93,435/- dealt with in ground no.5 of this appeal, for the reasons given in respect of that ground and also in the light of the decision of my predecessor in the first round of appeal (in appeal no.52/CC-XX/CIT(A)C-III/98-99) in this case, the addition of Rs.6,19,735/- is deleted.

“These issues also were before the CIT(A) in the first round of appeal of the same case for the same assessment year under grounds no.7,8 and 15 (appeal no.52/CC-XX/CIT(A)C-III/98-99). In respect of addition of Rs.72,97,613/-, after considering the facts of the case, seized documents and the evidences before hi, the CIT(A) gave his findings as follows in that order:-

“Ground No. 7 & 8

17. *These grounds of appeal pertain to the addition of Rs.72,97,613/- in the total income as per page 15 of JFC/3 which is ledger copy of Sri Binay Kr. Bafna. The assessee argued that on examination of the page No.15 of JFC/3 would show a sum of Rs.45,30,000/- was the brought forward balance advanced to him in the preceding year. According to the assessee the AO made an addition of Rs.72,97,613/- on the ground that as per page 15 of JFC/3, he had made an investment in flat at 24/1, Ballygunge Cir. Road, Kolkata, payment for which was made to Sri Binay Kumar Bafna, promoter of the aforesaid building. The AO believed that since the assessee had not furnished any explanation as to the source of this investment, the amount should be treated as income from undisclosed sources and added to his total income. The page 15 of JFC/3 was produced for explanation and verification. It was seen that as on 1st April, 1993 the opening debit balance in the account of Sri Bafna was Rs.45,30,000/- having been advanced to him in the earlier years. Against that, there are a receipt in cash from Sri Bafna on 11th May, 1993, 26th July, 1993, 20th August, 1993 and 28th August, 1993 of Rs.1,00,000, Rs.2,00,000/-, Rs.90,000/-, Rs.60,000/- Rs.1,00,000/- and Rs.50,000/- respectively. Fresh cheques were issued through Catholic Syrian Bank of Rs.5,00,000/- each on 13th August, 1993 and 1st September, 1993 followed by receipts in cash a sum of Rs.1,00,000/- on 15th September, 1993, Rs.1,00,000/- on 17th Sept, 1993 and Rs.1,00,000/- on 24th Sept, 1993. There were further payments by cheques of Rs.2,00,000/-, Rs.2,25,875/- and Rs.23,734/- on 7th October, 1993 and 14th October, 1993 respectively. The further credit of Rs.5,00,000/- on 7th Feb 1994 and Rs.3,00,000/- again on 7th Feb. 1994 and Rs.50,000/- also on 7th Feb, 1994 and Rs.88,000/- again on 7th Feb. 1994 were seen from the said ledger account. The ledger account showed further receipts of cash amount of Rs.38,000/- on 4th March, 1994 and in journal there is an entry of Rs.27,50,000/- on 25th March, 1994. At the end of the year there was a debit balance in the said account of Rs.30,09,613/-. There were two contra entries also on 2nd December, 1993 and 14th December, 1993 of Rs.2,00,000/- and Rs.1,00,000/- respectively. According to the assessee, it was evident from the aforesaid ledger account that the opening balance was reduced by the receipts in cash and there was payments by cheque, source of which now stands explained in the journal marked JFC/2.*

18. *The assessee mentioned that the facts of the case was that in the preceding years he had entered into an agreement with Sri Bafna for the purchase of the flat at 24/1 Ballygunge Cir. Road, Kolkata vide an agreement. The said agreement thereafter was cancelled. The amounts were advanced pursuant to the said agreement to Sri Bafna in the*

preceding year, which were outstanding balance as on 1st April, 1993. The said amount thereafter was being gradually refunded in cash to the assessee and the fresh payments by way of cheques were actually in the name of Yashavi Towers Pvt. Ltd, one Gorkhi Terrace, Kolkata for the purchase of immovable property at 39/1, Girish Mukherjee Road, Kolkata, being the Unit No.5B, as per page 2 to 27, being the agreement and the page 29 to 30 being the receipts of PJ-24 lying seized as per Panchanama dated 26th July, 1994 amounting to Rs.7,25,875/- which will show that the aforesaid cheque payments on Catholic Syrian Bank debited from the bank account of JFC was made on 1st Sept, 1993 and 7th October, 1993 for the acquisition of the aforesaid property. The said bank account was duly accounted for and the journal entry to this effect was available in the seized books at page 68 and 87 of JFC/3 and JFC/2 and likewise the payment to Sri Bafna was for the purchase of the property at 39/1, Girish Mukherjee Road, Kolkata being the Unit No.5A as per page 2 to 13 of the agreement and pages 16 and 17 of the receipts dated 30th August, 1993 and 14th October, 1993 of PJ-25, which will show that the payments of Rs.7,03,737/- was duly reflected, being the payment to the Catholic Syrian Bank account of Jain Finance Corpn which was duly debited in the bank account as on 1st Sept. 1993 and 14th October, 1994 respectively. The assessee mentioned that the AO made a separate addition on this account in the assessment order, which is taken up in another ground of appeal (in the ground No.15). All the payments of Rs.5,00,000/-, Rs.3,00,000/-, Rs.50,000/- and Rs.1,88,000/- were by way of advances to Sri Bafna and are reflected in the bank account and journal marked JFC/2 and pages 152 and 200 for, the amount has been duly debited in the bank account accordingly. Therefore, in these facts and circumstances, nature and source of the said payment can be said to be duly disclosed and explained, according to the assessee. The assessee contended that in view of the aforesaid position there is no case for making an addition of Rs.72,97,613/- made by the AO in the hands of the assessee during the relevant assessment year and also that of Rs.7,25,875/- and Rs.7,03,737/- which are covered by ground No.15.

19. The English version of the ledger account of Binay kr. Bafna appearing in the seized book marked JFC/3 is as follows:-

Date		Particulars	Debit (Rs.)	Credit (Rs.)
1.4.93	To	Opening Bal b/d	45,30,000.00	-
11.5.93	By	Cash	-	1,00,000.00
26.7.93	By	Cash	-	2,00,000.0
17.8.93	By	Cash	-	90,000.00
18.8.93	By	Cash	-	60,000.00
20.8.93	By	Cash	-	1,00,000.00

28.8.93	By	Cash	-	50,000.00
30.8.93	To	Journal	5,00,000.00	-
1.9.93	To	Journal	5,00,000.00	-
15.9.93	By	Cash	-	1,00,000.00
17.9.93	By	Cash	-	1,00,000.00
24.9.93	By	Cash	-	4,00,000.00
7.10.93	To	Journal	2,25,875.60	-
14.10.93	To	Journal	2,03,737.80	-
2.12.93	To	Cash(Wrong Entry)	2,00,000.00	-
2.12.93	By	Cash(Wrong Entry)	-	2,00,000.00
14.12.93	To	Cash(Wrong Entry)	1,00,000.00	-
14.12.93	By	Cash(Wrong Entry)	-	1,00,000.00
7.2.94	To	Journal	5,00,000.00	-
7.2.94	To	Journal	3,00,000.00	-
7.2.94	To	Journal	50,000.00	-
7.2.94	To	Journal	1,88,000.00	-
4.3.94	By	Cash	-	38,000.00
25.3.94	By	Journal	-	27,50,000.00
31.3.94	To	Balance C/d	-	30,09,613.40
			72,97,613.40	72,97,613.40

The transactions have been duly disclosed in the regular books of accounts maintained by the assessee. The nature of the transactions have been explained by the assessee and are reflected in the said ledger account. The purpose of the transactions carried on with Sri Bafna have also been explained. The source of payments made are reflected in the books of accounts seized by the Department which are regular books of accounts of the assessee. In view of the above as the nature and source of the payments have been duly explained, there is no scope for making an addition of Rs.72,97,615/-. Accordingly, this addition is deleted.

The AO made the said addition of Rs.72,92,615/- u/s. 69 for the same reasons for which he had made the addition of Rs.1,95,93,435/- dealt with in ground no.5 of this appeal. In his order dated 14.08.2002 the CIT(A) had deleted the said addition holding that those transactions had been duly disclosed in the regular books of account maintained by the assessee in respect of the his proprietorship business and the source of payments made was reflected in the books of account seized by the Department which are regular books of the assessee. The AO has neither controverted nor contradicted the facts noted by the CIT(A) in his order dated 14.08.2002. Since, it stands established that the impugned investments were recorded in the books of account of the assessee, which

are his regular books and the source of payments made for the same was reflected in those books which were seized by the Department, the impugned addition u/s. 69 of the Act made by the AO is found to be unjustified and deserves to be deleted.”

For the above discussion, the addition of Rs.72,92,615/- made by the AO is deleted.”

We hold that for the same explanation given by us for the ground no.1 raised by the revenue hereinabove, we hold that there is no scope for making any addition towards unexplained investment u/s 69 of the Act as the entire investments have been duly accounted for in the books of the proprietary concern of the assessee M/s Jain Finance Corporation which are part of the seized records and the Learned DR had not controverted any of the factual findings recorded by the Learned CIT(A) in this regard. Hence we do not find any reason to interfere with the decision of the Learned CIT(A) in respect of these two additions. Accordingly, the ground nos. 2 & 3 raised by the revenue are dismissed.

5. The next issue to be decided in this appeal is that whether an addition in the sum of Rs. 4,10,000/- and Rs. 7,03,737/- towards investment in the name of M/s Pinku Sonu Investment & Properties Pvt Ltd could be made u/s 69 of the act in the facts and circumstances of the case.

5.1. The brief facts are that during the course of search, a book marked JFC 60 was found and seized wherein at page 4, it contained a head note called advance stating that during 19.1.93 to 26.3.93 there were receipts by cheque from M/s Pinku Sonu Investment Properties Pvt Ltd for Rs. 25,000/- with a reverse entry thus totaling to Rs. 3,85,000/- in the said sheet. The Learned AO made an addition of Rs. 4,10,000/- in the assessment. No clear facts have been brought on record to justify even how the figure of Rs. 4,10,000/- was arrived at by him. The Learned AO also made an addition of Rs. 7,03,737/- on the basis of seized document reference PJ 25 at page 16

and page 16. It was submitted by the assessee that the said transactions have been duly reflected in the books of accounts of M/s Pinku Sonu Investment & Properties Pvt Ltd and hence the same need not be examined in the hands of the assessee. Ignoring this argument, the additions were made by the Learned AO in the hands of the assessee. On first appeal, the Learned CITA appreciated the contentions of the assessee that the seized document in JFC 60 and PJ 25 belongs to M/s Pinky Sonu Investment Properties Pvt Ltd and not to the assessee and moreover the year pertains to Asst Year 1993-94 and not to the year under appeal as far as the addition of Rs. 4,10,000/- is concerned. The only relationship between the assessee and the company to which the seized document relates is that assessee is a director in the said company. It was also submitted before the Learned CITA that the addition of Rs. 7,03,737/- effectively is a duplicate addition as the same is already included in the addition made in the sum of Rs. 72,97,613/- by the Learned AO . It was further submitted before the Learned AO that this addition was made by the Learned AO on the ground that there were no enough funds of its own in the hands of M/s Pinku Sonu Investment & Properties Pvt Ltd and moreover in the seized papers the name of the company is mentioned as Pinku Sonu Investment P Ltd and not Pinku Sonu Investment & Properties P Ltd. It was further explained that the Learned AO doubted the fact whether there are two different companies or are they one and the same. Hence this addition was made only on suspicion of the Learned AO. The Learned CITA appreciated the contention of the assessee that the said transactions have been duly accounted in the audited accounts of M/s Pinku Sonu Investments & Properties Pvt Ltd and the copy of the assessment order of the said company was also filed before him. Accordingly the additions were deleted by the Learned CITA. Aggrieved, the revenue is in appeal before us on the following ground:-

“4. That on the facts and circumstances of the case, ld.CIT(A) erred in deleting the addition of Rs.4,10,000/- and Rs.7,03,737/- made by the AO towards investment in the name of M/s. Pinku Sonu

Investment & Properties Ltd when the identity of the said concern was not established. “

5.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR stated that the seized document belongs to M/s Pinku Sonu Investment & Properties Pvt Ltd and not to the assessee. He argued that with regard to the addition made in the sum of Rs. 4,10,000/- , the relevant dates mentioned in the seized document i.e 19.1.93 to 26.3.93 pertains to Asst Year 1993-94 and hence even assuming without conceding, any addition is to be made, it could be made only in Asst Year 1993-94 and not in the year under appeal. He argued that the assessee is only a director in the said company. He stated that the said company had contributed the amount by way of unsecured loan and disclosed in their books of accounts. He argued that Rs. 3,85,000/- has been duly reflected in the audited accounts of M/s Pinku Sonu Investment & Properties Pvt Ltd and a sum of Rs. 5,000/- was received from Mr.S.Jain which is also reflected in the same seized document reference JFC 60 at page 7.

With regard to the addition made in the sum of Rs. 7,03,737/- , apart from reiterating the submissions made before the Learned CITA further argued that the seized document does not belong to the assessee herein and instead belongs to M/s Pinku Sonu Investment & Properties Pvt Ltd which fact is not disputed by the Learned AO. Hence any addition, if any, on this count , could be considered only in the hands of the said company and not the assessee herein.

5.3. We have heard the rival submissions and perused the materials available on record. We find that these additions of Rs. 4,10,000/- and Rs. 7,03,737/- have been made based on the seized document reference JFC 60 belonging to M/s Pinku Sonu Investment & Properties Pvt Ltd. The Learned CITA had given a categorical finding that these transactions have been duly reflected and accounted in the books of the said

company which were duly audited and assessments completed accordingly. The copy of assessment order of the said company was also placed before the Learned CITA. We hold that when the seized document is in the name of some other person and the assessee had categorically had not owned up the same, then the obvious inference is that he has exercised the powers in terms of section 132(4) of the Act by rebutting the presumption as to ownership of the seized document. In the instant case, the assessee had gone a step ahead by stating that the seized document does not belong to him but instead it belongs to the company M/s Pinku Sonu Investment & Properties Pvt Ltd ,a company in which he is a director, and further stated that the contents in the said seized document have already been duly reflected in the audited accounts of the said company. Hence we hold that the assessee had fully discharged his onus in terms of explaining the seized document found in his premises. We also find that any addition , if at all, in respect of Rs. 4,10,000/- could be made only in Asst Year 1993-94 and not in Asst Year 1994-95 (i.e the year under appeal) as per the dates mentioned in the seized document. We find lot of force in the arguments of the Learned AR that the seized document belongs to the said company and hence it is only for the company to explain the same and not the assessee herein. Hence we do not find any infirmity in the order of the Learned CITA in this regard. Accordingly, the ground no. 4 raised by the revenue is dismissed.

6. The next ground to be decided in this appeal is that whether an addition in the sum of Rs. 7,25,875/- towards investment in flat in Unit 5B at No. 39/1, Girish Mukherjee Road, Kolkata and sum of Rs. 7,03,737/- towards investment in flat in Unit 5A, 39/1, Girish Mukherjee Road, Kolkata in the facts and circumstances of the case.

6.1. The brief facts of this issue is that the Learned AO during the course of search found in seized document reference PJ 24 that assessee had made payment of Rs. 7,25,875/- to one Yeshavi Towers Pvt Ltd on 3.9.1993 and on 8.10.1993 towards purchase of immovable property at Unit No. 5B, No. 39/1, Girish Mukherjee Road,

Kolkata – 700025. The same seized material also showed further payment of Rs. 7,03,737/- to one Mr.Vinay Bapna on 30.8.1993 and 14.10.1993 for purchase of immovable property at Unit No. 5A, No. 39/1, Girish Mukherjee Road, Kolkata – 700025. The Learned AO added the same as to the total income as no explanation was offered by the assessee. On first appeal, it was submitted before the Learned CITA that the additions made in the sum of Rs. 7,25,875/- and Rs. 7,03,737/- are duplicate additions as the same are already part of the addition made in the sum of Rs. 72,97,613/- discussed hereinabove separately. Accordingly, the Learned CITA deleted the addition. Aggrieved, the revenue is in appeal before us on the following grounds:-

“5. That on the facts and circumstances of the case, ld.CIT(A) erred in deleting the addition of rs.7,25,875/- made by the AO towards investment in a flat as the assessee failed to offer any explanation on this issue either at the time of assessment or at remand stage.

9. That on the facts and circumstances of the case, ld.CIT(A) erred in deleting the addition of Rs.7,03,737/- made on account of payment to one Shri Binay Bafna towards investment in a flat at Girish Mukherjee Road when the assessee failed to offer any explanation towards the same either at the time of assessment or at remand stage.”

6.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR heavily relied on the order of the Learned CIT(A).

6.3. We have heard the rival submissions. We find that the Learned CITA had only deleted these additions in order to avoid double additions as the subject mentioned sums of Rs. 7,25,875/- and Rs. 7,03,737/- are already added in an independent addition of Rs. 72,97,613/-. We have already held in ground no. 3 hereinabove that the entire addition of Rs. 72,97,613/- towards investment in immovable properties is not warranted as the same has been duly accounted in the books of M/s Jain Finance Corporation , a proprietary concern of the assessee and sources for the same are duly

explained from the books of accounts of the said concern and hence there is no scope for making any addition towards unexplained investment. The finding given by the Learned CIT(A) in this regard is not controverted by the Learned DR before us. Accordingly, the ground nos. 5 & 9 raised by the revenue are dismissed.

7. The next ground to be decided in this appeal is that whether an addition in the sum of Rs. 12,08,400/- towards investment in shares could be made in the facts and circumstances of the case.

7.1. The brief facts of this issue is that the Learned AO during the course of search proceedings found that the assessee invested a sum of Rs. 12,08,400/- in shares during the year under appeal out of total seized shares valued at Rs. 41,78,460/- and an order u/s 132(5) of the Act was passed on the same on 13.2.1995 and since no satisfactory explanation was given, the same was added to the total income as unexplained investment. On first appeal, the assessee submitted that the actual investment in shares was not Rs. 12,08,400/- but was Rs. 20,17,770/-. It was submitted that these investments were made in various names out of the funds of M/s Jain Finance Corporation, a proprietary concern of the assessee and that the investments were duly reflected in the journal and the ledger of M/s Jain Finance Corporation which were seized vide identification mark nos. JFC 2 and JFC 3 by the revenue. It was also submitted that the sources for the abovementioned investment by the said concern is from business receipts from the hire purchase business of the concern. The Learned CIT(A) found that the assessee had duly submitted the details such as name of the company of which shares were acquired, number of shares, amount invested and the page numbers of the Khata in which the transactions were recorded with specific reference to the seized documents and the books of M/s Jain Finance Corporation wherein they were accounted with respective sources and deleted the addition. Aggrieved, the revenue is in appeal before us on the following ground:-

“6. That on the facts and circumstances of the case, ld.CIT(A) erred in deleting the addition of Rs.12,08,400/- made by the AO towards investment in shares when the assessee failed to establish the genuineness of the transactions representing inflow of funds so invested and also the identity and creditworthiness of the persons paying such amount to the assessee.”

7.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR heavily relied on the order of the Learned CITA.

7.3. We have heard the rival submissions. We find that the Learned CITA had only deleted this addition after verification of the fact that the said investment in shares were duly accounted in the books of M/s Jain Finance Corporation which were also part of the seized documents. The finding given by the Learned CITA in this regard is not controverted by the Learned DR before us. In these circumstances, we find no infirmity in the order of the Learned CITA in this regard. Accordingly, the ground no. 6 raised by the revenue is dismissed.

8. The next ground to be decided in this appeal is that whether the addition in the sums of Rs. 28,090/- , Rs. 33,800/- , Rs. 40,000/- and Rs. 7,936/- towards unexplained expenditure could be made in the facts and circumstances of the case.

8.1. The brief facts of this issue is that the Learned AO found during the course of search that the following payments were made by the assessee :-

Rs 28,090/- - Payment to M/s Tara Enterprises on account of Shutter, Collapsible gate as Per Seized Document Reference PJ 10 at page 51

Rs. 33,880/- Payment for purchase of water heaters from M/s Globe Electric & Trading Co. as per Seized Document Reference PJ 10 at page 51

Rs. 7,936/- - Payment of airfare as per bill of Mahabir Trading Co dated 17.9.93

as per Seized Document Reference PJ 17 at page 48

The Learned AO concluded that no satisfactory explanation was furnished by the assessee for incurrance of aforesaid expenditure and accordingly brought the same to tax u/s 69C of the Act. In respect of Rs. 40,000/- representing amount received from Suman Gupta by Pay order No. 758915 drawn on UBI , Pilkhana Branch, Howrah vide Seized Document Reference PJ 15 at pages 8 and 10, the Learned AO concluded that no satisfactory explanation was given for the same and accordingly brought the same to tax as undisclosed income of the assessee. On first appeal, it was submitted before the Learned CIT(A) that all these transactions were duly reflected in the cash book of M/s Jain Finance Corporation vide seized document reference JFC 1 and JFC 2. This was accepted by the Learned CIT(A) who in turn deleted the addition. Aggrieved, the revenue is in appeal before us on the following ground:-

“7. That on the facts and circumstances of the case, ld.CIT(A) erred in deleting the addition of Rs.28,090/-, Rs.33,800/-, Rs.40,000/- and Rs.7,936/- made by the AO as the assessee failed to offer any explanation on this issue either at the time of assessment or at remand stage.”

8.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR heavily relied on the order of the Learned CIT(A).

8.3. We have heard the rival submissions. We find that the Learned CIT(A) had only deleted this addition after verification of the fact that the said expenditures of Rs. 28,090/- , Rs. 33,880/- and Rs. 7,936/- and the receipt of Rs. 40,000/- from Suman Gupta were duly accounted in the books of M/s Jain Finance Corporation which were also part of the seized documents. The finding given by the Learned CIT(A) in this regard is not controverted by the Learned DR before us. In these circumstances, we find no infirmity in the order of the Learned CIT(A) in this regard. Accordingly, the ground no. 7 raised by the revenue is dismissed.

9. The last ground to be decided in this appeal is that whether an addition in the sum of Rs. 47,063/- on account of investment in flat at 2nd floor at Ballygunge Circular Road could be made in the facts and circumstances of the case.

9.1. The brief facts of this issue is that the Learned AO found during the course of search vide seized document reference PJ 22 at page 34 found that an amount of Rs. 47,063/- was paid to M/s Air Construction and Consultants Pvt Ltd for extra work in the flat at No. 24/1, Ballygunge Circular Road, Kolkata. The Learned AO found that this seized document was found in the premises of the assessee and hence added the same u/s 69C of the Act. On first appeal, it was submitted by the assessee that the payment of Rs. 47,063/- was made by M/s Air Construction and Consultants Pvt Ltd for extra work done on second floor of the flat situated at No. 24/1, Ballygunge Circular Road, Kolkata which belonged to Pinku Sonu Investment Pvt Ltd who were owners of the said premises and argued that this expenditure does not belong to him. Accordingly, the Learned CITA deleted the addition. Aggrieved, the revenue is in appeal before us on the following ground:-

“8. That on the facts and circumstances of the case, ld.CIT(A) erred in deleting the addition of Rs.47,063/- u/s. 69C of the Income Tax Act on account of investment in a flat at 2nd floor at Ballygunge Circular Road when the assessee failed to offer any explanation on this issue and also to establish that the flat is belonged to some other company, either at the time of assessment or at remand stage.”

9.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR heavily relied on the order of the Learned CITA.

9.3. We have heard the rival submissions. We find that the Learned CITA had only deleted this addition on the plea that the subject mentioned flat at No. 24/1, Ballygunge Circular Road, Kolkata does not belong to assessee but belongs to Pinku

Sonu Investment Pvt Ltd. We find that while deciding the ground no. 3 hereinabove, we have held that this flat belongs to the assessee and the sources for the same have been duly reflected in the accounts of M/s Jain Finance Corporation , a proprietary concern of the assessee and hence there is no scope for making any addition in the sum of Rs. 72,97,613/- therein. We find that the Learned CIT(A) had proceeded to grant relief to to the assessee on mistaken understanding of facts. Since the seized document vide reference PJ 22 page 34 was found in the premises of the assessee, it is for the assessee to explain the same with satisfactory explanation. We find no satisfactory explanation for incurrence of this expenditure of Rs. 47,063/- was given by the assessee. Accordingly, the ground no. 8 raised by the revenue is allowed.

10. In the result, the appeal of the revenue is partly allowed.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 27 /11 /2015

Sd/-

(S.S Viswanethra Ravi, Judicial Member)
Date 27 /11/2015

Sd/-

(M. Balaganesh, Accountant Member)

Copy of the order forwarded to:

- 1.. The Appellant/department: ACIT, Central Circle-XX, Poddar Court, 5th Fl., 18 Rabindra Sarani, Kolkata..
- 2 The Respondent/assessee: Prem Lal Jain 1 Ganesh Chandra Avenue, 4th Fl., Kol-13.
- 3 /The CIT,
/
The CIT(A)
- 4..
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

** PRADIP SPS