

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. 6083/DEL/2019 [A.Y 2010-11]

ITA No. 6084/DEL/2019 [A.Y 2012-13]

ITA No. 6085/DEL/2019 [A.Y 2013-14]

ITA No. 4881/DEL/2019 [A.Y 2014-15]

ITA No. 4880/DEL/2019 [A.Y 2015-16]

The Dy. C.I.T
Central Circle
Ghaziabad

vs

M/s KDP Infrastructure Pvt. Ltd.
UB-19, Antriksh Bhawan,
KG Marg Connaught Place,
New Delhi

PAN: AAACS 1691 J

ITA No. 4687/DEL/2019 [A.Y 2012-13]

ITA No. 4688/DEL/2019 [A.Y 2013-14]

ITA No. 4311/DEL/2019 [A.Y 2014-15]

ITA No. 4312/DEL/2019 [A.Y 2015-16]

M/s KDP Infrastructure Pvt. Ltd. Vs.
UB-19, Antriksh Bhawan,
KG Marg, Connaught Place,
New Delhi

The Dy.C.I.T
Central Circle
Ghaziabad

PAN: AAACS1691 J

[Appellant]

[Respondent]

Assessee by : Shri Ajay Wadhwa, Adv
Revenue by : Shri J.K. Mishra, CIT-DR

Date of Hearing : 14.10.2020
Date of Pronouncement : 27.11.2020

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above captioned appeals are cross appeals by the assessee and revenue, preferred against the order of the CIT(A), Kanpur pertaining to A.Ys2010-11, 2012-13, 2013-14 and 2015-16. This bunch of appeals pertain to same assessee and were heard together. Therefore, they are being disposed off by this common order for the sake of convenience and brevity.

2. We will first address to the appeals filed by the revenue for the captioned A.Ys

APPEALS BY THE REVENUE.

ITA No. 6085/DEL/2019 for AY 2013-14
ITA No. 4880/DEL/2019 for A.Y 2015-16

3. At the very outset, the two appeals of the revenue, namely, ITA No 6085/DEL/2019 for AY 2013-14 and 4880/DEL/2019 for A.Y 2015-16

deserve to be dismissed, as both the appeals are hit by the CBDT Circular No. 17/2019 dated 08.08.2019.

4. A perusal of the grievance of the revenue shows that the tax effect would be less than Rs. 50 lakhs, therefore, these appeals are not maintainable and dismissed in light of the CBDT Circular [supra].

5. In the result, both the appeals of the Revenue in ITA No. 6085/DEL/2019 for AY 2013-14 and 4880/DEL/2019 stand dismissed.

6. The common grievance in all the appeals filed by the revenue relates to the admission of additional evidences.

7. Before us, the ld. DR vehemently stated that the ld. CIT(A) has admitted the additional evidences without following Rule 46A of the Income tax Rules 1962, and therefore, the order of the CIT(A) deserves to be quashed, since it is in violation of principles of natural justice.

8. On the other hand, the ld. counsel for the assessee stated that the proceedings u/s 153A of the Act started on 16.09.2016 and the first questionnaire dated 27.10.2016 and assessment orders have been

framed in the month of December, 2016. It is the say of the Id.Counsel for the assessee that since voluminous documents were seized by the revenue in the search proceedings, the assessee was not in a position to reply to the queries raised by the Assessing Officer by supporting evidences and, therefore, before the first appellate authority, all the evidences were filed, which were admitted by the CIT(A).

9. We have given thoughtful consideration to the rival submissions. It is true that during the course of appellate proceedings, the appellant filed additional evidences along with an application made under Rule 46A of the Rules. We find that, after admitting the petition of the appellant under Rule 46A of the Rules, the Id CIT(A) sent the written submissions along with supporting additional evidences to the Assessing Officer calling for remand report.

10. We further find that the Id. CIT(A) again asked the Assessing Officer to furnish EnquiryReport and on receiving the enquiry report, the appellate order was framed. We are of the considered opinion that the CIT(A) has duly complied with the principles of natural justice and the Assessing Officer got sufficient opportunity to consider the additional evidences and, therefore, we do not find any merit in this

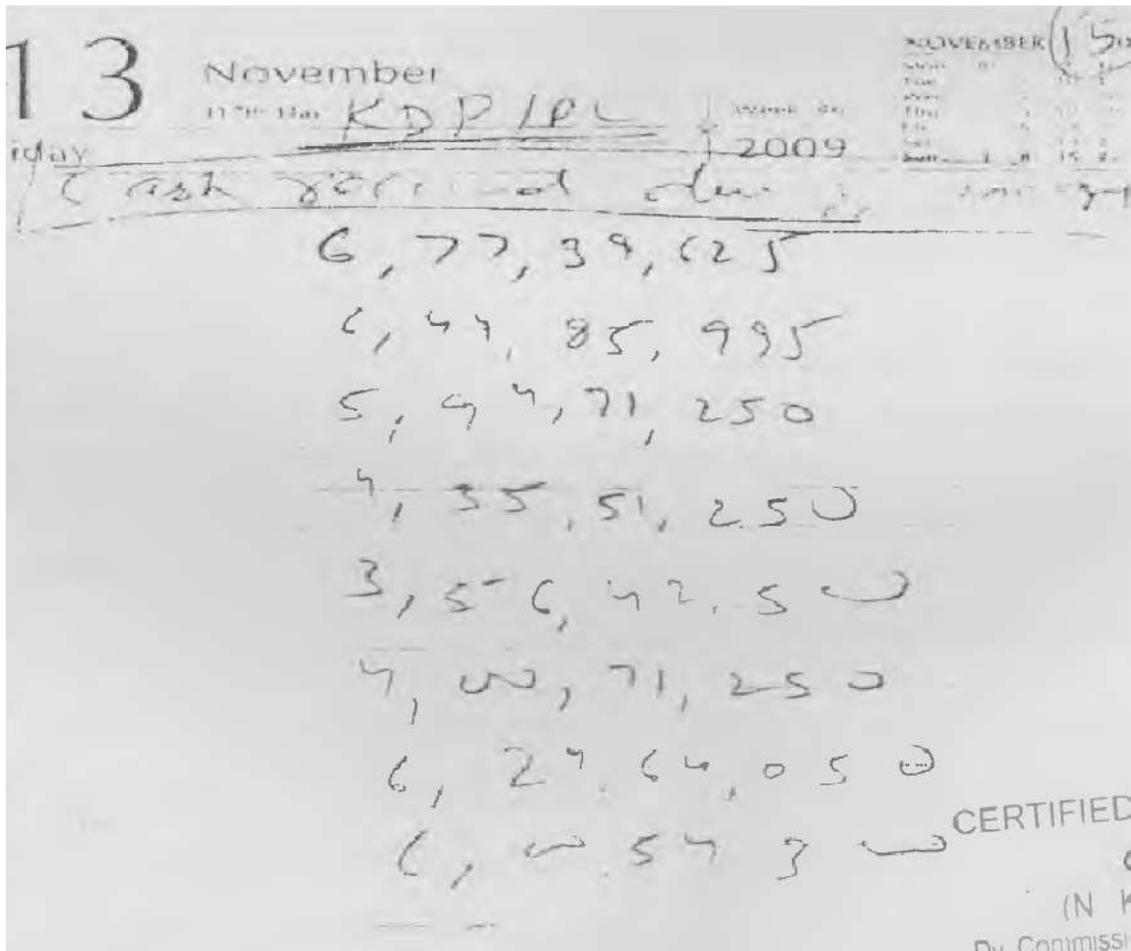
grievance raised by the revenue in all its appeals and is, accordingly, dismissed.

ITA No. 6083/D/2019 [Revenue's appeal for A.Y 2-10-11]

11. This appeal by the revenue is on three grounds. Ground No. 1 relates to deletion of addition of Rs.43.39 crores made on account of unexplained cash receipts.

GROUND NUMBER 1

12. During the search proceedings u/s 132 of the Act, certain incriminating documents were found and seized. Page 15 of Annexure LP01 is as under:



13. On a perusal of this document, the Assessing Officer formed a belief that the assessee has received cash amounting to Rs. 43,39,80,220/-. Accordingly, the assessee was asked to explain the above noted transaction on a loose sheet.

14. In its reply, the assessee stated that this amount relates to sale proceeds/advances of KDP Grand Savana Project for Towers A, B, C, D, E, F, J and K during F.Y 2008-09. It was explained that the impugned transactions are duly accounted for in the books of account.

15. Reply of the assessee did not find any favour with the Assessing Officer who was of the opinion that the assessee has failed to furnish the details. The Assessing Officer further observed that the assessee has only furnished details of advances received through RTGS/cheque payments but no explanation was given in so far as cash receipts found in the loose sheets and proceeded to make addition of Rs.43,39,80,220/-.

16. As mentioned elsewhere, the assessee filed some new evidences before the Id. CIT(A). The fresh evidences were transmitted to the Assessing Officer and the Assessing Officer submitted his enquiry report vide letter dated 09.01.2019. The enquiry report reads as under:

"Addition on account of cash received - During the course of assessment proceedings it was noticed from the incriminating documents seized from the premise of assessee that a details of cash receipts were given on page no. 15 of Annexure LP-J. The same was scanned in the assessment order passed on 30/12/2016. During the course of assessment proceedings the, assessee was required to explain the total cash receipt of Rs. 43,39,30,220/- mentions: in the said paper along with supporting documents and to reconcile the same regular books of account and has also required to explain why amount of Rs

may not be upheld as unexplained cash receipts and not be added in the total income due assessee. compliance the assessee has no: submitted any satisfactory reply and not submitted any cogent evidence in support of its claim. Now in his submission before. Your honour the undersigned the assessee is stating that due amounts noted in that seized documents were the sale proceeds/advance of one of the assessee's project name KDP Grand Suvana for towers A,B,C,D,E.F, J & K All the payment were received through RTGS/cheques and cash. The assessee has also submitted a paper book alongwith its submissions and from page 92 to 99 the assessee has given details of payments received against the sale proceeds/advance.

The assessee in his submission at point no. I of page 7, stated that " Mr Mohan Bansal. ex-employee of the company used to maintain a rough diary for his personal noting and use. The documents seized, page no. 15 of Annexure-LP- 01 was of his diary" it means that the page was written by Mr. Mohan Bansal as assessee claims. Further at point no Hi oj page 8 the assessee stated that Mr. Mohan Bansal at the time of assessment proceedings confirmed that the handwriting of text KDPIFL cash received during 2009-10 was not of him and the text was subsequently added in the seized documents as the flow of the characters and handwriting of the said text do not match with the rest of noting. Both the points of

submission are contradictory as on one side the assessee is stating that the paper was part of diary of Mr. Mohan Bansal and Mr. Mohan Bansal has denied that the paper was written by him. Further at point iv (b) the assessee stated that noting was in pencil therefore, there were fair chances that text could be added subsequently further at para no. ivtci he added that the assessee never denied the amounts written in the documents and reconciled all the figures with audited books of account of preceding year Further in the last para of page 6 assessee stated that the assessee also furnished tower wise chart of the sale proceeds and also got verified the same amount with books of account preceding financial year produced during assessment proceedings. The amount of Rs. -13,39,80,220-- matched with the entries in the books of account the last penny.

From the above discussion it may be observed that on one side the assessee is stating that the said paper has been added in the seized documents and no one has owned up the paper and on the other hand the company has tallied the amount mentioned in the paper to the Ins: penny. Therefore, it is obvious that the company has prepared the documents according to the amount mentioned in the said paper and got tallied to the last penny otherwise the payments received in different period and different mode may not tally with a

paper whose authenticity was also challenged by the assessee company.

Therefore, in view of the above discussion and submission filed by the assessee the consent ion of the assessee is not acceptable as the paper which was found from the premises of the assessee pertains to assessee and details of cash received as and money mentioned on it paper which the then A.O. has rightly disallowed and added to the income of - assessee.

17. After considering the detailed submissions made by the assessee and the enquiry report submitted by the Assessing Officer, the Id CIT(A) observed that the Assessing Officer has simply treated the figures mentioned in the alleged seized documents as cash received by the appellant company, which is not accounted for in the regular books of accounts, whereas the case of the appellant is that all the receipts of sale/advances received by it are accounted for in the regular books of account. The Id. CIT(A) further found from the financial statements of F.Y 2008-09 that the gross receipts of the project Grand Savannah is at Rs. 37,52,98,720/-.

18. From the audited balance sheet, the first appellate authority further found that 'Other Charges' amounting to Rs.5,86,81,500/- were also received by the appellant company and total receipts worked out to Rs.43,39,80,220/-. The ld. CIT(A) was convinced that all the receipts mentioned in the impugned seized documents are found recorded in the books of account for F.Y 2008-09. Having found the receipts recorded in the regular books of account, the ld. CIT(A) deleted the addition of Rs. 43,39,80,220/-.

19. Before us the ld. DR strongly supported the findings of the Assessing Officer and read the relevant part of the assessment order.

20. Per contra, the ld. counsel for the assessee reiterated what has been stated before the first appellate authority.

21. We have given thoughtful consideration to the orders of the authorities below. We find that in his enquiry report the Assessing Officer has not disputed that the notings in the impugned seized documents are duly recorded in the books of account. However, in his enquiry report the Assessing Officer stated that the appellant might have fabricated additional evidences and the books of account are

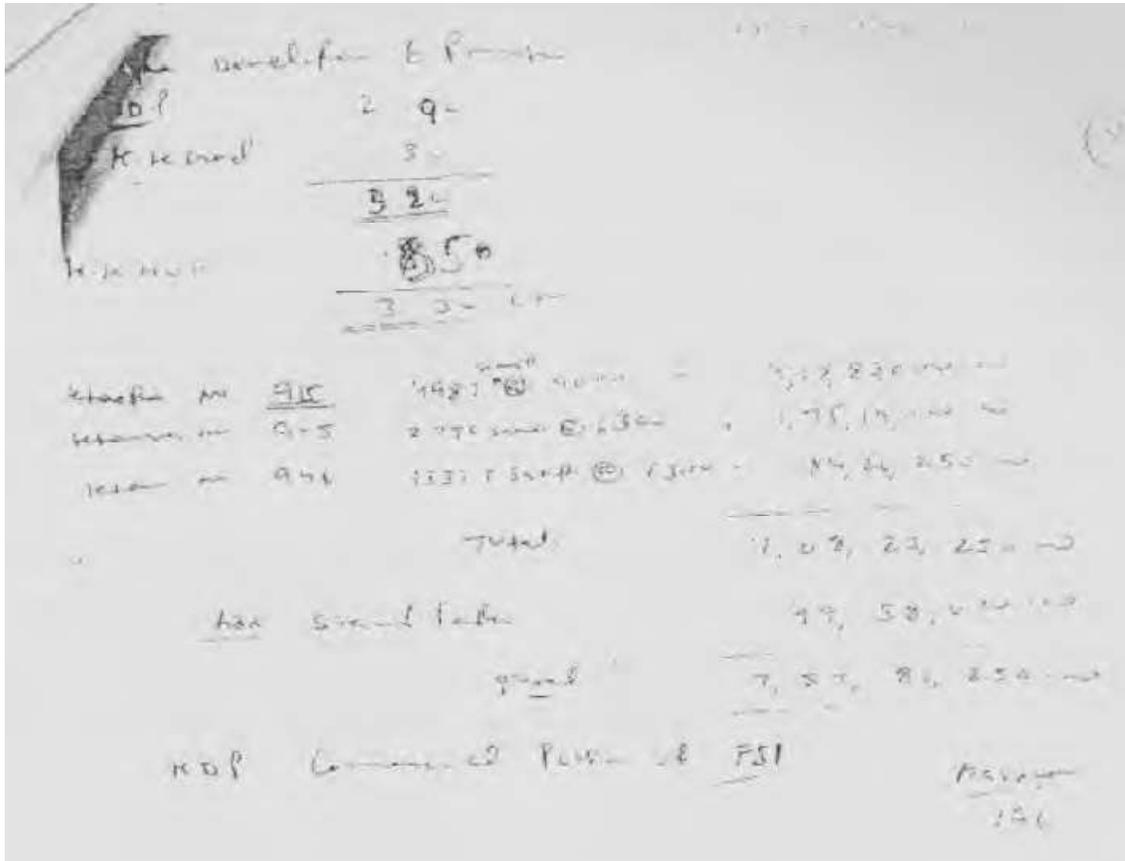
forged/doctored. We do not find any merit in these allegations made by the Assessing Officer.

22. The transactions pertain to F.Y 2008-09. Search operations were conducted on 26.09.2014. Financials of F.Y 2008-09 were filed alongwith return of income of A.Y 2009-10. Therefore, there is no occasion for the assessee to doctor the accounts which were already filed with the revenue. Since the first appellate authority has thoroughly examined the entries in the regular books of account, therefore, we do not find any reason to interfere with the findings of the first appellate authority. Ground No. 1 is, accordingly, dismissed.

GROUND NO. 2

23. Ground No. 2 relates to deletion of addition of Rs.7.08 crores made on account of unexplained investment.

24. During the search proceedings, incriminating documents were found and seized and one of such documents was page No. 40 of Annexure LP 10 which is as under:



25. On perusal of the aforementioned seized documents, the Assessing Officer formed a belief that the assessee has made payments amounting to Rs.7,08,23,250/- for the purchase of land. The assessee was asked to explain the transactions along with supporting documents.

26. In its reply, the assessee stated that the impugned document is a handwritten page having some calculations under the heading Krishna developers and promoters and some other calculation related to New

net worth of KPD Infrastructure Pvt. Ltd where the amount of Rs.7,08,23,250/- is related to Khasara Nos. 915, 945 and 946, being some properties purchase at Haridwar.

27. The reply of the assessee did not find any favour with the Assessing Officer who was of the opinion that the assessee has not furnished any supporting evidences and proceeded to make addition of Rs.7,08,23,250/- as unexplained investment.

28. Before the ld. CIT(A), the assessee furnished some evidences which were sent to the Assessing Officer and Assessing Officer has submitted his enquiry report dated 09.0.2019 which reads as under:

"Addition on account of investment made in land to the tune of Rs. 7,08,23,250/-

The above mentioned addition was made on the basis of page no. 30 of Accounts-L/2-10 seized from the premises D-247/29 Ground Floor Sector-62, Gurgaon of the assessee during the course of search proceedings. During the course of assessment proceedings the assessee was required to explain this total payment of Rs. 7,08,23,250/- along with supporting documents and to reconcile the same to regular books of account and also required to explain why amount to Rs. 7,08,23,250/- may not be treated as unexplained investment and not be added in the total income of the assessee. In response the assessee in his reply submitted that,

"It is hereby submitted that the hand written page having some calculations under the heading "Krishna Developer & promoters" and some other calculation relate to New World of KDP Infrastructure Pvt. Ltd where the amount of Rs. 7,08,23,250/- is related to Khaska no. 915,945, & 946 being some properties purchase at Haridwar."

From the submission of the assessee furnished during the course of assessment proceedings it may be observed that the assessee is not sure about the entries mentioned in the papers and as the assessee himself accepted that he has produced the required document during the course of assessment proceedings. And the then A.O. has passed the assessment order after due consideration of the facts and papers submitted before him and as mentioned in the assessment order that the transactions are not mentioned in the books of account, therefore, there is possibility that the papers may have been prepared after assessment. Therefore, the contention of the assessee is not acceptable as there were no situation prevailed which has prevented the assessee to produce the papers before the then A.O."

29. After considering the detailed submissions made by the assessee and Enquiry Report submitted by the Assessing Officer, the Id. CIT(A) observed that the Assessing Officer, in his enquiry report, has mentioned that the books of account might have possibly been prepared by the appellant company after such assessment, though the assessee had strongly contended that the seized documents relate to purchase of land and entries are duly recorded in the books of account.

30. The Id. CIT(A) was not convinced with the allegation of the Assessing Officer that the books of account might have possibly been fabricated by the assessee and was convinced that the investment is duly recorded in the regular books of account and, accordingly, deleted the addition.

31. Before us, the Id. DR read the relevant part of the assessment order and strongly supported the findings of the Assessing Officer.

32. Per contra the Id. counsel for the assessee reiterated what has been stated before the lower authorities.

33. We find that the entries noted in the seized documents pertain to purchase of land bearing Khasra Nos. 915, 945 and 946 totalling to Rs.7,08,23,250/-. We further find that the ledger account for purchase of land and ledger account of the parties from whom the land was purchased were duly examined by the Id. CIT(A). The allegation of the Assessing Officer that the books of account must have been prepared after the search operation is without any basis.

34. In our understanding, it is common practice during search proceedings that the revenue seizes the books of account along with incriminating documents and even if the books of account are not seized, copies of the same are taken. In either situation, it would be impossible for the assessee to fabricate/fudge /doctor the entries in the books of account. Since the investment has been found duly recorded in the regular books of account, provisions of section 69 of the Act do not apply and, therefore, we decline to interfere with the findings of the Id. CIT(A). Ground No. 2 is, accordingly, dismissed.

GROUND NO. 3

35. Ground No. 3 relates to deletion of addition of Rs.7.02 made on account of unexplained cash payments.

36. During the search proceedings, one of the incriminating documents was page 49 of Annexure LP 12 which reads as under:

PMT Made By KDP		Handwar A/C
By Cash		70238672.00
By Cheque		13450000.00
Total(A)		83688672.00
Exp		
Pmt made		79697989.00
Land Exp.		3497851.00
Agriculture Exp		3255353.00
Balance amt for Registry		1792000.00
Total(B)		88243193.00
Short Payment(A-B)		-4554521.00

37. On perusal of the aforesaid document, the Assessing Officer found that the assessee has made total investment of Rs.8.36 crores, out of which Rs.7.02 crores was made in cash. The assessee was asked to explain the investment made in cash with supporting documents and reconcile the same in the regular books of account.

38. On receiving no plausible reply, the Assessing Officer made addition of Rs.7,02,38,672/- u/s 69 of the Act.

39. Before the Id. CIT(A), the assessee filed detailed reply along with evidences which were sent to the Assessing Officer and the Assessing Officer submitted enquiry report vide letter dated 09.01.2019 which is as under:

Addition on account of investment made in land to the tune of Rs. 7,02,38,672/-

This addition was made on the basis of page no. 49 of Annexure-LP-12 seized from the premises D-247/29 Ground Floor Sector-63, Noida of the assessee during the course of search proceedings. During the course of assessment proceedings it was found that the assessee had made total investment of Rs. 8,36,88,672/- out of which Rs. 7,02,38,672/- was made in cash. The assessee was required to explain the investment amount of Rs. 7,02,38,672/- in cash alongwith supporting documents and to reconcile these transactions in his regular books of account. But during the course of assessment proceedings the assessee has offered no comments/explanation regarding the investment of Rs. 7,02,38,672/- made in cash. Therefore, in absence of any explanation regarding investment made in cash, the A.O. had made addition of Rs. 7,02,38,672/- as unexplained investment.

It is further submitted that during the course of assessment proceedings assessee had nothing to say in this regard and now in its submission before your honour the assessee has submitted a lot of things regarding the transaction and it has accepted payment of Rs. 134,50,000/- made through cheque but it has not discussed anything about the payment made in cash and moreover, it claimed that the payment of Rs. 134,50,000/- were received back as per cancellation agreement dated 21/01/2008 but it has not mentioned the date of receiving back the cheque amount of Rs. 134,50,000/- and has also not discussed the cash transaction made for Rs. 7,02,38,672/-. Therefore, from the submission the assessee company it is apparent that the assessee company has entered into any other transaction to which it had made investment of Rs. 7,02,38,672/- in cash from its undisclosed sources which has not been taken into account as during the course of assessment proceeding assessee company failed to produce any reply/documents regarding this transaction.

Therefore, the contention of the assessee is not acceptable.

40. After considering the detailed submissions made by the assessee and enquiry report submitted by the Assessing Officer, the ld. CIT(A) found that the bone of contention is the payment of Rs.7,02,38,672/- in cash for Haridwar account. The ld. CIT(A) further found that the appellant has contended that the transaction in the seized documents related to F.Y 2005-06, which is beyond the block period under consideration.

41. On perusal of the documents filed by the assessee, the ld. CIT(A) found that the appellant company has entered into purchase of agricultural land at Haridwar through one Shri Ved Prakash in the year 2005. The CIT(A) further found the Affidavit of Shri Ved Prakash to evidence the transaction. The transaction was such that the appellant was making payment to Shri Ved Prakash, who, in turn, was making payment for purchase of agricultural land.

42. From the documents, the ld. CIT(A) further found that certain land at village Ajitpur Tehsil of Taluka Haridwar was transferred in the name of Shri Ved Prakash on 14.10.2005. The ld. CIT(A) further found that the consideration, in cheque, was transferred by the appellant company to Shri Ved Prakash during the year 2005 and the amount paid

by the appellant to Shri Ved Prakash were received bank wide agreement dated 21.01.2008.

43. On perusal of the documents relating to impugned transaction, the CIT was convinced that the said transaction in the alleged seized document pertains to F.Y. 2005-06 and 2006-07, which are beyond the block period, in the present search assessment and accordingly, deleted the impugned additions.

44. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

45. On the other hand, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

46. We have carefully considered the rival submissions on the issue. The ld. DR could not point out any factual error in the findings of the ld. CIT(A) and since the documentary evidences examined and verified by the first appellate authority show that the impugned transaction related to F.Y 2006-07 and, in our considered opinion, the same cannot be considered in the block period relating to the present search

assessments. As no factual error or defect has been pointed out, we do not find any reason to interfere with the findings of the Id. CIT(A). Ground No. 3 is accordingly, dismissed.

47. In the result the appeal of the revenue in ITA No. 6083/DEL/2019 for A.Y is dismissed.

ITA No. 4881/D/2019 [Revenue's appeal for A.Y 2014-15]

48. The revenue is in appeal on three grounds.

GROUND NO. 1

49. Ground No. 1 relates to the deletion of addition made by the Assessing Officer on account of unexplained cash of Rs.1,54,09,440/-.

50. During the search proceedings, certain incriminating documents were found and seized and one of such documents was Page No. 51 of Annexure LP 05 which is as under:

NRO - 4, 24-3, 57
 JUNE 2012/2014
 2410520
 2410520
 19,44,000
 19,44,000
87,09,120

2013 (100%)
 2410520
 2410520
 19,44,000
 19,44,000
 19,44,000
 19,44,000
 102,21,000
~~25,00,000~~
 12,52,000
 16,07,040
1,54,09,440

2014 (100%)
 2015 (100%)
 2015 (100%)
 2410520
 241,10,520
 24,10,520
57,07,120

51

→ 12 564207
 → 20 6
12,05,280

- CA
- CS
- Service
- FDS
- A/C
- Es Gtds Mng
- Helper
- Executive officer (Maintenance)
- office land
- Stationery + Month.

51. On perusal of the above document, the Assessing Officer found that the assessee has made expenditure totalling Rs.3,28,27,680/- out of which Rs.1,54,09,440/- pertains to the year under consideration. Accordingly, the assessee was asked to explain the transaction and reconcile the same with its books of account.

52. In its reply, the assessee explained that the seized documents referred to contain figures of comparison for expenditure made on maintenance charges, in the month of June 2012, 2013 and 2014 in respect of KDP Project. It was explained that Greenwell Mark Buildwell Pvt Ltd takes maintenance charges from residents but in actual, the appellant provides maintenance charges and, therefore, the amount is transferred from Greenwell Mark Buildwell Pvt Ltd for which the appellant raises bill.

53. Reply of the assessee was rubbished by the Assessing Officer. According to the Assessing Officer, the assessee has made the expenditure outside the books of account and the same are not recorded in the books of account and accordingly made addition of Rs.1,54,09,440/-.

54. Before the Id. CIT(A), detailed submissions were filed and it was explained that the appellant company was maintaining flats for which purpose it incurred expenditure and to ensure proper maintenance, the appellant entered into a tripartite agreement, which was between the appellant, Greenland Mark Buildwell Pvt Ltd and the flat owners, wherein it was agreed that the maintenance charges at the rate of Rs.

1.80 per sq. ft. per month, will be paid by the flat owner after delivery of the flat.

55. It was explained that Greenwell Mark Buildwell Pvt Ltd made collection of maintenance charges from the residents of the flats and charges received by Greenwell Mark Buildwell Pvt Ltd were for security, electricity, lift maintenance, etc. However, certain expenditure like electricity, water charges were paid by the appellant company as these meters were in the name of the appellant.

56. The ld. CIT(A) called for Remand Report from the Assessing Officer who reiterated what has been stated by him in the assessment order.

57. After considering the detailed submissions made by the assessee and remand report of the Assessing Officer, the ld. CIT(A) observed that as per the Tripartite Agreement, Greenwell Mark Buildwell Pvt Ltd made collection of maintenance charges from flat owners. The ld. CIT(A) further observed that the impugned seized document represents the expected receipt of maintenance charges, which are duly

accounted for by the assessee as well as Greenwell Mark Buildwell Pvt Ltd in their books of accounts.

58. The ld. CIT(A) further examined the actual maintenance charges incurred by Greenwell Mark Buildwell Pvt Ltd and the ld. CIT(A) found that Greenwell Mark Buildwell Pvt Ltd received maintenance charges of Rs.3,55,02,597/- during the F.Ys 2011-12 to 2014-15 against which expenditure of Rs.2,88,59,199/- was directly incurred by Greenwell Mark Buildwell Pvt Ltd and Rs.77,71,275/- was incurred by the assessee which was reimbursed by Greenwell Mark Buildwell Pvt Ltd.

59. The ld. CIT(A) found that the amount depicted in the seized document being Rs. .87,09,120/-, Rs. 1,54,09,440/- and Rs. 8,70,91,204/- A.Ys 2013-14 to 2015-16 represent the account on maintenance charges duly reflected in the books of accounts of the appellant company as well as Greenwell Mark Buildwell Pvt Ltd. While deleting the impugned addition, the ld. CIT(A) concluded by holding that the Assessing Officer has merely on the basis of suspicions raised from the entries in the document seized in the search action has made addition.

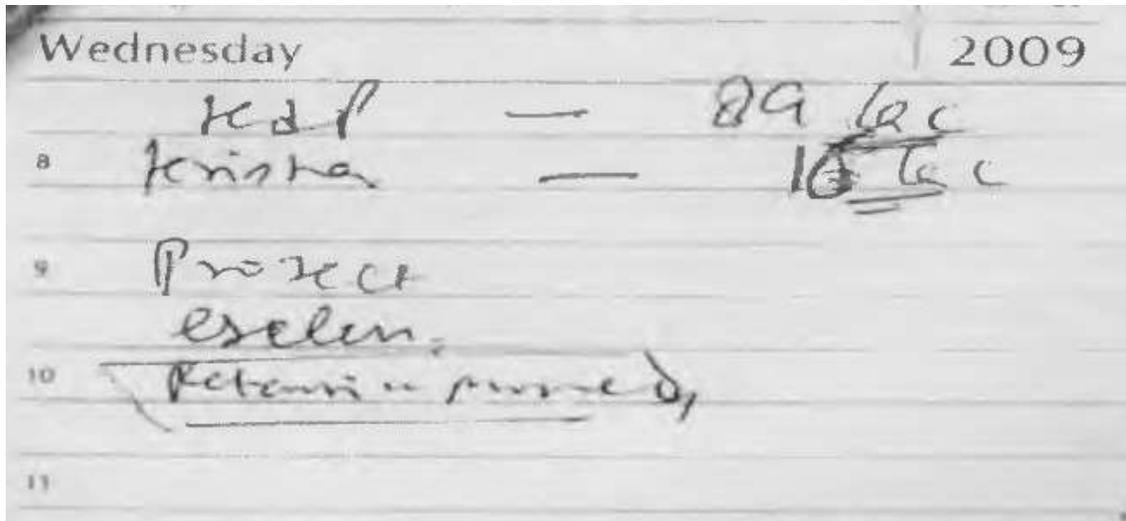
60. Before us, the Id .DR strongly supported the findings of the Assessing Officer and the Id. counsel for the assessee reiterated what has been stated before the lower authorities.

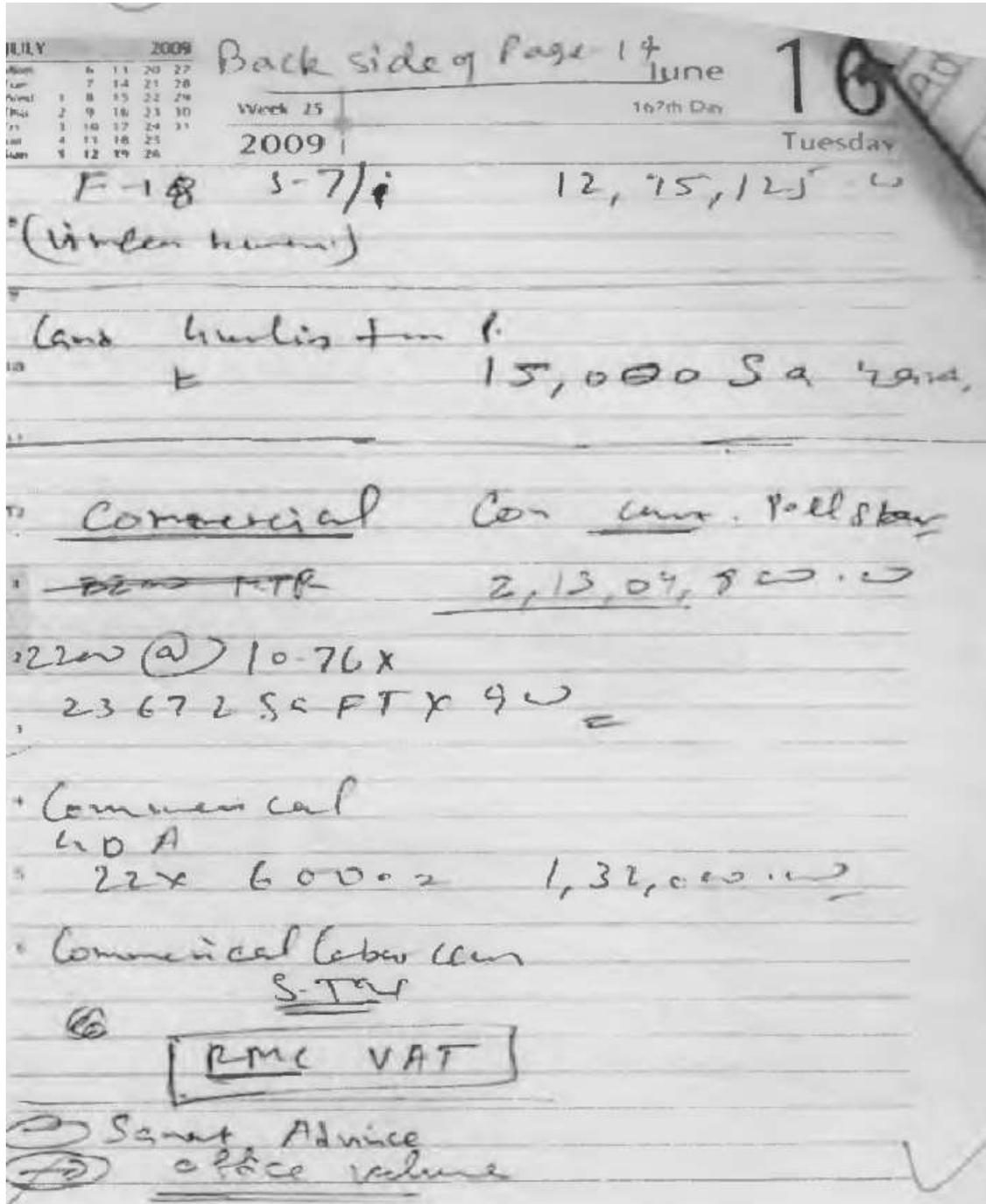
61. We have carefully perused the factual findings given by the first appellate authority and no factual error has been pointed out before us by the Id.DR in the findings of the Id. CIT(A). Whereas the findings of the Id. CIT(A) clearly show that he has examined all the entries in the books of account of the appellant as well as Greenwell Mark Buildwell Pvt Ltd. Since the entries are duly recorded in the regular books of account, we do not find any reason to interfere with the findings of the Id. CIT(A). Ground No. 1 is dismissed.

GROUND NO. 2

62. Ground No. 2 relates to the deletion of addition of Rs.89 lakhs.

63. During search proceedings, one of the incriminating documents was page 14 of Annexure LP01 which is as under:





64. On perusing the aforementioned document, the Assessing Officer came to the conclusion that the assessee has received commission

amounting to Rs.89 lakhs and accordingly, the assessee was asked to explain the said transaction with supporting documents and to reconcile the same in the regular books of account.

65. On receiving no plausible reply the Assessing Officer made addition of Rs.89 lakhs.

69. Before the Id. CIT(A), it was strongly contended that the impugned seized document is nothing but a dumb document.

70. After considering the submissions made by the assessee, the Id. CIT(A) observed that on careful examination of these documents, it is revealed that an entry of Rs.89 lakhs and Rs.16 lakhs is written against the name of KGP and Krishna respectively on top of alleged seized documents. The Id. CIT(A) further observed that these entries are appearing on diary showing date as 17.06.2009. The Id. CIT(A) further observed that nowhere in the document the word 'commission' has been mentioned and there are further entries, which have not been added by the Assessing Officer and the Id. CIT(A) was convinced that the said document is a dumb document and deleted the addition.

71. Before us, ld. DR could. not controvert to the factual findings of the ld. CIT(A) and the ld. counsel reiterated what was stated before the first appellate authority.

72. On careful perusal of the impugned seized document exhibited elsewhere, no logical inference can be drawn and it is a fact that the word 'commission' has not been mentioned anywhere. The notings are simply jottings of figures, from which no logical conclusion can be drawn, and therefore, the ld. CIT(A) has rightly treated the said document as dumb document. We do not find any reason to differ from the findings of the ld. CIT(A). Accordingly, Ground No.2 is dismissed.

GROUND No. 3

73. Ground No. 3 relates to the deletion of addition of Rs.27,97,84,156/- made on account of differences in parallel set of accounts.

74. During the search proceedings, to trial balances were found and seized. On a perusal of the same, the Assessing Officer found that

there is a difference of Rs. 27,97,84,156/- in the total of both the trial balances and, accordingly, made an addition of Rs. 27,97,84,156/-.

75. Before the CIT(A), it was strongly contended that the entire addition has been made only on account of difference in two separate trial balances. Both the trial balances were examined by the Id. CIT(A) and he found that one of the trial balances is incomplete and further found that in one of the trial balances, last six pages were missing. The CIT(A) further rubbished the contention of the Assessing Officer that the assessee is maintaining two parallel sets of books of account. Convinced with the reply of the assessee, the Id.CIT(A) deleted the impugned addition.

76. Before us, the Id. DR strongly supported the Assessing Officer and the Id. counsel for the assessee reiterated what has been stated before the Id. CIT(A).

77. We have carefully perused the orders of the authorities below qua the issue. It is true that the only basis for making addition was the difference in figures in two trial balances found at the time of search

proceedings. The Assessing Officer has alleged that the assessee is maintaining two parallel set of books of accounts. But the entire assessment order is silent about any such parallel set of books of account found and seized during the course of search proceedings.

78. Further, trial balance is prepared from the books of account and it is always that the trial balance figures frequently change at the close of the accounting year, as necessary adjustments entries are passed at the close of the accounting year. There may be differences in the figures, but the fact of the matter is that, which trial balance was used for preparing the final set of profit and loss account and balance sheet, which is must most relevant. The Assessing Officer has nowhere mentioned this fact. We further find that before the Id. CIT(A), the difference in the two trial balances pertaining to some closing entries were duly reconciled and the Id. CIT(A) has examined the same. We, therefore, do not find any reason to interfere with the findings of the Id. CIT(A). Ground No. 3 is dismissed

79. In the result the appeal of the revenue is dismissed.

ITA No. 6084/Dell/2019 [A.Y 2012-2013]

80. The solitary grievance of the revenue is that the Id. CIT(A) erred in deleting the addition of Rs.1.75 crores made by the Assessing Officer on account of unexplained cash payments.

81. During the search proceedings, one of the incriminating documents was bearing page Nos. 23, 25, 27, 29 and 31 of Annexure LP 14 which are as under:

NW-4, LP-14, Page-23

K.D.P. Infrastructure Pvt. Ltd. 2011-12 (Final)
D-247/29 Sec 63, Noida

Maharaj Singh Tyagi
Ledger Account

1-Apr-2011 to 31-Mar-2012

Date	Particulars	Vch Type	Vch No	Debit	Page Credit
4-9-2011	Cr Cash	Payment	936	2,00,000.00	
28-9-2011	Cr Cash	Payment	1233	8,00,000.00	
8-10-2011	Cr HDFC Bank Ltd. CA-09758630000172	Payment Cheque	133434	20,00,000.00	
10-10-2011	Cr Cash	Payment	1336	10,00,000.00	
2-11-2011	Cr Cash	Payment	1554	5,00,000.00	
2-12-2011	Cr Cash	Payment	1811	5,00,000.00	
3-12-2011	Cr Cash	Payment	1812	5,00,000.00	
29-2-2012	Cr State Bank of India CA-63028244846	Payment Cheque	903622	15,00,000.00	
12-3-2012	Cr Yes Bank Ltd. CA-01278390000159	Payment Cheque	995990	10,00,000.00	
				60,00,000.00	
Dr	Closing Balance				80,00,000.00
				80,00,000.00	80,00,000.00

NW-4, LP-14, Page-25

K.D.P. Infrastructure Pvt. Ltd. 2011-12 (Final)
D-247/29 Sec 63, Noida

Satya Kumar Tyagi
Ledger Account

1-Apr-2011 to 31-Mar-2012

Date	Particulars	Vch Type	Vch No	Debit	Page Credit
4-9-2011	Cr Cash	Payment	936	2,00,000.00	
28-9-2011	Cr Cash	Payment	1233	8,00,000.00	
8-10-2011	Cr HDFC Bank Ltd. CA-09758630000172	Payment Cheque	133430	20,00,000.00	
10-10-2011	Cr Cash	Payment	1336	10,00,000.00	
2-11-2011	Cr Cash	Payment	1554	5,00,000.00	
2-12-2011	Cr Cash	Payment	1811	5,00,000.00	
3-12-2011	Cr Cash	Payment	1812	5,00,000.00	
29-2-2012	Cr State Bank of India CA-63028244846	Payment Cheque	903620	15,00,000.00	
12-3-2012	Cr ICICI Bank Ltd. CA-165405000014	Payment Cheque	002679	10,00,000.00	
				60,00,000.00	
Dr	Closing Balance				80,00,000.00
				80,00,000.00	80,00,000.00

1-Apr-2011 to 31-Mar-2012

Date	Particulars	Vch Type	Vch No	Debit
24-9-2011	Cr Cash	Payment	936	2 00 000 00
28-9-2011	Cr Cash	Payment	1233	8 00 000 00
8-10-2011	Cr HDFC Bank Ltd.CA-09758630000172	Payment Cheque	133426	20 00 000 00
10-10-2011	Cr Cash	Payment	1336	10 00 000 00
2-11-2011	Cr Cash	Payment	1554	5 00 000 00
2-12-2011	Cr Cash	Payment	1811	5 00 000 00
3-12-2011	Cr Cash	Payment	1812	5 00 000 00
29-2-2012	Cr State Bank of India CA-63028244846	Payment Cheque	903618	15 00 000 00
12-3-2012	Cr ICICI Bank Ltd. CA-165405000014	Payment Cheque	002677	10 00 000 00
				80 00 000 00
Dr	Closing Balance			80 00 000 00

NW-4, LP-14, Page-29

K.D.P. Infrastructure Pvt. Ltd. 2011-12 (Final)
D-247/29 Sec 63, Noida

Jai Kumar Tyagi
Ledger Account

1-Apr-2011 to 31-Mar-2012

Date	Particulars	Vch Type	Vch No	Debit
4-9-2011	Cr Cash	Payment	936	2 00 000 00
28-9-2011	Cr Cash	Payment	1233	8 00 000 00
8-10-2011	Cr HDFC Bank Ltd.CA-09758630000172	Payment Cheque	133428	20 00 000 00
10-10-2011	Cr Cash	Payment	1336	10 00 000 00
2-11-2011	Cr Cash	Payment	1554	5 00 000 00
2-12-2011	Cr Cash	Payment	1811	5 00 000 00
3-12-2011	Cr Cash	Payment	1812	5 00 000 00
29-2-2012	Cr State Bank of India CA-63028244846	Payment Cheque	903619	15 00 000 00
12-3-2012	Cr ICICI Bank Ltd. CA-165405000014	Payment Cheque	002678	10 00 000 00
				80 00 000 00
Dr	Closing Balance			80 00 000 00

NW-4, LP-14, Page-31

K.D.P. Infrastructure Pvt. Ltd. 2011-12 (Final)
D-247/29 Sec 63, Noida

Devendra Tyagi
Ledger Account

1-Apr-2011 to 31-Mar-2012

Date	Particulars	Vch Type	Vch No	Debit
4-9-2011	Cr Cash	Payment	936	2 00 000 00
28-9-2011	Cr Cash	Payment	1233	8 00 000 00
8-10-2011	Cr HDFC Bank Ltd.CA-09758630000172	Payment Cheque	133432	20 00 000 00
10-10-2011	Cr Cash	Payment	1336	10 00 000 00
2-11-2011	Cr Cash	Payment	1554	5 00 000 00
2-12-2011	Cr Cash	Payment	1811	5 00 000 00
3-12-2011	Cr Cash	Payment	1812	5 00 000 00
29-2-2012	Cr State Bank of India CA-63028244846	Payment Cheque	903621	15 00 000 00
12-3-2012	Cr Yes Bank Ltd.CA-012783900000159	Payment Cheque	996991	10 00 000 00
				80 00 000 00
Dr	Closing Balance			80 00 000 00

82. From the perusal of the aforementioned seized document, the Assessing Officer found that the assessee has made payment of Rs. 4 crores for purchasing of land to 5 persons and out of such payment, Rs.1.75 crores has been made in cash. The same can be understood from the following chart :

<i>Name of the person to whom the payment has made</i>	<i>Payment made by cheques</i>	<i>Payment made by cash</i>	<i>Total Payment made</i>
<i>Sh. Maharaj Singh Tyagi</i>	<i>Rs. 45,00,000/-</i>	<i>Rs. 35,00,000/-</i>	<i>Rs. 80,00,000/-</i>
<i>Sh. Satya Kumar Tyagi</i>	<i>Rs. 45,00,000/-</i>	<i>Rs. 35,00,000/-</i>	<i>Rs. 80,00,000/-</i>
<i>Sh. Ram Kumar Tyagi</i>	<i>Rs. 45,00,000/-</i>	<i>Rs. 35,00,000/-</i>	<i>Rs. 80,00,000/-</i>
<i>Sh. Jai Kumar Tyagi</i>	<i>Rs. 45,00,000/-</i>	<i>Rs. 35,00,000/-</i>	<i>Rs. 80,00,000/-</i>
<i>Sh. Devendra Tyagi</i>	<i>Rs. 45,00,000/-</i>	<i>Rs. 35,00,000/-</i>	<i>Rs. 80,00,000/-</i>
<i>Total</i>	<i>Rs. 2,25,00,000/-</i>	<i>Rs. 1,75,00,000/-</i>	<i>Rs. 4,00,00,000/-</i>

83. The assessee was asked to explain the transactions and reconcile the same with its regular books of accounts.

84. In its reply the assessee submitted that payments have been made by cheque and cash to the aforementioned five parties which are duly recorded in the regular books of accounts. The assessee also filed ledger account and registry of land.

85. The Assessing Officer dismissed the submissions of the assessee stating that the assessee has not explained the source of the above payments and has not filed any satisfactory reply regarding these payments and accordingly, made an addition of Rs.1.75 crores which was paid in cash.

86. Before the Id. CIT(A), the assessee vehemently stated that the seized documents were copy of ledger accounts of five parties. It was strongly contended that all the transactions were duly recorded in the regular books of accounts which were also placed before the AO.

87. After considering the submissions made by the assessee and the remand report of the Assessing Officer, the CIT(A) observed that the seized documents related to transactions of purchase of land at Noor Nagar, District Ghaziabad from the aforementioned parties to whom the consideration was paid by cheque and also by cash. The CIT(A) further examined the registered deed of agricultural land and found that the purchase of agricultural land was for Rs.4 crores which includes Rs.1.75 crores paid by cash.

88. The ld.CIT(A) further found that total consideration paid is reflected in the regular books of account of the appellant company and the same were found tallied with the bank statements and statements of cashbook. The ld. CIT(A) further found that cash payment of Rs.1.75 crores were also recorded in the audited books of account. Therefore, the provisions of section 69 of the Act do not apply on the facts of the case and accordingly, deleted the impugned addition.

89. Before us the ld. DR could not point out any factual error in the findings of the ld. CIT(A) and the ld. counsel for the assessee reiterated what was stated before the lower authorities.

90. We have carefully perused the assessment order and the order of the first appellate authority. The only objection raised by the Assessing Officer is that the cash payment of Rs.1.75 crores was made for the purchase of agricultural land. However, the said cash payment has been found to be reflected in the cashbook which has been mentioned and verified by the first appellate authority and no factual error has been pointed out. In our considered opinion, once the transaction is found to be recorded in the regular books of account, provisions of

section 69 of the Act do not apply and the ld. CIT(A) has rightly deleted the addition of Rs.1.75 crores which calls for no interference.

91. In the result the appeal of the revenue in ITA No. 6084/DEL/2019 is dismissed.

APPEALS OF THE ASSESSEE

92. The assessee is also in appeal for A.Ys is 2012-13 to A.Y 2015-16 and the grievance of the assessee for the impugned A.Ys can be understood from the following chart:

	Assessment Year	2012-13	2013-14	2014-15	2015-16	Total
S. No.	Nature of Addition-AO	Additions made vide Order u/s 153A and sustained by CIT(A)	Additions made vide Order u/s 153A and sustained by CIT(A)	Additions made vide Order u/s 153A and sustained by CIT(A)	Additions made vide Order u/s 143(3) and sustained by CIT(A)	
1	Unexplained share capital u/s 68	21135000 0	1346000 00	5490000		351445490
2	Addition on the basis of mere statement u/s 132(4)				100000000	100000000
3	Enhancement made by the CIT(A) on the basis of statement u/s 132(4)				150000000	150000000
	Total	21135000	1346000	5490000	250000000	601440000

93. At the very outset, the ld. counsel for the assessee stated that he is not pressing the legal grounds challenging the validity of assessment framed u/s 153A of the Act. On such concession, all the legal grounds raised by the assessee are dismissed.

ITA No. 4687/DEL/2019 [Assessee's appeal for A.Y 2012-13]

94. In F.Y 2011-12 pertaining to A.Y 2012-13, the assessee has received share application money from the following two persons:

- (i) Optimum Iron Works Pvt Ltd - Rs.16,13,50,000/-.
- (ii) Nivedan Agencies Private Ltd - Rs.5,00,00,000/-

95. During the course of scrutiny assessment proceedings, the assessee was asked to explain the share application money along with share premium received from the aforementioned two parties in light of section 68 of the Act. The assessee furnished necessary details along with bank statements, Income tax returns and audit returns of the applicants. For examination of the above companies, summons were issued u/s 131 of the Act and the applicants were asked to furnish the following details:

- (a) ITR, audit report along with profit and loss account and balance sheet
- (b) Details of investment made in the appellant company.

96. In response to the summons, none attended, and the Assessing Officer observed that neither compliance was made nor any reply was filed. Referring to various judicial decisions, the Assessing Officer came to the conclusion that the assessee has grossly failed to discharge the onus cast upon it by Section 68 of the Act and accordingly, made addition of Rs. 21.13 crores u/s 68 of the Act.

97. The assessee carried the matter before the CIT(A) but without any success.

98. Before us, the ld counsel for the assessee vehemently stated that all the details were furnished before the Assessing Officer, which have not been appreciated in true perspective. It is the say of the ld. counsel for the assessee that the Assessing Officer has grossly erred in stating that the summons served u/s 131 of the Act were not duly replied. The ld. counsel drew our attention to the relevant exhibits in

paper book and pointed out that both the companies have furnished the details as called for by the Assessing Officer along with their sources.

99. The ld. counsel further pointed out that the directors of the share applicant companies are related to the directors of the appellant company and, in fact, the director of Nivedan Agencies Private Limited are the same persons who are directors of the appellant company. The ld. counsel further stated that the assessment of Optimum Iron Works Pvt Ltd was framed in the very same circle where the appellant has been assessed. Therefore, the Assessing Officer could have very easily verified whatever he wanted to verify.

100. The ld. counsel drew our attention to the relevant documentary evidences brought on record in the form of paper book. Relying upon various judicial decisions ld. counsel stated that the appellant has successfully discharged the initial burden cast upon it/s 68 of the Act and the additions deserve to be deleted.

101. Per contra, the ld. DR strongly supported the findings of the CIT(A)/Assessing Officer and drew our attention to the judicial decisions relied upon in his written submissions.

102. We have given thoughtful consideration to the orders of the authorities below. We have also considered the relevant documentary evidences brought to our notice. There is no quarrel that the directors of the investor companies are related to the directors of the appellant and in fact, in the case of Nivedan Agencies, the directors are the same.

103. In so far as Optimum Iron Private Limited is concerned, we find that the same was assessed in the same circle for A.Y 2012-13 and the assessment has been framed u/s 143 (3) of the Act vide order dated 30.03.2015 which is placed at page 196 of the paper book No. 2. We further find that both the companies have duly complied with the details sought by the Assessing Officer through summons issued u/s 131 of the Act. The compliance can be found at page 177 of paper book No. 2 and 310 of paper book Part III.

104. It seems that the Assessing Officer was carried away with the returned income of these two companies whereas he ignored the net worth of these two companies. In our considered opinion, the returned income may be a guiding factor, but it cannot be decisive without considering the net worth of the applicants. In our understanding of the law, u/s 68 of the Act, the assessee has to establish three things, namely:

- (i) identity,
- (ii) genuineness of the transaction, and
- (iii) capacity of the lender/depositor.

105. The identity cannot be questioned because one of the applicants is assessed at the very same circle as the appellant and the other applicant is also a taxpayer, which is evident from the tax returns. Genuineness of the transaction cannot be doubted with as the transactions have been made through banking channels, duly recorded in the regular books of account.

106. In so far as the capacity is concerned, the assessee's onus is to explain the capacity, prime facie, and which on the given facts of the

case in hand, as discussed elsewhere, we are of the view that the assessee has successfully explained the capacity of the investor company. Merely because the director did not attend the proceedings would not justify the action of the Assessing Officer knowing the fact that one of the applicant is assessed in the same circle and the other applicant is also assessed and as mentioned elsewhere, the directors of the other applicant are directors of the appellant company, therefore, it cannot be said that the share applicant companies are strangers to the assessee.

107. Considering the facts of the case in totality, we do not find any merit in the additions made by the Assessing Officer and confirmed by the Id. CIT(A). We, accordingly, direct the Assessing Officer to delete the addition of Rs.21,13,50,000/-.

108. In the result appeal filed by the assessee in ITA No. 4687/DEL/2019 is allowed.

ITA No. 4688/DEL/2019 A Y 2013-14

109. The additions made u/s 68 of the Act in this year relates to share application money with share premium from the following three parties:

- | | | | |
|-------|--------------------------------|---|-----------------|
| (i) | Nivedan Agencies | - | Rs.3.5 crores |
| (ii) | Sutanuti Marketing Pvt Ltd | - | Rs. 5.96 crores |
| (iii) | Shanthi Gopal Vanijya Pvt. Ltd | - | Rs. 3.96 crores |

110. The edifice of the additions made u/s 68 is that the assessee failed to discharge the burden cast upon it by provisions of Section 68 of the Act and the ld. CIT(A) concurred with findings of the Assessing Officer.

111. Before us, the ld. counsel for the assessee, at the very outset, stated that the share application money received from the three companies were earlier in the books of account of the assessee as loans from these companies and the loans have been repaid during the year and the same amount has been ploughed back in the form of share application and share premium, therefore, technically these are

not fresh cash credits. The ld. counsel for the assessee further pointed out that the directors of the appellant company are also directors of the three applicant companies. Therefore, it cannot be said that the share applicant companies are strangers of the appellant.

112. The ld. counsel further drew our attention to the response given by the three share applicant companies to the summons served upon them u/s 131 of the Act. The ld. counsel vehemently stated that the assessee has completely discharged the onus and the additions deserve to be deleted.

113. On the hand, the ld. DR strongly supported the findings of the CIT(A) / Assessing Officer and relied upon the judicial decisions filed through written submissions.

114. We have given thoughtful consideration to the orders of the authorities below. It is true that the directors of the appellant company are directors of share applicant companies. Therefore, it can be safely concluded that the share applicants are no strangers to the appellant. We further find that in the case of Sutanuti Marketing

Private Limited which has been assessed at the very same circle as that of the appellant and the order framed u/s 143 r.w.s153C of the Act dated 30.12.2016 is framed by the same Assessing Officer and the said order is placed at pages 579 to 580 of the Paper book IV.

115. We further find that the share applicant money received from the three share applicant companies were already there in the books of accounts of the assessee in FY 2011-12 when the appellant company received the amount through RTGS, totalling to rupees 3.54 crores and details are at page 6 of Annexure1-A.

116. We further find that the appellant repaid the loan of rupees 3.54 crores through RTGS and details are at page 7 of Annexure1- B and as per page 8, Annexure 1-C the same amount of Rs. 3.54 crores was received from Nivedan Agencies as share application money. The same is with Sutanutu the details are at page 9 Annexure A -2, page 10, AnnexureA-B page 11 Annexure 2-C.

117. Similarly, the appellant had taken loan from Shanti Gopal Vanijya Pvt Ltd in FY 2011-12 through RTGS and the details are at page 12

Annexure 3-A. The loan was repaid by the appellant, details are at page 13 Annexure 3-B and the same amount was invested in Shanti Gopal Vanijya as per details at Annexure3-C page 14. Since no adverse inference has been drawn in so far as these credits are concerned in FY 2011-12, these credits are self-explanatory and explain the source of investment. Considering this fact, we are of the considered view that the appellant has successfully discharged the onus cast upon it/s 68 of the Act and do not find any merit in the impugned addition. We accordingly direct the Assessing Officer to delete the addition of Rs.13.46 crores.

118. In the result the appeal of the assessee in ITA No. 4688/DEL/2019 is allowed.

ITA No. 4311/DEL/2019 [A.Y 2014-15].

119. Additions have been made u/s 68 of the Act in the case of share application money received along with share premium from Shanti Gopal Vanijya Pvt Ltd amounting to Rs.54.90 lakhs. The sole basis of making the addition is that the assessee has grossly failed to comply

with the provisions of section 68 of the Act. The CIT(A) confirmed the findings of the assessee holding the same in appeal for A.Y 2013-14 [supra].

120. We have explained the source of money invested by Shanti Gopal Vanijya Pvt Ltd. We have also mentioned that the directors of the appellant company are directors of the share applicant companies. Therefore, the share applicant company is no stranger to the appellant company. We further find that the share applicant company duly complied with the summons served upon it u/s 131 of the Act and furnished necessary details called for by the Assessing Officer and the same can be seen at page 189 of Paper Book II.

121. Exhibits 136 and 137 of the Paper Book No. 1 clearly show the source of Shanti Gopal Vanijya Pvt Ltd for making investment in the appellant company. The Assessing Officer is found to be carried away by the returned income of the share applicant companies and seems to have completely ignored the net worth of the share applicant company and even if the Assessing Officer was not satisfied and on finding that the entire transactions have been made through banking channels the

Assessing Officer was free to take action against Shanti Gopal Vanijya Pvt Ltd. As the assessee successfully discharged the onus cast upon it by provisions of section 68 of the Act, we therefore, do not find any merit in addition so made. We accordingly direct the Assessing Officer to delete the addition of Rs.54.90 lakhs.

122. In the result the appeal of the assessee is allowed.

ITA No. 4312/DEL/2019 [A.Y 2015-16].

123. The grievance of the assessee is two-fold. The first challenge in respect of addition of Rs.10 crores made by the Assessing Officer and the second challenge in respect of enhancement made by the Id. CIT(A) amounting to Rs.15 crores. The basis of the addition is as under:

"Tanuj Goyal (Director), in his statement, recorded u/s 132(4) of the Income Tax Act, 1961 has surrendered of Rs. 10,00,00,000/- against question no. 25 on account of cash investment in the properties on the basis of documents confronted before him during the search in the hands of M/s KDP Infrastructure Pvt. Ltd in F.Y. 2014-15 relevant to A.Y. 2015-16. But he has not given any explanation regarding sources of this surrender. During the

assessment proceedings, it came to notice that the assessee company has also not declared the surrender income in return of income. Therefore, the amount of Rs. 10,00,00,000/- is added to the total income of the assessee as surrendered in his statement recorded u/s 132(4) of the Income Tax Act, 1961. The assessee has furnished inaccurate particulars of income, therefore, penalty proceedings u/s 271AAB are also considered separately."

124. From the above the observations of the Assessing Officer it can be seen that the Assessing Officer has made the addition only because in his statement recorded u/s 132(4) of the Act, the director has surrendered Rs.10 crores.

125. When the matter was agitated before the CIT(A), the CIT(A) was of the opinion that it was not Rs.10 crores but Rs.15 crores and therefore, enhanced the addition to Rs.15 crores.

126. However, we find that the language of the CIT(A) is not clear as to whether Rs.10 crores has been enhanced to Rs.15 crores or Rs.15 crores has been added over and above Rs.10 crores. This can be understood from the following finding of the ld. CIT(A):

"In view of the above detail discussions of factual matrix of the case and judicial pronouncements cited here-in- above addition made by the AO amounting to Rs. 10,00,00,000/- has not only confirmed but also enhanced by Rs. 15,00,00,000/- on the basis on seized documents LP-3 and LP-12 respectively and considering the confess made by the director of appellant company u/s 132(4) of IT Act"

127. Before us, the ld. counsel for the assessee drew our attention to the relevant statement of the director Shri Tanuj Goel and vehemently stated that the question put at the time of search had no reference to any entry not recorded in the books of account and therefore, the same cannot be considered as valid surrender in the light of CBDT Circular.

128. The ld. counsel further stated that the same is the fate of enhancement made by the ld. CIT(A). The ld. counsel further pointed out that in A.Y 2015-16, no share application money was received by the appellant. Therefore, there was no question of any undisclosed income which needed to be surrendered. The ld. counsel strongly stated that the assessee has retracted from the surrender because the

same was under duress and without there being any unaccounted income, the assessee under pressure surrendered the amount.

129. Per contra, the ld. DR strongly supported the findings of the lower authorities.

130. We have given thoughtful consideration to the orders of the authorities below. We have also considered the relevant statements on the basis of which the impugned additions have been made. CBDT vide instruction F. 286/2/2003 - IT [INV]-II dated 10.3.2003 has clearly instructed the search party that the confessions are often retracted by filing return of income. Therefore, focus should be on collection of evidence on undisclosed income and no attempt should be made to obtain confession only.

131. In the light of the CBDT Circular [supra] we find that there is no reference to any incriminating material/undisclosed income and it appears that the surrender is purely on compulsion and, in fact, enhancement made by the CIT(A) is without any basis because in the

year under consideration, no share application money/share premium has been received by the assessee.

132. We further find that while asking the director to surrender there was no question asking him the source of income. The Hon'ble High Court of Allahabad in the case of Dilbagh Rai Arora 104 Taxman.com 371 under similar circumstances has held as under:

"Addition can only made be made if there is incriminating material or surrounding circumstances reveal that there is any material to justify the addition. The person making an admission is not always mindful of it and sometime can get out of its binding purview. If the person can explain exclusive with supportive evidence/material or otherwise that the admission by him earlier is not correct or contain a wrong statement or that a true state of affairs is different from that represented therein and so the same should not be accepted upon forecasting tax liability which should rather be fixed on the basis of correct and true affairs as ascertained from the material on record."

133. In the light of the aforesaid decision all the additions made in the earlier A.Ys [supra] have been deleted by us on facts of each A.Y. This itself proves that there was nothing to surrender and surrender was

without any application of mind and the facts and circumstances clearly show that that was no undisclosed income which needed to be surrendered. Considering the facts of the case in totality in the light of the facts as discussed in the appeals of the A.Ys [supra] we do not find any merit in both the additions. We, accordingly, delete the addition of Rs.10 crores and Rs. 15 crores and allow the appeal of the assessee.

134. Before parting, the judicial decisions relied upon by both the sides, though considered by us, but we found that the facts of the case in hand do not need any reference to any judicial decisions relied upon by both the sides.

135. In the result appeal of the assessee is allowed

136. To sum up, in the result,

Revenue's appeals:

ITA No. 6085/DEL/2019 for A.Y 2013-14	Dismissed
ITA No. 4880/DEL/2019 for A.Y 2015-16	Dismissed.
ITA No. 6083/DEL/2019 for A.Y 2010-11	Dismissed

ITA No. 4881/D/2019 for A.Y 2014-15	Dismissed
ITA No. 6084/Dell/2019 A.Y 2012-13	Dismissed

Assessee's Appeals

ITA No. 4687/DEL/2019 [A.Y 2012-13]	Allowed
ITA No. 4688/DEL/2019 [A.Y 2013-14]	Allowed
ITA No. 4311/DEL/2019 [A.Y 2014-15]	Allowed
ITA No. 4312/DEL/2019 [A.Y 2015-16]	Allowed

The order is pronounced in the open court on 27 .11.2020.

**Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER**

**sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 27th November, 2020

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	08.10.2020
Date on which the final order is uploaded on the website of ITAT	08.10.2020
Date on which the file goes to the Bench Clerk	08.10.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	