

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 1386/Del/2022
(Assessment Year: 2011-12)**

DCIT, Central Circle, Ghaziabad	Vs.	Sushil Tyagi, A-2, Ganpati Apartments, Civil Lines, New Delhi
(Appellant)		(Respondent)
PAN:AEJPT6739A		

**ITA No. 1387/Del/2022
(Assessment Year: 2017-18)**

DCIT, Central Circle, Ghaziabad	Vs.	Yogender Singh, J-6A, Sector-23, Sanjay Nagar, Ghaziabad
(Appellant)		(Respondent)
PAN:BGCOS8548E		

**ITA No. 1413/Del/2022
(Assessment Year: 2017-18)**

Yogender Singh, J-6A, Sector-23, Sanjay Nagar, Ghaziabad	Vs.	DCIT, Central Circle, Ghaziabad
(Appellant)		(Respondent)
PAN:BGCOS8548E		

**ITA No. 1412/Del/2022
(Assessment Year: 2016-17)**

Naveen Tyagi, G-302, VVIP Addresses, Raj Nagar Extention, Ghaziabad	Vs.	DCIT, Central Circle, Ghaziabad
(Appellant)		(Respondent)
PAN:ADMPT6420A		

**ITA No. 1414/Del/2022
(Assessment Year: 2016-17)**

Sarika Tyagi, H-100, Patel Nagar, - 3, Ghaziabad (Appellant) PAN:AFAPT5986P	Vs. DCIT, Central Circle, Ghaziabad (Respondent)
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Assessee by :	Shri Rajeev Khandelwal, CA Shri Gagan Khandelwal, Adv Shri Jaund Jaiswal, Adv
Revenue by:	Ms. Sapna Bhatia, CIT DR
Date of Hearing	23/08/2024
Date of pronouncement	/10/2024

ORDER

PER M. BALAGANESH, A. M.:

1. These are the appeals filed by the different assessees and the revenue against the separate orders of the Id CIT(A).
2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

ITA No. 1387/Del/2022 (AY: 2017-18)-Yogender Singh (Revenue Appeal)

3. The only issue to be decided in this appeal of the revenue is as to whether the Id. CIT(A) was justified in deleting the addition made in the sum of Rs 96,28,600/- towards unsecured loans u/s 68 of the Act in the facts and circumstances of the instant case.
4. We have heard the rival submissions and perused the materials available on record. The return of income for the Asst Year 2017-18 was filed by the assessee company on 29.3.2018 electronically declaring total income of Rs 12,15,810/-. A search and seizure operation u/s 132 of the

Act was conducted at business and residential premises of VVIP Group of Companies / Directors, Partners and Employees on 3.11.2016. The year under consideration being the year of search, a notice u/s 143(2) of the Act was issued to the assessee on 24.8.2018 and served on the assessee. The Id. AO observed that assessee had received unsecured loans from the following parties :-

a) Shri Abhay Rajni Mittal	- 10,00,000
b) M/s Goel Steel Traders	- 8,28,600
c) M/s G S Medical (Prop. Ikwai Kha)	- 20,00,000
d) M/s Nidhi Trading Co (Prop. Mool Chand)	- 4,00,000
e) M/s Shri Sai Enterprises	- 18,00,000
f) M/s Surbhi Aggarwal	- 6,00,000
g) M/s Papa Global Corporation (Prop. Jaidev Sharma)	-30,00,000
TOTAL	96,28,600

5. The Id AO observed that the assessee did not file relevant bank statements of the lenders nor established identity, creditworthiness and genuineness of persons / parties from whom the assessee has taken unsecured loans. Accordingly, the Id AO proceeded to treat the receipt of unsecured loans as unexplained cash credit u/s 68 of the Act and made an addition of Rs 96,28,600/- in the assessment.

6. Before the Id. CIT(A), the assessee furnished all the documents with facts and evidences to prove all the three ingredients of section 68 of the Act viz. identity of the lenders, creditworthiness of the lenders and genuineness of transactions, in respect of each of the lenders together with the details of repayment of loans. The Id. CIT(A) has reproduced the same in Pages 6 to 8 of his order. The Id. CIT(A) sought for a remand report from the Id. AO in this regard on the ground that no proper

opportunity was given to the assessee. The Id. AO however in the remand report submitted that sufficient opportunities were indeed given to the assessee and assessee chose not to file the requisite details during the assessment proceedings. Thereafter, the Id. CIT(A) proceeded to examine each and every detail filed by the assessee in respect of each of the lenders on his own and granted relief to the assessee by observing as under:-

"6.4.1 In the matter of unsecured loan of Rs. 10,00,000/-, received from Sh Abhay Rajni Mittal, the ledger account of the party in the books of appellant duly confirmed is enclosed, from the same it is found that amount of Rs. 10,00,000/- is received on 22.04.2016, copy of Aadhar card is enclosed And from the Bank account of Sh Abhay Rajni Mittal in HDFC bank, Ghaziabad, Uttar Pradesh, Account no. 15911530002145, this amount of Rs 10,00,000/- is transferred in the account of the appellant. The source is explained out of sale proceeds of the flat at Sector 23, Sanjay Nagar, Ghaziabad, the relevant deed of sale of this property is filed, from which it is verified that amount of Rs. 22,00,000/- is transferred by the purchaser party. Therefore all the three limbs of a genuine cash credit ie identity, genuineness of transaction and source of the fund stand explained with regard to this unsecured loan receipt of Rs. 10,00,000/-.

6.4.2 In the matter of unsecured loan of Rs. 8,28,600/- from M/s. Goel Steel Traders, the appellant furnished the ledger account of the party in the books of the appellant, from which it is found that Rs. 8,28,600/- are received on 31.03.2017. However this amount has been returned back on 05.06.2017. The bank statement of M/s. Goel Steel Traders in SBI, Navyug market, Ghaziabad in account no. 33761916342 is furnished from which this transfer of 31.03.2017 and repayment on 05.06.2017 are clearly reflected. Copy of return of income of M/s. Goel Steel Traders of AY 2017-18 is filed alongwith audited balance sheet as on 31.03.2017 from which it is found that total capital and liabilities of this concern are Rs. 2.48 crores. The turn-over of this concern as on 31.03.2017 is Rs. 12 65 crores. In the books of M/s. Goel Steel Traders, on 31.03.2017 Sh. Yogender Singh i.e. the appellant is shown as debtor of Rs. 8,28,600/-. Therefore all the three limbs of a genuine cash credit i.e. identity, genuineness of transaction and source of the fund stand explained with regard to this unsecured loan: receipt of Rs. 8,28,600/-.

6.4.3 In the matter of unsecured loan of Rs. 20,00,000/- from M/s. G.S. Medicare Prop. Ikwat Kha, the appellant furnished the ledger account of the party in the books of the appellant, from which it is clear that Rs. 20,00,000/- is received on 31.03.2017 and the same is paid back on 05.06.2017. From the bank statement of GS Medicare in Punjab National Bank, account no. 0674002190420948, it is found

that the amount of Rs. 20,00,000/- is given to Sh. Yogender Singh i.e. the appellant on 31.03.2017 and received back from him on 05.06.2017. The copy of bank statement of Sh. Yogender Singh i.e. the appellant reflecting both receipt and payment of this amount of Rs. 20,00,000/- is also filed. Copy of return of income of Sh. Ikwai Kha for AY 2017-18 reflecting income of Rs. 26,00,126/- for AY 2017-18 is filed. In the balance sheet of M/s. G.S. Medicare (prop. Sh. Ikwai Kha) as on 31.03.2017, the capital and loans of Rs. 2.42 crores are found and Sh. Yogendra Singh is appearing as loan debtor of Rs. 20,00,000/-. From the copy of Bank statement of M/s. G.S. Medicare Prop. Ikwai Kha. it has been seen that there are no cash deposits before the transfer of the unsecured loan amount. Looking to the facts of the case, it is clear that all the three limbs of a genuine cash credit i.e. identity, genuineness of transaction and creditworthiness are well established. Therefore no adverse inference needs to be drawn in the matter of this cash credit.

6.4.4 In the matter of unsecured loan of Rs. 4,00,000/- taken from M/s Nidhi Trading Company (Prop Mool Chand), the appellant filed the ledger account of the party in the books of the appellant. It has been found that Rs. 4,00,000/- are received on 31.03.2017 and the same are returned back on 05.06.2017 From the bank statement of M/s. Nidhi Trading Company (Prop Mool Chand) in PNB Bank Account no 0674005501735032, it is found that Rs. 4,00,000/- is transferred to Sh. Yogender Singh i.e. the appellant on 31.03.2017 and further the same is received back on 05.06.2017. Copy of Bank statement of Sh. Yogender Singh i.e. the appellant reflecting these transactions is also filed. In the return of income of Sh. Mool Chand prop. of M/s Nidhi Trading Company for AY 2017-18, income of Rs. 6,32,313/- is declared in the balance sheet of Nidhi Trading Company as on 31.03.2017, the capital of Rs. 62,04,753/- is shown. From the copy of Bank statement of M/s. Nidhi Trading Company (Prop Mool Chand), it has been seen that there are no cash deposits before the transfer of the unsecured loan amount. Looking to the facts of the case, it is clear that all the three limbs of a genuine cash credit i.e. identity, genuineness of transaction and creditworthiness are well established. Therefore no adverse inference needs to be drawn in the matter of this cash credit.

6.4.5 In the matter of unsecured loan of Rs. 18,00,000/- taken from M/s. Shri Sai Enterprises, the appellant has furnished the ledger account of the party in the books of the appellant. It has been found that Rs. 18,00,000/- are taken on 31.03.2017 but the same are returned back on 05.06.2017. Further the bank statement of Sh Sai Enterprises in PNB account no. 0674002190415964 is furnished In which the payment of Rs. 18,00,000/- on 31.03.2017 and returned back of the same on 05.06 2017 is reflected. Copy of bank account of the appellant reflecting these receipts/payments is also filed. In the return of income of Sh. Ravi Kumar prop. of M/s. Shri Sai Enterprises for AY 2017-18, income of Rs. 16,70,500/- is declared. In the balance sheet of M/s. Shri Sai Enterprises as on 31.03.2017, share capital and loans of Rs. 1,86,58,852/- are reflected. In the loans and advances

Sh. Yogender Singh ie the appellant is shown as loan debtor of Rs. 18,00,000/- From the copy of Bank statement, it has been seen that there are no cash deposits before the transfer of the unsecured loan amount. Looking to the facts of the case, it is clear that all the three limbs of a genuine cash credit i.e. identity, genuineness of transaction and creditworthiness are well established Therefore no adverse inference needs to be drawn in the matter of this cash credit.

6.4.6 In the matter of addition of Rs. 6,00,000/- taken from Smt. Surbhi Agarwal, the appellant has furnished the ledger account of the party in the books of the appellant From the same it has been found that Rs. 6,00,000/- are taken on 26.08 2016 and the same are paid back on 20.10.2018. Further the bank statement of Smt. Surbhi in Oriental Bank of Commerce, Batra Hospital, New Delhi, account no. 03022041000600 is furnished from which the amount of Rs. 6,00,000/- is transferred on 26.08 2016 Copy of return of income of Smt. Surbhi Agarwal of AY 2017-18 is also furnished in which Rs. 4,48,539/- is shown as taxable income and Rs. 7,07,721/- as exempt income. From the copy of Bank statement, it has been seen that there are no cash deposits before the transfer of the unsecured loan amount. Looking to the facts of the case, it is clear that all the three limbs of a genuine cash credit ie identity, genuineness of transaction and creditworthiness are well established. Therefore no adverse inference needs to be drawn in the matter of this cash credit.

6.4.7 In the matter of addition of Rs. 30,00,000/- taken from Mis Papa Global Corporation Prop. Jai Dev Sharma, the appellant has furnished the ledger account of the party in the books of the appellant. From the same it is found that Rs 3,00,000/- is opening balance and Rs. 30,00,000/- are received on 06.02.2017 and 31.03.2017. Rs 10,00,000/- are returned back on 10.03.2017, thus the closing balance is Rs. 23,00,000/- at the end of this financial year and the entire amount has been paid back by 03.11.2018. From the bank statement of M/s. Papa Global Corporation in HDFC Bank, Raj Nagar, Ghaziabad in account no. 50200010291982, the transfer of these amounts are verifiable Copy of return of income Sh Jaydev Sharma of AY 2017-18 is also filed. From the audited accounts of M/s. Papa Global Corporation, it has been found that in the balance sheet as on 31.03.2017 this concern has capital and liabilities amounting to Rs. 2.52 crores. From the copy of Bank statement, it has been seen that there are no cash deposits before the transfer of the unsecured loan amount. Looking to the facts of the case, it is clear that all the three limbs of a genuine cash credit ie identity, genuineness of transaction and creditworthiness are well established. Therefore no adverse inference needs to be drawn in the matter of this cash credit.

6.5 The assessee company has furnished the following in respect of the loan creditors

- Confirmation of loan creditors*
- Copy of bank statement of the unsecured loan providers.*
- PAN Details/ITR copies/ Balance sheet.*

The assessing officer has himself not made any inquiry from the unsecured loan creditors. The loan creditors are existing income tax assesseees. Under section 68 of Income Tax Act, 1961, the onus of the assessee is discharged if he furnishes the documentary evidences proving the i) identity of the creditors ii) genuineness of the transaction and iii) the creditworthiness of the creditor. In the present case, the identity of the loan creditor is established as it is existing income tax assessee. The genuineness of the transaction is established as the transaction has taken place by banking channel.

6.6 The appellant has explained the 'source' of creditor in its books by filing the confirmation and financial statements of loan creditor. The appellant cannot be expected to explain 'source' of 'source' as held in judicial pronouncements. The requirement of explaining 'source' of 'source' u/s 68 of the Act is applicable from A.Y. 2013-14 in respect of receipt of share capital/share application/ share premium. Even otherwise as per the return/ balance sheet/ other creditworthiness evidences of the loan creditor, it had the availability of the sufficient funds Under section 68 of the Act, what is material is the 'source' of the fund.

6.7 The reliance is further placed on the following case laws wherein it has been held that where the necessary documents are furnished by the assessee to prove the identity, genuineness of transaction and creditworthiness of the creditor, the AO cannot make the addition without making inquiries :-

- CIT vs. Laxman Industrial Resources Pvt. Ltd. [2017] 397 ITR 106*
- CIT Vs. Rakam Money Matters Pvt. Ltd.*
- CIT vs. Orchid Industries Pvt. Ltd. 397 ITR 136*
- CIT v Fair Finvest Ltd [2014] 44 Taxmann.com 356*
- CIT v Gangeshwari Metal Pvt. Ltd. (2013) 30 Taxman.com 328 (Delhi)*
- Pr. CIT v Oriental International Company Pvt. Ltd. 2018 101 CCH 0004 Del*

7. Looking into factual matrix of the case and after careful analysis of various judicial, interpretations of section 68 of IT Act in which genuineness of cash credit has been analyzed in detail and taking into consideration the fact that nothing adverse could be found even after detailed search proceedings conducted under 132 of IT Act in various premises of the appellant, in the matter of unsecured loan amounting to Rs.. 96,28,600/-, the addition made u/s 68 of IT Act is hereby deleted And hence the grounds of appeal relating to this addition are hereby allowed."

7. We find that none of the aforesaid factual findings were controverted by the revenue before us except reiterating the fact that the Id. AO had indeed given sufficient opportunities to the assessee in the

assessment proceedings and hence the Id CIT(A) ought not to have taken cognizance of all the additional evidences filed before him. But it is pertinent to note that the Id. AO also had one more occasion in the remand proceedings to examine these documents, but he chose not to do so. Hence the Id CIT(A) proceeded to examine all the factual details with supporting evidences. Hence we reject the plea of the Id. DR before us to restore this matter to the file of Id AO as in our considered opinion, these facts are not going to change. The Id CIT(A) is having co-terminus powers with that of Id AO and in the instant case, entire evidences had been verified and examined by the Id CIT(A) himself and relief was granted to the assessee. Hence we do not find any infirmity in the order of the Id CIT(A) in this regard. Accordingly, the grounds raised by the revenue are dismissed.

8. In the result, the appeal of the revenue is dismissed.

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9. The Ground No. 1 raised by the assessee is challenging the confirmation of addition by the Id CIT(A) in the sum of Rs 21,00,000/- towards cash found in the course of search.

10. We have heard the rival submissions and perused the materials available on record. During the course of search, a sum of Rs 21,00,000/- was found in the form of cash in the following manner: -

Cash found from residence – Rs 14,00,000/-

Cash found from locker - Rs 7,00,000/-

The assessee is an employee of M/s Vibhav Vaibhav Infra Home P Ltd working as Head of Finance. The assessee submitted that the said cash pertains to the said company and he was holding it as a custodian in the

capacity of Head of Finance of the said company. Moreover, certain IOUs were there on the date of search which were not incorporated in the cash book prior to the search. The same were however entered in the cash book of the said company after the date of search. In any case, the company had owned up the cash of Rs 21,00,000/- and had also come forward to explain the source for the same to have drawn from the available cash balance as per its cash book. During the course of search, a statement u/s 132(4) of the Act was recorded from the assessee, wherein the assessee had categorically stated that the cash belongs to the company M/s Vibhav Vaibhav Infra Home P Ltd vide reply to Question No. 31 of the statement. The Id. AO however, did not heed to these contentions of the assessee and proceeded to treat the cash found during search as unexplained money u/s 69A of the Act in the hands of the assessee. This action of the Id AO was upheld by the Id CIT(A). Aggrieved, the assessee is in appeal before us.

11. We find that the assessee right from the date of search had always maintained that the seized cash does not belong to him and it belongs to M/s Vibhav Vaibhav Infra Home P Ltd, wherein he is working as the Head of Finance. We find that the said company had also come forward to own up the said cash of Rs 21,00,000/- to have belonged to them by passing entry in the cash book immediately after the date of search. The statement of the assessee u/s 132(4) of the Act gets corroborated with the action of the said company incorporating the cash of Rs 21,00,000/- in the books of the company. Hence the statement u/s 132(4) of the Act in the instant case attains evidentiary value. The Id AR produced the cash book of M/s Vibhav Vaibhav Infra Home P Ltd confirming the fact that Imprest Cash of Rs 21,00,000/- was lying with the assessee and the said cash belonged to the company. On perusal of the cash book of the said company, we find that the said company indeed had sufficient cash

balance to explain the source of Rs 21,00,000/-. Hence no addition towards the cash found could either be made in the hands of the said company or in the hands of the assessee herein. Accordingly, the Ground No. 1 raised by the assessee is allowed.

12. The Ground No.2 raised by the assessee is challenging the chargeability of interest u/s 234A, 234B and 234C of the Act. In the instant case, the return was filed by the assessee belatedly. Hence interest u/s 234A of the Act is leviable as per the Act. The chargeability of interest u/s 234B of the Act is consequential in nature and does not require any specific adjudication. It is well settled that interest u/s 234C of the Act is to be made only on the returned income and not on the assessed income. The Ground No. 2 raised by the assessee is partly allowed.

13. The Ground No. 3 raised by the assessee is challenging the initiation of penalty u/s 271AAB and 271AAC of the Act. The adjudication of the same at this stage would be premature and hence dismissed.

14. The Ground No. 4 raised by the assessee is general in nature and does not require any specific adjudication.

15. In the result, the appeal of the assessee is partly allowed.

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16. Ground No. 4 raised by the assessee was stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly Ground No. 4 is hereby dismissed as not pressed.

17. Ground Nos. 1, 1a and 6 raised by the assessee are general in nature and does not require any special specific adjudication.

18. Ground Nos. 2 and 3 raised by the assessee are challenging the addition **made in the sum of ₹39,07,928/-** on account of alleged on-money paid by the assessee for purchase of flat. The assessee has raised additional grounds of appeal on 04.06.2014 as under:-

- "1. The Assessing Officer erred in passing the impugned order under section 153A of the Act.*
- 2. The appellant contends that on the facts and in the circumstances of the case and in law, the Assessing Officer ought not to have passed the impugned order under section 153A inasmuch as there is no incriminating evidence found during the search operations conducted at his residence and hence, the impugned order is bad in law and needs to be quashed.*
- 3. The appellant further, contends that the Assessing Officer ought to have passed the order under section 153C of the Act inasmuch as the document relied upon by the Assessing Officer, that is, Page no 26 of Annexure-A, is found during search operations conducted inter alia at the residential premises of Mr Praveen Tyagi, Chief Managing Director of Messrs Vibhor Vaibhav Infrahome Private Limited.*
- 4. The appellant craves to add to, alter or amend the aforesaid **additional ground of appeal.**"*

19. We find that all the facts relevant for adjudication of the aforesaid additional grounds are already on record. The additional ground raised above are purely legal in nature and go to the root of the matter. Hence, **in view of the decision of the Hon'ble Supreme Court in the case of NTPC Limited Vs. CIT reported in 229 ITR 383 (SC)**, these additional grounds are hereby admitted and taken up for adjudication.

20. We have heard the rival submissions and perused the material available on record. For AY 2016-17, the assessee originally filed his return of income on 30.01.2017 **declaring total income of ₹17,09,970/-**. A search was conducted u/s 132 of the Act at the business and residential premises

of VVIP & SSG Group of cases/ directors and partners on 03.11.2016. Accordingly, a notice u/s 153A of the Act stood issued to the assessee. The assessee filed his return of income on 05.09.2018 in compliance to notice issued u/s 153A of the Act disclosing total income of Rs. 17,09,970/-. During the course of search, a document containing details of payment made by various persons for sale of units in VVIP project was found and seized from the residential premises of Shri Praveen Tyagi, Director of M/s Vaibhav Vibhor Infrahome Private Limited (VVIP Ltd). The documents contained details of payments received by the said concern i.e. VVIP in cheque and in cash. Shri Praveen Tyagi explained the documents **during the course of search proceedings and offered an amount of ₹16.65** crores for taxation as undisclosed income of VVIP Ltd. Relevant seized documents in this regard is Annexure-A page 26 of the paper book. Shri Praveen Tyagi in his statement u/s 132(4) of the Act had stated that amounts reflected in the said seized documents were received by VVIP Limited against the booking of flats in financial year 2015-16 in the months of April and May 2015. Shri Praveen Tyagi is the Chief Managing Director of VVIP Limited and he came forward to offer the cash component reflected in the said seized document amounting to **₹16,65,60,788/-** as undisclosed income of VVIP Ltd for Assessment Year 2016-17. The Id AO observed that the assessee had made booking of a flat bearing No. I-301(2) **for total consideration of ₹1,62,88,282/-** and has **made payment of ₹1,59,59,893/-** as reflected in the seized documents. The Id AO **made an addition of ₹1,59,59,893/-** as unexplained investment in flat made by assessee and brought to the same to tax u/s 69 of the Act. **This was reduced to ₹39,07,928/-** by the Id CIT(A) on the ground that only this sum was paid in cash by the assessee as on-money and the remaining sums to the **tune of ₹1,20,51,965/-** were paid by cheques on various dates commencing from 13.12.2011 to 31.03.2015. The Id CIT(A) also observed

at page 26 of his order that service tax was also paid by the assessee on payment made in cheques. The Id CIT(A) also admitted to the fact that the payments in cheques were made by the assessee in earlier years, either out of own funds or out of loan from HDFC Bank Limited to the tune of ₹66,17,057/-. Aggrieved by the sustenance of the addition of ₹39,07,928/- by the Id CIT(A) on account of alleged on money payment made in cash for purchase of flat, the assessee is in appeal before us.

21. It would be pertinent to reproduce the relevant seized documents i.e. Annexure-A at page 26 of the paper book as under:-

VVIP ADDRESSES @30								
No.	Applicant Name	Unit Address	Total Cost	Received *	Received **	Total Received	Balance	Remarks
1	Mrs. Anjo Sharma	R-101(1)	15,817,000	4,837,205	-	4,837,205	10,979,795	Cancel
2	Mrs. Praveen Tyagi	R-201(2)	-	485,013	-	485,013	(485,013)	Cancel
3	Mr. Navin Tyagi	R-501(2)	48,288,232	33,051,965	3,907,928	35,959,893	12,328,339	
4	Mrs. Poojari Tyagi	R-402(2)	18,162,782	8,676,914	13,300,000	21,976,914	(5,814,632)	
5	Mrs. Anshu Garg	R-501(2)	16,036,882	974,896	12,703,808	13,678,704	2,357,578	
6	Mr. Rajesh Singh	R-601(2)	15,910,282	584,938	13,007,748	13,592,686	2,317,596	
7	Mrs. Meena Gupta	R-701(3)	25,736,000	15,512,682	10,636,000	25,548,682	187,318	
8	Mr. Rajeev Kumar	R-801(2)	15,858,282	2,706,606	9,597,628	13,304,234	2,554,048	
9	Mr. Rajesh Oberoi	R-901(2)	25,000,000	144,205	1,408,000	1,552,205	23,447,795	
10	Mr. Navin Rindal	R-1001(2)	25,760,830	2,914,941	-	2,914,941	22,845,889	
11	Mrs. Suresh Babna	R-1101(3)	15,817,467	2,143,758	3,000,000	5,143,758	10,673,709	
12	Mrs. Rupinder Kaur	R-1201(2)	19,405,000	974,896	10,300,000	11,274,896	8,130,104	
13	Mr. Praveen Kumar	R-12A01(1)	17,083,200	-	-	-	17,083,200	Cancel
14	Mr. Vipul Maheshwari	R-201(2)	19,279,600	16,011,299	2,204,000	18,215,299	1,064,301	
15	Mrs. Ravita Ganeswari	R-301(3)	24,000,000	16,849,237	7,000,000	23,849,237	850,763	
16	Mrs. Anshu Tyagi	R-401(2)	16,162,287	11,454,307	13,307,868	24,762,175	(8,597,893)	
17	Mrs. Sarika Tyagi	R-501(2)	16,036,282	9,214,771	13,703,808	22,918,579	(3,822,257)	
18	Mrs. Anita Tyagi	R-601	22,000,000	15,000,000	7,000,000	22,000,000	-	
19	Mr. Vishal Tyagi	R-701(2)	15,784,282	8,549,867	12,000,000	20,549,867	(4,765,585)	
20	Mr. Sudin Rawat	R-801(2)	18,068,000	-	13,500,000	13,500,000	4,568,000	
21	Mr. Ashwini Chandra Tyagi	R-901(2)	15,333,000	11,601,359	-	11,601,359	3,731,641	
22	Mr. Pooja Arora	R-1001(2)	15,595,782	389,959	12,100,000	12,489,959	3,105,823	
23	Kalpana Fashions	R-1101	15,498,000	15,225,921	-	15,225,921	272,079	
24	Mrs. Madhu Tyagi	R-12A01(2)	15,941,462	974,896	6,000,000	6,974,896	8,966,566	Cancel
TOTAL			418,173,940	157,578,184	166,567,828	324,146,012	88,214,170	

22. From the above table, it could be seen that there is absolutely no mention of any date of receipt of money, be it in cheque or in cash. As far as the payment is concerned, Id CIT(A) in page 25 para 6.16 of his order had categorically stated that cheque payments were made from 13.12.2011 to 31.03.2015. Hence, it is very clear that no cheque payments

were made by the assessee in Assessment year 2016-17. The assessee had categorically denied having not made any cash payment in the sum of **₹39,07,928/-** towards purchase of flat. In this regard, the reliance placed by the Id AR on the decision of the **Hon'ble** Bombay High Court in the case of Sumathi Janardhana Kurup Vs. ITO in Writ Petition No. 1746 of 2020 dated 12.02.2024 is very well founded. The facts of that case together with the **adjudication by the Hon'ble** Bombay High Court are reproduced herein:-

"1. Ms. Agarwal states a physical copy of reply has been handed over to her this morning and she may have to file a rejoinder.

2. Having considered the petition, we do not think there is any need to file a rejoinder. Petition can be disposed at this stage because we are not at all satisfied with the order passed by Respondent. In our view, it is an unacceptable order.

3. Petitioner is a senior citizen aged 75 years. During the year under consideration, i.e., Assessment Year 2015-2016, for which Petitioner has not filed return of income since there was no taxable income, Petitioner paid a sum of Rs. 10,00,000/- in two tranches, i.e., Rs. 5,00,000/- on 28th February 2015 and another Rs. 5,00,000/- on Gitalaxmi 2/6 406-aswp-1746-2024.doc 2nd March 2015 to one M/s. Lucina Land Development Limited ("Lucina") against allotment of a flat being Flat No. 5C-2061, Rose in the joint name of Petitioner and her grand-daughter Divya.

4. It is Petitioner's case that this amount as well as the amounts paid earlier to Lucina came out of redemption of Fixed Deposits, Loans from the daughter and son-in-law etc. It is also Petitioner's case that the total consideration for the said flat payable was Rs. 44,03,000/-, of which Petitioner has till date paid Rs. 28,04,337/- of which only Rs. 10,00,000/- were paid during Assessment Year 2015- 2016. Ms. Agarwal stated that the balance of Rs. 15,98,663/- has to be paid in the year 2025 when the possession of flat will be given.

5. Petitioner had initially received a notice dated 11 th June 2021 under Section 148 of the Income Tax Act, 1961 ("the Act"). The notice was not proceeded with. Subsequently, after the Apex Court's judgment in the matter of Union of India v. Ashish Agarwal 1, a fresh notice dated 26th May 2022 under Section 148A(b) of the Act was served upon Petitioner. It is alleged in the notice that the department had carried out a search and seizure action under Section 132 of the Act in the case of M/s. India Bulls and its group concerns on 13 th July 2016. During the search operation,

there was some material they found regarding unaccounted income, which included on-money (cash) receipts on sale of certain flats/units by different entities for the group which inter-alia included an entity M/s. Lucina Land Development Limited and Lucina has admitted having received cash from different customers, which included Petitioner. It is also alleged that Lucina has admitted having received a sum of Rs. 20,91,200/- from Petitioner. Based on this information, the notice under Section 148A(b) of the Act has been issued.

6. Petitioner replied vide a letter dated 13th June 2022, which has been relied upon in the affidavit-in-reply. It is stated in the reply that only Rs. 28,04,337/- has been paid to Lucina of which Rs. 10,00,000/- were only paid during the relevant assessment year and the balance was still payable and Petitioner is not filing return of income as her income was below taxable limits. It is also stated in the reply that the source of payment for the flat is from redemption of Fixed Deposits, Loans from the daughter and son-in-law. The total payments made for the flat also is tabulated in the reply. Further, there is a categorical denial that any amount has been paid in cash to the builder in addition to the basic price of the flat. A final defence also has been taken that the case also does not qualify within the ambit of Section 149 of the Act, as there is no income chargeable to tax represented in the form of an 'asset', which has escaped assessment amounting to Rs. 50,00,000/- or more and therefore, the notice issued under Section 148 of the Act was not valid.

7. After the order dated 23rd July 2022 under Section 148A(d) of the Act was passed, an assessment order has been passed and Petitioner admits having filed an appeal. But the concern is, Petitioner will be directed to deposit 20% of the tax amount and Petitioner is not in a position to pay the same.

8. Ms. Agarwal stated that when on the face of order under Section 148A(d) of the Act it could not have been passed, Petitioner who is 75 years old and looking after her 88 years old husband suffering from Parkinson, should not be made to go through the misery of waiting for the appeal itself to be heard and also having to deposit 20% of the demand. Ms. Agarwal also submitted that penalty proceedings will also be issued and Petitioner will have to endure that also.

9. In view of the peculiar facts and circumstances of the case, we decided to entertain this petition under Article 226 of the Constitution of India.

10. In the order dated 23rd July 2022 passed under Section 148A(d) of the Act, it records Petitioner has denied having paid any cash to Lucina. The Assessing Officer ("AO") says Petitioner, however, did not submit any documentary evidence in support of her claim. The only basis on which an allegation is made that Petitioner Gitalaxmi 5/6 406-aswp-1746-2024.doc has paid cash is a statement of somebody from Lucina that it received

cash from Petitioner. Moreover, there is nothing on record to indicate that Petitioner has paid the entire amount of Rs. 44,03,000/-. Further, in the order, it is stated that the income of source for purchase of immovable property of Rs. 64,94,200/- remained unexplained and therefore, it would fall within the meaning of "assets" as per Explanation-1 of Section 149 of the Act. There is no explanation as to when it is the AO's case that the market value of the flat itself was only Rs. 51,55,000/-, how could the property be valued at Rs. 64,94,200/-. This has been done, in our view, simply to get over the fetters placed under Section 149(1)(b) of the Act. The AO has not explained any of these factors.

11. Even in the assessment order, it is stated "therefore, during the assessment proceedings, the source of payments alongwith on-money payment towards the purchase of flat have been asked to assessee. However, assessee has failed to provide the justified reply in regard to the complete source of payments, which have been made during the Assessment Year under consideration for purchase of flat." During the assessment year, only a payment of Rs. 10,00,000/- has been paid and there is nothing that the AO has produced to show that any amount in excess of Rs. 50,00,000/- has been paid during the assessment year. The entire basis is the letter received from Lucina. In our view, that alone is not enough, particularly when assessee has Gitalaxmi 6/6 406-aswp-1746-2024.doc denied having paid any cash to Lucina. The onus is on the Revenue to show evidence that assessee has in fact paid cash and purchased immovable property of Rs. 64,94,200/-. Simply relying on a letter allegedly from Lucina is not enough. In our view, there is no tangible matter to issue notice under Section 148A or Section 148 of the Act.

12. We also note from the assessment order that in any case this amount of Rs. 20,91,200/- has been offered by Lucina to tax before the Settlement Commission. If that is the case, we wonder how can the amount be taxed again in the hands of Petitioner.

13. In the circumstances, in our view, the impugned order dated 23rd July 2022 passed under Section 148A(d) of the Act has to be quashed and set aside. Ordered accordingly. Consequently, the notice issued under Section 148 of the Act and the assessment order also are quashed and set aside.

14. In view of the above, Ms. Agarwal states they shall immediately take steps to withdraw the appeal filed. Statement accepted.

15. Petition disposed. No order as to costs."

23. Though ultimately the Hon'ble Bombay High Court had quashed the reassessment notice, the observations made in paras 6,10, and 11 above

would be very much relevant and equally applicable to the facts of the instant case before us and no addition could be made in the hands of the assessee herein based on the statement of Praveen Tyagi, which was recorded during the course of his search in the capacity of Chief Managing Director of VVIP Ltd.

24. Even assuming that assessee had made had made the cash payment, there is absolutely no evidence from the seized documents, indicating that **the said cash payment of ₹39,07,928/-** was made in Assessment year 2016-17. The basis for the revenue to consider those alleged cash **payment of ₹39,07,928/-** to have been made in Assessment year 2016-17 is from the statement of Shri Praveen Tyagi u/s 132(4) of the Act in response to Question No. 22 thereon. That statement is merely a statement and not supported with any other corroborative evidence found during the course of search. Hence, it is very clear that there is no such material indicating the date of payment of alleged on-money by the assessee to VVIP Ltd or **to any other person in the sum of ₹39,07,928/-**. **There is absolutely no basis for making an addition of ₹39,07,928/-** in Assessment year 2016-17 by invoking the provisions of Section 69 of the Act. Further, in any event, even if there is any cash payment that is required to be made for purchase of flat, the said cash payment would be made by the person at the time of booking of flat or at the time of making the first phase of payment by cheque which, in the instant case as considered by the Id CIT(A) is 13.12.2011. Hence, the alleged cash payment could be considered only in Assessment year 2012-13 and not in Assessment year 2016-17. This is in view of the fact that no builder or no seller of the flat would afford to take huge risk of not receiving the cash component involved in a particular property transaction as seller/ builder would always try to secure their position and remain in safe zone by

receiving the cash component first and then do the documentation for the cheque portion. Hence, the theory of preponderance of probability which is heavily relied upon by the revenue actually goes in favour of the assessee herein. In the instant case, the booking of flat has been made by the assessee on 4.12.2011, as evident from the allotment letter given by the VVIP Ltd.

25. It is pertinent to note that the Id CIT(A) in page 20 para 6.9 of his order had categorically stated that Annexure-A page 26 seized document has been found in the residential premises of Shri Praveen Tyagi and accordingly presumption u/s 132(4A) read with Section 292C of the Act would go in favour of the Shri Praveen Tyagi. In other words, as per these 2 sections, the law presumes that whatever is found in the course of search on the premises of the searched person belongs to the searched person, though this presumption is rebuttable with cogent supporting evidences. Hence, in the instant case, when Shri Praveen Tyagi was confronted by the search team with the seized documents Annexure –A, page 26, he admitted the fact that the transaction reflected therein pertaining to cheque and cash transaction received by VVIP Ltd from various flat owners. He never denied that this transaction does not belong / pertain/ relate to VVIP Ltd. It is also relevant to note that the statement of Shri Praveen Tyagi was recorded by the search team of Chief Managing Director in the capacity of Chief Managing Director of VVIP Ltd. If part of a transaction reflected in such seized documents is being used against the third-party, like the assessee herein, then the logical recourse provided in the statute to the revenue is to record a satisfaction note in the hands of searched person that part of document pertains/ relates/ belongs to 3rd party like the assessee herein and hand over such seized documents to the Id AO of the 3rd party like the assessee herein to take any further

action known to law. Thereafter, it is the duty of the Id AO of the 3rd party like the assessee herein, after due examination/ enquiries of the transaction of the assessee qua the returns filed and evidences available on record, to record a satisfaction note in terms of Section 153C of the Act that the said seized documents received from the Id AO of the searched persons belongs/ relates/ pertains to the assessee herein and it has a bearing on determination of total income of the assessee. This is clear mandate provided in Section 153C of the Act and has been approved by **various Hon'ble High Courts and Hon'ble** Supreme Court. In the instant case, no such satisfaction note was ever recorded and no proceedings u/s 153C of the Act were initiated on the assessee herein. The Id AR also placed on record a copy of panchanama drawn on 05.11.2016 in the case of Shri Praveen Tyagi in the premises R-9/242, Rajnagar, Ghaziabad. On perusal of the said Panchnama, we find that the name of Shri Naveen Tyagi i.e. assessee herein, does not figure at all. Hence whatever is being found and seized in the aforesaid residential premises of Shri Praveen Tyagi, if they are sought to be used against the assessee, then the department should have proceeded on the assessee u/s 153C of the Act. It is not in dispute that the assessee was independently covered in the search u/s 132 of the act and proceedings were initiated u/s 153A of the Act in his hands for the year under consideration. But that does not mean that evidence found in the search of a third-party premises could be used in the search assessment proceedings of the assessee u/s 153A of the Act. The legislature in its wisdom permits two search assessments to be framed for the same assessment year – one u/s 153A of the Act and other u/s 153C of the Act. In the search assessment u/s 153A of the Act, the assessment is to be framed based on the materials found during the course of search of that assessee plus the declared income. In the search assessment u/s 153C of the Act, materials found in the premises of third-

party could be used on the assessee provided search material has a bearing on determination of total income of the assessee after recording due satisfaction note as mandated in Section 153C of the Act. This is the clear mandate of law in Section 153A and 153C of the Act. This mandate cannot be changed merely because Shri Naveen Tyagi (assessee herein) is also part of VVIP Limited. Reliance has been rightly placed by the Id AR on the coordinate bench decision of Kolkata Tribunal in the case of Krishna Kumar Singhania V. DCIT reported in 168 ITD 271 (Kolkata Tribunal). Relevant operative portion of the said order is reproduced here in below: -

"10. We have heard the rival submissions. We find that it is not in dispute that there were no documents that were seized from the premises of the assessee except loose sheets vide seized document reference KKS /1 comprising of 8 pages, for which satisfactory explanation has been given by the assessee and no addition was made by the Id AO on this seized document. The seized document used by the Id AO for making the addition in section 153A assessment is CG/1 to 11 and CG/HD/1 which were seized only from the office premises of Cygnus group of companies in which assessee is a director. In this regard, it would be pertinent to note that as per section 292C of the Act, there is a presumption that the documents, assets, books of accounts etc found at the time of search in the premises of a person is always presumed to be belonging to him/them unless proved otherwise. This goes to prove that the presumption derived is a rebuttable presumption. Then in such a scenario, the person on whom presumption is drawn, has got every right to state that the said documents does not belong to him / them. The Id AO if he is satisfied with such explanation, has got recourse to proceed on such other person (i.e the person to whom the said documents actually belong to) in terms of section 153C of the Act by recording satisfaction to that effect by way of transfer of those materials to the AO assessing the such other person. This is the mandate provided in section 153C of the Act. In the instant case, if at all, the seized documents referred to in CG/1 to 11 and CG/HD/1 is stated to be belonging to assessee herein, then the only legal recourse available to the department is to proceed on the assessee herein in terms of section 153C of the Act. In this regard, we would like to place reliance on the recent decision of the Hon'ble Delhi High Court in the case of CIT v.

Pinaki Misra & Sangeeta Misra [2017] 392 ITR 347 dated 3.3.2017, wherein it was held that, no addition could be made on the basis of evidence gathered from extraneous source and on the basis of statement or document received subsequent to search. Hence we hold that the said materials cannot be used in section 153A of the Act against the assessee. This opinion is given without going into the merits and veracity of the said seized documents implicating the assessee herein.

26. Hence, the objections raised by the Id DR in her written submissions that the premises of Shri Naveen Tyagi was also searched as part of VVIP group along with premises of Shri Praveen Tyagi and the premises of VVIP Ltd, has no substance. We have also found that the Id DR has relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. S Ajit Kumar reported in 404 ITR 526 (SC) wherein, it was held that any material or evidence found/ collected in a survey which has been simultaneously made at premises of connected person can be utilized while making block assessment in respect of an assessee u/s 158BB read with section 158BH of the Act as it would fall under words "and such other materials or information as are available with Assessing Officer and relatable to such evidence" occurring in section 158BB of the Act. It has to be understood that this decision was rendered in the context of erstwhile provisions of Chapter XIVB of the Act for computation of undisclosed income for the block period wherein in Section 158BB of the Act, there was a specific inclusion of the following words "and such other material or information as are available with Assessing Officer relevant to such evidence." It is pertinent to note that this expression is conspicuously absent in section 153A of the Act. Hence, the decision relied upon by the Id DR in the case of S. Ajit Kumar (supra) does not advance the case of the revenue. Further, we find that the **Hon'ble** Jurisdictional High Court in the case of PCIT vs Anand Kumar Jain HUF in ITA No. 23/2021 dated 12.02.2021 had an occasion to address the very same legal issue. The relevant question

raised before the **Hon'ble Jurisdictional High Court** High Court was as under:-

"a. Whether the ITAT is justified in deleting the additions made on account of bogus long term capital gain on the ground that the evidences found during search at the premises of entry provider cannot be the basis for making additions in assessment completed u/S. 153A in the case of beneficiary ignoring the vital fact that there was a common search u/s 132 conducted on the same day in both the cases of the entry provider and the beneficiary."

26.1. This question was answered by the **Hon'ble** Delhi High Court as under:-

*"10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law **that requires our consideration.**"*

27. In view of the aforesaid detailed observations and respectfully following the various precedents relied upon hereinabove, we hold that the Additional Ground No. 2 raised by the assessee deserves to be allowed. Accordingly, the adjudication of Additional Ground No. 1 raised by the assessee becomes academic in nature, and accordingly not adjudicated. Hence, the alleged on-money payment of **₹39,07,928/-** cannot be

considered in the search assessment framed in the hands of the assessee u/s 153A of the Act. Even on merits of the addition, we have already held that these additions cannot be made in Assessment year 2016-17. Accordingly, Original Ground Nos. 2 and 3 raised by the assessee hereby allowed.

28. The Original Ground No. 5 raised by the assessee is challenging the chargeability of interest u/s 234A, 234B, 234C of the Act.

29. We have heard the rival submissions . If there is any delay in filing of return in response to notice u/s 153A of the Act by the assessee, then interest u/s 234A of the Act is chargeable. The Id AO is directed accordingly.

29.1. The chargeability of interest u/s 234B of the Act is consequential in nature and does not require any specific adjudication.

29.2. The law is very well settled that interest u/s 234C of the Act is chargeable only on the returned income and not on the assessed income.

30. In the result, appeal of the assessee is partly allowed.

ITA No. 1414/Del/2022- Sarika Tyagi-AY 2016-17

31. Identical original and additional grounds are raised by this assessee as were raised in case of Shri Naveen Tyagi except the fact that no ground was raised on the addition made towards cash deposit of by Ms. Sarika Tyagi. Hence the decision rendered by us hereinabove for Shri Naveen Tyagi shall apply mutatis mutandis for Ms. Sarika Tyagi also except with variance in figures.

32. In the result, the appeal of the assessee in case of Ms. Sarika Tyagi case in ITA No. 1414/Del/2022 is allowed.

ITA No. 1386/Del/2022-Sushil Tyagi-AY: 2011-12

33. Ground No. 1 raised by the revenue is with regard to deletion of partial addition made on account of gross profit

34. We have heard the rival submissions and perused the material available on record. The assessee is a proprietor of M/s. Manak Developers, engaged in the business of contractorship and trading of electrical and other goods. The total turnover declared by the assessee was ₹38,35,36,575/-. The assessee had declared net profit of ₹47,99,745/- which worked out at 1.25% of the total turnover. There was no compliance by the assessee during the assessment proceedings. The Id AO rejected the book results of the assessee u/s 145(3) of the Act and resorted to estimate the profit of the assessee @8% by applying the provisions of Section 44AD of the Act. The Id AO also justified the adoption of 8% profit rate by having a comparable figure of net profit @ 7.4% declared by the assessee in Assessment year 2012-13 and 8% u/s 44AD of the Act for Assessment year 2013-14. Accordingly, the Id AO made an addition towards net profit in the sum of Rs. 2,58,83,181/- in the assessment completed u/s 153A read with section 144 of the Act on 27.12.2018. The Id CIT(A) in para 6.4 page 12 of his order, observed that book results of the assessee have been accepted by the Id AO in the original assessment framed for Assessment year 2011-12 u/s 143(3) of the Act dated 28.02.2013, the Id CIT(A) took cognizance of the arguments advanced by the Id AR that in the search proceedings no evidence was found which may lead the Id AO to reject the book results u/s 145(3) of the Act. The Id CIT(A) observed that the assessee during the year was engaged in the business of trading in electronic goods, which is evident from the sales tax assessment order issued by Commercial Tax Department, Uttar Pradesh. The Id CIT(A) observed that out of total

turnover of ₹37.92 crores during the year, the turnover related to contractor business is only ₹33,75,505/- and the remaining is only from trading activity of electronic goods. Accordingly, Id CIT(A) rejected the action of the Id AO to apply net profit ratio @8% by having comparison of net profit @ 7.4% declared in subsequent year. The Id CIT(A) observed that during the year under consideration, the main activity of assessee has been trading and not contractorship. Hence, he proceeded to adopt the net profit of the comparable business of earlier years instead of subsequent years. In other words, up to earlier years, the assessee was doing only trading business and during the year under consideration, it had started the contractorship business and continue to do in subsequent years also along with trading business. But the turnover for the year predominantly is only from trading business. Hence, for the purpose of arriving on the comparable data, net profit for the year is to be determined based on the net profit from trading business declared in earlier years and not subsequent years. The Id CIT(A) observed that the assessee had earned net profit @1.25 % during the year as against the net profit of 1.23% in earlier years. Accordingly, the Id CIT(A) has determined to resort to estimation of profit @ 8% of contract receipt of ₹33,75,505/- and an addition of ₹2,70,040 (33,75,505 X 8%) was made. In respect of trading business, the Id CIT(A) observed that the assessee has shown gross profit of 4.09% last year and same rate of 4.09% applied on the turnover of trading business during the year and addition of Rs. 1,55,50,606/- was determined in trading business. We find that the Id CIT(A) had taken cognizance of actual business predominantly carried during the year i.e. trading in electrical goods and it compared the gross profit derived in earlier years from the very same trading activity. He has also taken cognizance of the fact that the assessee had started subcontract work related to civil work only during the year earning a

meagre **turnover of ₹33.75 lakhs and the same was not prevalent in earlier** years. We do not find any infirmity in the said adoption of profit by the Id CIT(A). Accordingly, ground No. 1 raised by the revenue is dismissed.

35. Ground No. 2 raised by the revenue is challenging the addition u/s 68 of the Act **on account of unsecured loan of ₹7,53,250/-**

36. We have heard the rival submissions and perused the material available on record. During the assessment proceedings, since no representation was made by the assessee, Id AO directly proceeded to add **the unsecured loan of ₹7,53,250/-** as unexplained cash credit in the hands of the assessee. But before Id CIT(A), it was explained that loans were received from the following parties: –

Sarika Tyagi (wife of assessee)	Rs. 2,50,000/-
HPS Greens Infrastructure Private Limited	Rs. 5,03,250/-
Total	Rs. 7,53,250/-

35. It was submitted that loan from Ms. Sarika Tyagi was received in earlier year and was brought forward as opening balance and accordingly deleted the addition towards loan amount received from Sarika Tyagi as the amount was not received during the year and provisions of Section 68 of the Act cannot be made.

36. With regard to loan from HPS Green Infra Structure (P) Ltd, the Id CIT(A) verified the ledger account and found that assessee had received **₹56.03 lakhs and had paid back ₹51 lakhs** thereby leaving a closing **balance of ₹5.03 lakhs**. The Id CIT(A) observed that all the receipts and payments were made through regular banking channels and the bank statements of the lender as well as assessee were examined to find out availability of sufficient funds in the bank account before making the said

payment by the either party and also examined the return of income of the lender and from the audited financial statements found that it has own fund of ₹2.27 crore. Hence, Id CIT(A) concluded that the lender is having sufficient creditworthiness to advance loan to the assessee. Since all the 3 ingredients of Section 68 were duly fulfilled, the Id CIT(A) deleted the addition. None of the aforesaid factual findings of the Id CIT(A) were controverted by the revenue before us. Hence, we do not find any infirmity in the order of the Id CIT(A) in granting relief to the assessee. Accordingly, Ground No. 2 raised by the revenue is dismissed.

37. Ground No. 3 raised by the revenue is challenging the deletion of addition made on account of investment in shares of Rs. 10,00,000/-.

38. We have heard the rival submissions and perused the material available on record. On verification of the seized documents Annexure LP-1 page 26, it was found that the assessee had acquired 10,000 shares of Rs. 10 each of Ms/ Frystal Polymers on transfer from Central Himalayan Farms (P) Ltd on 19.10.2010. This transaction valued at ₹10 lakhs was sought to be treated as unexplained investment for purchase of shares in the assessment as there was no representation from the side of the assessee. From the order of the Id CIT(A), it was duly clarified that the investment is only Rs. 1 lakh (10,000 X 10) and not Rs. 10 lakhs. Accordingly, the Id CIT(A) confirmed the addition only to the extent of Rs. 1 lakh and deleted the remaining arithmetic error of Rs. 9 lakhs. We do not find any infirmity in the order of the Id CIT(A) as what is sought to be corrected is only an arithmetic error committed by the Id AO. Accordingly, ground No. 3 raised by the revenue is dismissed.

39. Ground No. 4 is general in nature and does not require any specific adjudication.

40. To sum up,

Sr No.	ITA No.	Party	AY	Result
1	1386/Del/2022	Sushil Tyagi	2011-12	Dismissed
2.	1412/Del/2022	Naveen Tyagi	2016-17	Partly allowed
3.	1414/Del/2022	Sarika Tyagi	2016-17	Allowed
4.	1413/Del/2022	Yogender Singh	2017-18	Partly allowed
5.	1387/Del/2022	Yogender Singh	2017-18	Dismissed

Order pronounced in the open court on 10/10/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/10/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi