IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 5871/Del/2017
(Assessment Year: 2012-13)

Mr. Trilok Chand Chaudhary, 39, Gadai Pur, Mehrauli, New Delhi. 110030 **PAN No. AAEPC0683P**	vs	ACIT Central Circle 26, New Delhi.

Assessee by	**Sh. Ved Jain, Adv.**
Revenue by	**Sh. S.S. Rana, CIT (DR)**

Date of Hearing	**27.08.2018**
Date of Pronouncement	**20.09.2018**

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT (Appeals)-31, New Delhi dated 27.06.2017 for AY 2012-13.

2. The facts of the case are that in this case return of income was originally filed on 31.03.2014 declaring income of Rs. 7.28 crores. A search and seizure operation u/s 132 of the Act was carried out on 11.09.2013 and 17.09.2013 in the case of AKN

Group of cases. The case of the assessee was also covered in the search. During the course of search, carried out at the different premises located in India in AKN Group, documents and data storage devices, etc. belonging to the assessee were found and seized. During the course of search operation, the assessee made a total surrender of Rs. 15 crores. The breakup of the surrender is that: - in AY 2009-10, assessee surrendered 1.2 crore being the amount spent on marriage of daughter, in AY 2012-13, (under appeal) Rs. 7.3 crores surrendered being amount paid to Sartaj Hotel Apartment Villa Pvt Ltd. and in AY 2014-15, Rs. 6.5 crores surrendered which includes seized cash of Rs. 2.95 crores from the office of CDR Estates and Rs. 41 lakhs of advances during the year. Notice u/s 153A was issued to the assessee, required the assessee to furnish return of income within 15 days. In response thereto, the return of income u/s 153A was filed by assessee on 31.03.2014 declaring income of Rs. 7.28 crores which was declared in the original return of income filed u/s 139 of the Act. During the year under consideration, the assessee has earned income from other sources.

3. During the search on the assessee on 17.09.2013 certain documents related to the investment on properties were found and seized from the office premises of the assessee and M/s CDR Estate Pvt. Ltd. As per page no. 49-53 of Annexure A-11 party no. TO-2, seized from the office premises of the assessee and M/s CDR Estate P. Ltd., assessee had entered into Memorandum of Understanding (MOU) with M/s Meghatech Realtors Pvt. Ltd. and received Rs. 10 crores in cash for purchasing land in Harchandpur. The assessee was confronted with the documents in his statement recorded u/s 132(4) of the Act in which he has said to have received Rs. 10 crores from M/s Meghatech Realtors P. Ltd. This amount was subsequently paid to Smt. Saroj Sharma and others for purchase of land at Harchandpur. It was stated by assessee that he was acting on behalf of M/s Meghatech Realtors Pvt. Ltd.

3.1 During the search on 17.09.2013, document annexurised as page no. 41-45 of Annexure A-11 Party TO2 related to investment on properties by Sh. Devender Kumar in Harchandpur was also found and seized from the office premises of the assessee and M/s

CDR Estate P. Ltd. During the course of post search Investigation Sh. Devender Kumar was summoned u/s 131 of the Act to examine and verify the documents seized. Sh. Devender Kumar in his statement recorded u/s 131 of the Act has stated that he has received Rs. 20 crores in cash from M/s Newage Infrabuilders P. Ltd. This amount was given to him by M/s Newage Infrabuilders P. Ltd. as per the MOU with M/s Newage Infrabuilders P. Ltd. and he was acting on behalf of company to purchase a land at Harchandpur. It was said by Sh. Devender Kumar that both he and the assessee together had tried to purchase the land at Harchandpur from Smt. Saroj Sharma and others and accordingly paid Rs. 20 crores as received from M/s Newage Infrabuilders P. Ltd.

3.2 The AO in order to examine the facts issued summons u/s 131 to both the companies with whom Sh. Devender Kumar and assessee had signed MOUs on 17.10.2013, however, the summons received back un-served. Since the service of the summons could not be made through postal means, Inspectors of the office of ADIT (Inv.) were deputed to serve the summons on two aforesaid companies. Despite the best efforts the Inspector of Income Tax could not find the above companies on the given address. The reports of the Inspectors are reproduced in the assessment order.

4. The AO noted that assessee in his statement recorded u/s 132(4) of the I.T. Act, has stated that Sh. K.V. Jain had facilitated the above MOU with M/s Meghatech Realtors Pvt. Ltd. The AO summoned Mr. K.V. Jain u/s 131 of the Act and his statement was recorded. Sh. K.V. Jain admitted that he had facilitated the MOU between assessee and M/s Meghatech Realtors Pvt. Ltd. and Sh. Devender Kumar and M/s Newage Infrabuilders (P) Ltd. The AO asked him to serve the summon upon both these companies but Mr. K.V. Jain showed his inability to get the summon served on both the companies.

4.1 In view of the reports of the Inspectors and statement of Mr. K.V. Jain, Shri Devender Kumar and assessee were asked to produce Directors of both the above companies. In response to the notices, no compliance was made by Sh. Devender Kumar and the assessee on the given dates. The AO in view of the non-compliance of the assessee issued show-cause notice to Sh.

Devender Kumar and assessee as to why the cash amount received by both of them should not be added to their income. In response to the show cause notice both Devender Kumar and assessee have furnished the copy of MOU with respective company, copy of the balance sheet and profit and loss account as on 31.03.2012 of both the companies but failed to produce the Directors. On 03.01.2014, two letters have been received by the AO from assessee signed by the Directors of both the companies admitting therein of giving Rs. 10 crores and Rs. 20 crores to assessee and Sh. Devender Kumar out of shareholder's money. On 09.01.2013 same letters have been again received from Directors of both the companies admitting of giving cash of Rs. 10 crores and 20 crores to the assessee and Devender Kumar out of shareholder's money from the address D-111, South Ganesh Nagar, Mandawali, New Delhi. The Inspector reported that no such person was found at the aforesaid address.

4.2 During assessment proceedings, notices u/s 153A read with section 153C of the Act were issued to both the companies, however, both the notices returned back to the AO with the remarks “no such firm exists”. Inspectors of the Circle were deputed, however, they have reported that no such entity existed at the given address.

5. In order to verify the details of the Directors of both the companies, notice u/s 133(6) of the Act was sent to Axis Bank, New Delhi, where both the companies had their bank accounts for furnishing of account opening form and account statement for the period from 01.04.2009 to 31.03.2015. The Bank submitted the required details from which it was found from account opening form, name and address of the Directors of both the companies. Summons u/s 131 of the Act were issued to the Directors of M/s Meghatech Realtors Pvt. Ltd. for personal appearance before the AO, however, the notices returned back with the remarks “no such person exists on this address”. Similar notices were issued to the Directors of M/s Newage Infrabuilders P. Ltd. for personal appearance before AO, however, some reports have been received that no such person exists on this address.

5.1 The AO raised query to the assessee regarding the advance of Rs. 10 crores received from M/s Meghatech Realtors Pvt. Ltd. and advance received by Sh. Devender Kumar from M/s Newage Infrabuilders P. Ltd. and to give explanation regarding the same. The assessee was given show-cause notice to produce the Directors of M/s Meghatech Realtors Pvt. Ltd. before AO. The assessee filed reply along with audited account of this company and submitted that this Company is a Private Limited Company and all the records are available on public domain at the MCA website. He has also stated that this company was introduced to the assessee through Sh. K.V. Jain who had appeared in person before ADIT(Inv.) and confirmed the facts. The company is independent entity and is liable completely for the source of Rs. 10 crores advance to the assessee.

5.2 In respect of Sh. Devender Kumar, assessee submitted that he has an independent person and not related to the assessee. He has also entered into an agreement for purchase of land at Harchandpur from Smt. Saroj Sharma and others. However, later Smt. Saroj Sharma denied any such deal having been entered with the assessee as well as with Sh. Devender Kumar and, as such, they have been jointly finding the cases and that is why the agreement between him and Smt. Saroj Sharma was found in his premises. The complaint by the assessee and Sh. Devender Kumar have been filed with the economic offence wing of Delhi Police for which all the documents were also seized from his premises. Otherwise it is an independent deal and assessee is not answerable for the same, even if, document was found from his premises.

5.3 Sh. Devender Kumar was summoned u/s 131 of the I.T. Act for his personal appearance and his statement was recorded on 11.03.2016 which is reproduced in the assessment order in which he has stated MOU was signed by him on the direction of the assessee and the cash was never handed over to him. He has also stated that he is not aware of company M/s Newage Infrabuilders Pvt. Ltd. It was written in English, whereas he can barely understand English. He was just a signing authority only on the direction of the assessee in lieu of commission income.

5.4 The AO issued show-cause notice to the assessee on 18.03.2016 mentioning all the above facts and asked for the explanation of the assessee regarding both the MOU and showcaused as to why the cash amount involved in the transaction of Rs. 20 crores and 10 crores should not be added to the income of the assessee. The assessee filed a reply before the AO in which the assessee again reiterated that MOU of Rs. 20 crores is between Sh. Devender Kumar and M/s Newage Infrabuilders Pvt. Ltd. which does not belong to the assessee. It is independent deal between them and Smt. Saroj Sharma and others. Statement given before AO on 11.03.2016 is completely contradictory as submitted in the statement before ADIT at the time of appraisal proceedings on oath in which he has already explained that it is an independent transaction. Even in the complaint filed with Police Department and other authorities, he has stated that it is an independent transaction and confirmed the same. Therefore, there is no justification to make any addition of Rs. 20 crores in the hands of the assessee. As regards MOU between assessee and M/s Meghatech Realtors Pvt. Ltd., the assessee reiterated the submissions already made and also explained that the transaction is reflected in their balance sheet the assessee knew from the market that they have moved to different places as they had also raised loan from the market for the purpose of this deal on which there is a police complaint and a lot of litigations, therefore, no addition could be made on 10 crores in his hand.

6. The AO did not accept the explanation of the assessee and noted that assessee failed to produce any of the Directors of both the companies. Therefore, physical existence has not been proved. It is difficult to believe that these companies after giving huge advance did not bother to recover the amount in question. These are companies in existing on papers. The assessee failed to prove genuineness of the transaction in the matter. The AO also noted that Devender Kumar in his statement submitted that MOU was signed by him at the instance of the assessee in lieu of commission income. The assessee failed to cross examine his statement and the documents were found from premises of the assessee, therefore, there is a presumption that all the documents belong to the assessee. No complaints have been made against both the companies. The AO, therefore, held that the entire cash amount Rs. 30 crores is unexplained cash and added to the income of the assessee from undisclosed sources. The AO, accordingly, made an addition of Rs. 30 crores.

7. On perusal of the submissions filed by the assessee, AO noted that during the year under consideration, assessee has received an advance of Rs. 1,97,93,369/- from M/s Dream Green Land Realtors P. Ltd. in which the assessee has 50% shareholding and also received an advance of Rs. 25 lakhs from M/s Rosemary Properties P. Ltd. in which he has 50% of the shareholding. The assessee was asked to file complete details and asked to explain why the advance received from above two companies do not attract the provisions of deemed dividend u/s 2(22)(e) of the Act and why the same should not be treated as his income being a major shareholder in M/s Brownie Estates Pvt. Ltd. The assessee explained that the said advances were received for purchase of land for the company and section 2(22)(e) of the Act does not include any advance or loan made in the ordinary course of business. However, the assessee did not submit any audited books of account of the above mentioned companies before AO in order to verify the accumulated profit of the said companies. The AO, therefore, directed that as to why the above amount received should not be treated as deemed dividend in the hands of the assessee because assessee was beneficial owner of the shares of

the above companies for the assessment year in question. The AO noted that assessee has not filed any evidence in support of the above claim for taking advance for business purposes. Therefore, it was considered as deemed dividend. The assessee also did not produce audited books of accounts of the above mentioned companies in order to verify the accumulated profits, the entire quantum of advances received by the assessee during the year from the above mentioned companies were therefore, added to the income of the assessee. The AO accordingly made an addition of Rs. 2,22,93,639/-.

8. Both the above additions were challenged before Ld. CIT(A). The written submission of the assessee is reproduced in the appellate order in which the assessee reiterated the same submissions as made before the AO. It was submitted that Sh. Devender Kumar always maintained that he had entered into an agreement with Smt. Saroj Sharma and others to sell the Harchandpur land to them. Sh. Devender Kumar also filed a letter before Tehsildar, Sohna, to stop executing the registry of the land occupied by Smt. Saroj Sharma etc. The assessee also filed

application for admission of additional evidences on which remand report from the AO was called for. The AO in the remand report reiterated the facts stated in the assessment order. The assessee filed the rejoinder to the remand report in which it was submitted that affidavit of Sh. K.V. Jain has been filed and that report of the Inspectors were not confronted to the assessee and no right has been given to rebut the same. The Ld. CIT(A) noted that the assessee failed to establish the identity and creditworthiness of the creditors and genuineness of the transaction in the matter. Only affidavit of the mediator was filed which do not satisfy three limbs of section 68 of the Act. Sh. Devender Kumar had denied having received any cash from M/s Newage Infrabuilders Pvt. Ltd. and stated on both that he had signed the MOU at the behest of the assessee. Therefore, affidavit of the mediator is having no credibility. Ld. CIT(A) also noted that no action has been taken against Smt. Saroj Sharma etc. The AO has reported that no such investment was shown in the balance sheet of the above said two companies available with MCA and no funds were available with the aforesaid companies to make such huge investments. Ld. CIT(A), accordingly, confirmed the addition of Rs. 30 crores. As regards addition made on account of deemed dividend, the submission of assessee was recorded for AY 2009-10 in which it was also contended that addition u/s 2(22)(e) of the Act is justified to the extent of accumulated profits of lender companies. Other facts were reiterated as were submitted before AO. The Ld. CIT(A) followed his order dated 31.03.2017 for AY 2013-14 and 2014-15 and directed the AO to make addition u/s 2(22)(e) of the Act to the extent of accumulated profits. The appeal was, therefore, partly allowed.

9. The assessee is in appeal before the Tribunal. Ld. Counsel for the assessee did not press ground no. 1 & 3 of the appeal, the same are dismissed as not pressed.

10. On the remaining grounds, the assessee challenged the order of the Ld. CIT(A) in confirming the addition of Rs. 30 crores u/s 68 of the I.T. Act and addition of Rs. 2,22,93,369/- made u/s 2(22)(e) of the Act.

11. Ld. Counsel for the assessee reiterated the submissions made before authorities below and referred to various notices issued by the AO and reply filed by the assessee and documents

on record along with statement of the assessee, Sh. K.V. Jain and Sh. Devender Kumar recorded time to time. He has also submitted that PB 166, the letter of the assessee dated 12.10.2016 along with affidavit of Sh. Devender Kumar retracting from the statement made before AO. PB 180 is affidavit of Sh. K.V. Jain and PB 184 is complaint made to Commissioner of Police, Gurgaon. PB 349 is Civil Suit filed by Sh. Devender Kumar against Smt. Saroj Sharma and others. PB 294 is assessment order of Sh. Devender Kumar u/s 153A read with section 153C of the Act. He has submitted that presumption u/s 292C of the Act is that the document is correct. The document relating to addition of Rs. 20 crores is not in the name of the assessee. Proceedings u/s 153C of the Act were initiated against Sh. Devender Kumar and other company and the document belongs to them. There is no other material on record to prove that assessee received Rs. 20 crores. There is no evidence that cash of Rs. 20 crores is paid by the assessee. Statement recorded by the AO is not relevant for making addition. The affidavit of Sh. Devender Kumar has not been rebutted by AO. Therefore, onus upon AO has not been discharged. As regards addition of Rs. 10 crores, he has submitted that the M/s Meghatech Realtors Pvt. Ltd. paid Rs. 10 crores and no efforts have been made by the AO to verify payment to Smt. Saroj Sharma. No summon has been issued to Smt. Saroj Sharma. No enquiries have been made from witnesses to all the agreements or MOU. No report of Inspector has been confronted to the assessee. Therefore, no addition can be made. Ld. Counsel for the assessee as regards addition made u/s 2(22)(e) of the Act reiterated the facts stated before the authorities below and submitted that the accumulated profit as per remand report as on 31.03.2012 were as under:

1. Dream Green Land Realtor Ltd. was Rs. 4,26,330/- and
2. Rosemary Properties P. Ltd. Rs. 2,41,280/-.

He has submitted that the order of the Ld. CIT(A) need to be modified as accumulated profit taxed as deemed dividend in earlier year need to be excluded i.e. in the case of M/s Dream Green Land Realtor Ltd. in A.Y. 2008-09 was Rs. 2,871/- and in case of M/s Rosemary Properties P. Ltd. in AY 2009-10 was Rs. 86,111/-. Ld. Counsel for the assessee further submitted that advance was received for purchase of land which will not fall within the definition of deemed dividend and relied upon Board Circular No. 19/2017 dated 12.06.2017, Judgment of Delhi High Court in the case of CIT vs. Raj Kumar 318 ITR 462, CIT vs. Creative Dying and Printing P. Ltd. 318 ITR 476. Ld. Counsel for the assessee therefore, submitted that appeal of the assessee may be allowed.

12. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that the documents in question were seized from the possession of the assessee. Therefore, section 292C/132(4) apply. Summons issued to both the companies were returned un-served. The Inspector also could not serve the summons upon both the companies because some were not available at the given address. Sh. K.V. Jain who facilitated the above MOU's expressed his inability to get the summons served on both the companies. The assessee did not produce Directors of both the companies. The notices u/s 153A read with section 153C were issued to both the companies which returned un-served. Sh. Devender Kumar made a statement against the assessee that he signed the MOU on the direction of the assessee.

Ld. DR, therefore, submitted that assessee failed to prove the identity and creditworthiness of the creditors and genuineness of the transaction in the matter. Ld. DR relied upon several decisions in support of his contention including judgment of Bombay High Court in the case of Konark Structural Engineering P. Ltd. vs. DCIT 90 taxmann.com 56, judgment of Calcutta High Court in the case of DRB Exports P. Ltd. vs. CIT 93 taxmann.com 490, judgment of Allahabad High Court in the case of Prem Casting P. Ltd. vs. CIT 88 taxmann.com 189, judgment of Delhi High Court in the cases of CIT vs. MAF Academy P. Ltd. 361 ITR 258, CIT vs. Navodhya Castle P. Ltd. 367 ITR 306 and CIT vs. N.R. Portfolio P. Ltd. 263 CTR 456. Ld. DR also submitted that statement recorded u/s 132(4) could be the basis for making addition against the assessee and relied upon the decision of the Delhi High Court in the case of Bhagirath Aggarwal vs. CIT 351 ITR 143, CIT vs. M.S. Aggarwal 93 taxmann.com 247 and PCIT vs. Avinash Kumar Setia, 81 taxmann.com 476. Ld. DR, therefore, submitted that addition of Rs. 30 crores was correctly made in the hands of the assessee and as regards addition on account of deemed dividend, Ld. DR relied upon the order of the CIT(A).

13. We have considered the rival submission and perused the material available on record.

14. In the instant case the authorities below have made and confirmed the addition of Rs. 20 crores in the hands of the assessee on the basis of recovery of MOU dated 14.12.2011 from the possession of the assessee, copy of the same is filed at page 101 of the PB. According to section 292C and 132(4A) of the I.T. Act, when such document was found in possession or control of any person in the course of search, it may be presumed that such document belong to such person and that contents of such document are true and correct. However, such presumption is rebuttable and is not conclusive in nature. The MOU in question is executed in between Sh. Devender Kumar S/o Sh. Badle Ram and M/s Newage Infrabuilder P. Ltd., New Delhi. According to the MOU Sh. Devender Kumar is responsible to acquire the land at village Harchandpur, District Gurgaon and to hand-over the same to M/s Newage Infrabuilder P. Ltd. who has agreed to purchase 400 acres of the land from Smt. Saroj Sharma and others. Thus, Sh. Devender Kumar was responsible to acquire the land in

question from Smt. Saroj Sharma and others and then transfer it to M/s Newage Infrabuilder P. Ltd. According to the MOU M/s Newage Infra Builder P. Ltd. has paid Rs. 20 crores in cash to Sh. Devender Kumar in consideration of the aforesaid MOU. The ultimate sale deed shall have to be registered in the office of Sub-registrar, Gurgaon. The MOU is attested by Notary public and also attested by the witnesses. PB 96 is agreement to sell between Smt. Saroj Sharma & others and Sh. Devender Kumar dated 17.12.2011, whereby Sh. Devender Kumar has paid Rs. 10 crores to Smt. Saroj Sharma etc. for purchase of land at Harchandpur, Gurgaon. Smt. Saroj Sharma and others have acknowledged receipt of Rs. 10 crores from Sh. Devender Kumar. Smt. Saroj Sharma and others have also executed receipt of Rs. 10 crores in favour of the purchaser Sh. Devender Kumar vide separate receipt dated 17.12.2011, copy of which is filed at page 100 of the PB. The assessee is not party to the aforesaid MOU, agreement to sell or the receipt. Even assessee is not witness to the MOU, agreement to sell or the receipt. Assessee thus, has not even remotely connected with the seized document found from possession of the assessee during the course of search. PB 146 is statement of Sh. Devender Kumar recorded on 18.10.2013 by ADIT (Inv.). In this statement the investigation wing has confronted Sh. Devender Kumar of the aforesaid document seized during the course of search from possession of assessee which includes agreements to sell executed with Smt. Saroj Sharma and others and explanation of Sh. Devender Kumar was called upon. Sh. Devender Kumar on such question has explained that he has purchased land at Harchandpur from Smt. Saroj Sharma and others for a sum of Rs. 15,50,000/- per acre in which he was a commission agent on behalf of M/s Newage Infrabuilders P. Ltd. He has stated in his statement that he has paid Rs. 10 crores in cash to Smt. Saroj Sharma and others. Therefore, Sh. Devender Kumar in his initial statement before ADIT(Inv.) has confirmed execution of agreement to sell with Smt. Saroj Sharma and others and execution of the receipts copies of the same are filed in the PB at pages 96 -100 above (supra). In his statement Sh. Devender Kumar has further stated that he has also executed one more agreement to sell with Smt. Saroj Sharma and others and paid Rs. 10 crores in cash and agreed to supply copy of the same agreement to sell to the investigation wing. He has further affirmed in his statement that this agreement to sell was also executed on behalf of M/s Newage Infrabuilders P. Ltd. The Investigation wing further asked for the explanation of Sh. Devender Kumar with regard to the documents recovered from the possession of the assessee on 17.09.2013 which is the MOU dated 14.12.2011 (PB 101). Sh. Devender Kumar in answer to this question has affirmed that he has executed the said MOU on behalf of M/s Newage Infrabuilders P. Ltd. for purchase of land at Harchandpur by acquiring the said land from Smt. Saroj Sharma and others. He has further affirmed that M/s Newage Infrabuilders P. Ltd. has paid Rs. 20 crores to him in cash for purchase of land at Harchandpur, Gurgaon from Smt. Saroj Sharma and others. In further statement Sh. Devender Kumar explained that he would get commission of Rs. 50,000/- per acre from M/s Newage Infrabuilder P. Ltd. Thus, in his initial statement also Sh. Devender Kumar affirmed that he has executed MOU in question with M/s Newage Infrabuilder (P) Ltd. for acquiring the land from Smt. Saroj Sharma and others and received Rs. 20 crores from M/s Newage Infrabuilder P. Ltd. He has also affirmed that he has paid Rs. 20 crores to Smt. Saroj

Sharma and others vide two agreements to sell, one of them was recovered during the course of search and he agreed to supply copy of one more agreement to sell to the investigation wing. Commission was to be paid @ Rs. 50,000/- per acre. He has further stated in his statement that the aforesaid land could not be transferred to M/s Newage Infrabuilders P. Ltd. because Smt. Saroj Sharma and others sold the land to some other person and he has filed a case in the court in which Stay has been granted in his favour. He has further stated in his statement that assessee has also entered into an agreement to sell for some other portion of the property with Smt. Saroj Sharma and others and assessee was also cheated by them, therefore, he along with assessee have filed a case in the court against Smt. Saroj Sharma and others and due to this reason only the aforesaid documents were found during the course of search from the office premises of the assessee. In his statement Sh. Devender Kumar did not make any allegation, if money was paid by the assessee on his behalf. PB 110 is a letter dated 06.04.2012 filed by Sh. Devender Kumar to Sub-Registrar, Sohna in which he has explained that he has entered into an agreement to sell with Smt. Saroj Sharma and others for purchase of land at Harchandpur, Gurgaon and she has executed a sale deed of some portion in favour of others. Sh. Devender Kumar, therefore, requested Sub-Registrar not to register any sale deed in future. PB 116 is complaint made by Sh. Devender Kumar against Smt. Saroj Sharma and others dated 04.06.2012 to the Deputy Commissioner of Police, New Delhi for cheating and criminal breach of trust which is supported by the agreement to sell and receipt. PB 187 is also complaint lodge by Sh. Devender Kumar to the Commissioner of Police, Gurgaon against Smt. Saroj Sharma and others for cheating. PB 370 is a copy of the plaint filed by Sh. Devender Kumar against Smt. Saroj Sharma and others i.e. suit for specific performance of contract in the Court of Civil Judge, Gurgaon. All these material evidences clearly established that MOU in question is between Sh. Devender Kumar and M/s Newage Infrabuilder P. Ltd. and further agreement to sell were executed between Sh. Devender Kumar and Smt. Saroj Sharma and others. Assessee is not party to any of the MOU or agreement to sell and that on offence of cheating/breach of trust committed by Smt. Saroj Sharma, Sh. Devender Kumar filed a police complaint against her as well as filed suit for specific performance before the court. Thus, the Revenue Department has failed to attribute any sale consideration of Rs. 20 crores to the assessee. PB 294 is assessment order in the case of Sh. Devender Kumar dated 28.12.2016 u/s 153A read with section 153C/143(3) of the I.T. Act for AY 2012-13 in which the AO on the same set of facts made addition of Rs. 20 crores in the hands of Sh. Devender Kumar on protective basis. Thus, it established that AO has also recorded satisfaction u/s 153C against Sh. Devender Kumar that he was connected with amount of Rs. 20 crores in question. The AO ignored all these above material evidences on record and merely relied upon the later statement of Sh. Devender Kumar recorded on 11.03.2016 at the assessment stage in which Sh. Devender Kumar has stated that he has signed the agreement in question at the instance of the assessee. However, he has admitted that he has purchased land from Smt. Saroj Sharma and others on the basis of the agreement to sell. In this statement also he has stated that police complaint was prepared at the instance of assessee. From this statement, it appears that the AO deliberately recorded this statement without any justification against the statement recorded by the investigation wing immediately after search on 18.10.2013. Sh. Devender Kumar tried to contradict the contents of MOU and the agreement to sell without any justification. The AO has not explained as to what was necessity to record statement of Sh. Devender Kumar subsequently, at the fag end of the assessment proceedings. The statement would also show that AO put the words in the mouth of Sh. Devender Kumar so as to he may contradict his earlier statement recorded by the investigation wing. No question was put to him as to why the documents were prepared in his name, if he was not party to be agreement to sell or MOU. The entire material on record clearly support the statement of Sh. Devender Kumar recorded by the investigation wing on 18.10.2013. The statement of Sh. Devender Kumar recorded by AO on 11.03.2016 is not corroborated by any evidence or material on record. Thus, there was no justification for the AO or CIT(A) to rely upon subsequent statement of Sh. Devender Kumar dated 11.03.2016. It may also be noted here that the assessee filed letter dated 12.10.2016 before Ld. CIT(A) supported by affidavit of Sh. Devender Kumar (PB 166-176) in which he has affirmed his statement made to the investigation wing on 18.10.2013. It is also stated in the affidavit that subsequently notice u/s 153C dated 08.02.2016 was issued to him by Ms. Preeti Singh, ACIT, Central Circle-26, New Delhi and she told him that huge liability to the extent of Rs. 20 crores would fall on him, if he strict to his original statement made before investigation wing on 18.10.2013. He has, therefore, disowned his statement recorded before AO on 11.03.2016. In this affidavit also he has confirmed all the transactions recorded in his name on behalf of M/s Newage Infrabuilders P. Ltd. The Ld. CIT(A) without any justification ignored the affidavit of Sh. Devender Kumar. Though in this case Ld. CIT(A) called for the remand report from the AO, copy of which is filed at page 256 of the PB dated 04.05.2017 but the AO has not rebutted the explanation of the assessee above. Therefore, contents of the affidavit shall have to be read in the evidence in favour of the assesse. It appears that the authorities below merely on the basis of subsequent statement of Sh. Devender Kumar and that the Directors of M/s Newage Infrabuilders P. Ltd. have not been produced for examination before AO confirmed the addition against the assessee. It is admitted fact that during the course of search no cash was found or seized. There is no recovery of any incriminating material against the assessee to connect him with the addition of Rs. 20 crores. Even if the Directors of M/s Newage Infrabuilders P. Ltd. were not produced for examination before AO, the entire material on record clearly justify explanation of the assessee that assessee had not dealt with amount of Rs. 20 crores. The contents of the document speak against the Revenue-Department. The presumption against the assessee that the document belong to him have been rebutted by the above material on record including the seized material found during the course of search which is corroborated by statement of Sh. Devender Kumar recorded on 18.10.2013 in ADIT(Inv.). Sh. Devender Kumar has taken action against Smt. Saroj Sharma etc., therefore, there was no justification to make addition of Rs. 20 crores against the assessee. Whatever reasons have been given by the authorities below for making addition against the assessee are irrelevant on the face of the evidences brought on record. Therefore, the decisions relied upon by the Ld. DR would not support case of the Revenue. In view of the above discussion, we are of the view that addition of Rs. 20 crores against the assessee is wholly unjustified. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs. 20 crores.

15. The AO made further addition of Rs. 10 crores in the hands of the assessee on the basis of MOU dated 14.12.2011 (PB 105) which is recovered during the course of search. This MOU is executed between assessee and M/s Meghatech Realtors Pvt. Ltd. According to this MOU assessee was responsible to acquire the land at Village Harchandpur, Gurgaon from Smt. Saroj Sharma and others and shall transfer the same to M/s Meghatech Realtors Pvt. Ltd. in consideration to this MOU. M/s Meghatech Realtors P. Ltd. paid Rs. 10 crores to the assessee. This MOU is attested by Notary Public and also attested by the witness. As per the agreement assessee has paid the same amount of Rs. 10 crores to Smt. Saroj Sharma on behalf of M/s Meghatech Realtors P. Ltd. Both MOU and agreement are filed at PB 105 and PB 338. Since presumption is rebuttable, therefore, the case is to be examined on the basis of material on record. The assessee in his initial statement recorded by investigation wing dated 17.09.2013 (PB 276) has explained that he has received Rs. 10 crores from M/s

Meghatech Realtors P. Ltd. for purchase of the land through Sh. J.K. Jain. The assessee similarly filed complaint to the police against Smt. Saroj Sharma and others and also filed letter to the Sub-Registrar, Sohna, Gurgaon so that no further sale deed is executed in favour of others. PB143 is statement of Sh. Kulbhushan Jain recorded by investigation wing on 18.10.2013 in which he has confirmed that he has arranged the deal of the assessee with M/s Meghatech Realtors P. Ltd. The Hon'ble Supreme Court in the case of DCIT vs. T. Jai Chandaran in Civil Appeal No. 4341/2018 arising out of SLP No. 22112/2013 dated 24.04.2018 considered the issue, whether additional interest payable to PSU cannot be assessed as income of respondent? It was held that in the given facts the respondent had acted only as broker and, as such, the amount in question could not be termed as income of the respondent. The AO, therefore, should have verified the facts from all the concern persons and should have examined Smt. Saroj Sharma and others and witness to the MOU before arriving at the finding of fact in the matter. The assessee further explained that report of the Inspector was not confronted to him, therefore, such evidence cannot be read in evidence against the assessee. No efforts have been made by the AO to verify the facts from the AO of M/s Meghatech Realtors P. Ltd. The AO also ignored balance sheet of this company filed with ROC to verify the amount of advance shown of Rs. 10 crores. These facts clearly show that despite corroborating material available on record, the AO merely made the addition against the assessee because the Directors of M/s Meghatech Realtors P. Ltd. were not produced for examination before the AO. However, the fact remained that sufficient material was available on record that assessee acted on behalf of M/s Meghatech Realtors P. Ltd. and assessee while acting on their behalf executed agreement to sell with Smt. Saroj Sharma and others. However, Smt. Saroj Sharma and others did not complete deal with the assessee, assessee has taken action against her with the police as well as in the court of law with Sh. Devender Kumar. Therefore, facts shall have to be verified from all the concerned parties including Smt. Saroj Sharma and witnesses to the MOU etc. It appears to us that AO has not conducted proper investigation on this issue and merely made addition for non production of Director of Company. Therefore, the matter requires reconsideration and the level of the

AO. We, accordingly, set aside the orders of the authorities below and restore this issue to the file of AO with direction to re-decide this issue in accordance with law and as per observations in the order by giving reasonable opportunity of being heard to the assessee. The AO shall made all efforts to enquire from all concern parties about the facts of execution of MOU for M/s Meghatech Realtors P. Ltd. and shall pass the reasoned order.

16. In the result, this ground of appeal of assessee is allowed for statistical purposes.

17. As regards, the addition on account of deemed dividend, the assessee pleaded that advance was received for purchase of land for the company in ordinary course of business. However, during the course of arguments Ld. Counsel for the assessee has not been able to refer to any evidence to support such contention. Therefore, this point was rightly rejected by the authorities below. However, Ld. Counsel for the assessee submitted that addition for deemed dividend could be made to the extent of accumulated profits of the lender company. The Ld. CIT(A) following his order dated 31.03.2017 for AY 2013-14 and 2014-15 accepted the plea

of the assessee and directed the AO to make addition u/s 2(22)(e) i.e. addition made are restricted to the extent of accumulated profits. Ld. Counsel for the assessee referred to the remand report filed by the AO before Ld. CIT(A), PB 250 i.e. on 31.03.2012, the accumulated profit in case of M/s Dream Green Land Realtors P. Ltd. and M/s Rosemary Properties P. Ltd. were Rs. 4,26,330/- and Rs. 2,41,280/-. He has further submitted that the order of Ld. CIT(A) need to be modified as accumulated profit taxed as deemed dividend in earlier year need to be excluded i.e. in the case of Dream Green Land Realtors P. Ltd. for AY 2008-09 was Rs. 2,871/- and in case of M/s Rosemary Properties Ltd. in AY 2009-10 it was Rs. 86,111/-. We, accordingly, direct the AO to take into consideration the above facts and submission of the assessee while passing the appeal effect order in the matter. With these modifications this ground of appeal of the assessee is partly allowed for statistical purposes.

18. In the result, the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 20.09.2018

Sd/-	Sd/-
(L.P. SAHU)	**(BHAVNESH SAINI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 20.09.2018
*Kavita Arora

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	05.09.18 to 06.09.2018
Date on which the typed draft is placed before the dictating Member	17.09.2018
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	20.09.18
Date on which the final order is uploaded on the website of ITAT	24.09.18
Date on which the file goes to the Bench Clerk	24.09.18
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	