

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 454 & 455/Chd/2014
निर्धारण वर्ष / Assessment Year : 2011-12 & 2007-08

The DCIT Central Circle-III, Ludhiana	बनाम	Shri Inderjit Singh Brar 1040, Sector 71, Mohali
स्थायी लेखा सं./PAN NO: AFBPB3598J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 461/Chd/2014
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Inderjit Singh Brar # 163, Model Town Phase-2, Bathinda	बनाम	The DCIT Central Circle-III, Ludhiana
स्थायी लेखा सं./PAN NO: AFBPB3598J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. C. Chandrakanta, CIT,DR

सुनवाई की तारीख/Date of Hearing : 10/08/2021
उद्घोषणा की तारीख/Date of Pronouncement : 21/10/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

The Cross appeals by the Department and the Assessee for the A.Y. 2011-12 and the appeal by the Department for the A.Y. 2007-08 are directed against the separate order each dated 24/02/2014 of the Ld. CIT(A)-1, Ludhiana.

2. Since the issues involved are common and the appeals were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance we will deal with the cross appeal by the assessee and the department for the A.Y. 2011-12.

4. In the Departmental appeal in ITA No. 454/Chd/2014, the grounds raised are as under:

1. *That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 11,23,17,600/- on account of alleged unexplained investment in properties.*

2. *That the Ld. CIT(A) has erred in law and on facts in restricting the addition of Rs. 14,49,14,000/- on account of alleged unexplained investment in properties to Rs. 6,51,00,000/-.*

3. *That the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 5,42,82,079/- on account of alleged unexplained investment in properties.*

4. *That the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 13,46,94,265/- on account of alleged unexplained investment in properties.*

5. *That the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 1,34,37,000/- on account of alleged unexplained investment in properties.*

6. *That the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 20,00,000/- on account of alleged unexplained investment in properties.*

7. *That the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs.32,50,00,000/- on account of alleged unexplained investment in properties.*

8. *That the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 34,00,000/- on account of alleged unexplained investment in properties.*

9. *That the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 1,42,28,500/- on account of alleged unexplained investment in properties.*

10. *That the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 21,00,000/- on account of alleged unexplained investment in properties.*

11. *That the Ld. CIT(A) has erred in law and on facts in not appreciating the facts mentioned in the assessment order as well as in the remand report in respect of all the additions mentioned above.*

12. *That the Ld. CIT(A) has erred in law and on facts in not appreciating the facts that the additions were made on the basis of seized documents which were not dumb documents rather these were speaking documents containing meticulous*

detail of various transactions having sufficient description of unaccounted amounts in respect of all the additions mentioned above.

13. That the Ld. CIT(A) has erred in law and on facts in not appreciating the facts that the assessee failed to disclose the source of the amounts mentioned on seized documents and also failed to prove the nature of the documents seized. The seized documents were also confronted to the assessee while recording his statement for which the assessee gave vague replies to the queries raised as under and his attitude was not cooperative during the course of assessment proceedings in respect of all the additions mentioned above:

- These are only projections.*
- The matter is very old and the assessee did not remember any such land or the person.*
- Regarding the amount shown as paid on some seized documents, the assessee replied that the amount might have been required to be paid.*
- The figures were only estimates.*
- When asked that if he does not remember the location of land and the name of person who made the proposal for sale of land in all the cases mentioned in the seized records, then he should tell only the names of three persons or locations of land for which offers for sale of land was received by him during this period. The assessee replied that the matter is very old and he has not kept any record.*

14. The Appellant craves leave to add or amend the grounds of appeal on or before the appeal is heard and disposed off.

15. It is prayed that the order of the Commissioner of Income Tax (Appeals), be set-aside and that of the AO be restored.

And the grounds raised by the assessee in ITA No. 461/Chd/2014 read as under:

- 1. That Ld. CIT(A) erred on facts and law in confirming the action of the AO of determining the assessed income at Rs.6,80,71,080/-.*
- 2. That Ld. CIT(A) erred on facts and law in confirming the addition of Rs.6,51,97,000/-. The addition confirmed by the CIT(A) is on the basis of arbitrary interpretation of dumb documents.*
- 3. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

5. The common grievance in the Departmental appeal as well as in assessee's appeal relates to the deletion / addition on account of alleged unexplained investment in properties.

6. The grievance of the Department in its appeal relates to the deletion of additions while the assessee is in appeal against the sustenance of addition made by the A.O.

7. Since the Ld. CIT(A) dealt with all the additions sustained and the deletions made simultaneously in the impugned order therefore we will also decide all the issues simultaneously.

8. The facts related to the issues under consideration, in brief are that a search under section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was conducted at the residential premises of the assessee and his family members on 18/02/2011. Accordingly a notice under section 153A of the Act was issued to the assessee. In response to the said notice, the assessee filed his return of income on 11/09/2012 declaring the same income of Rs. 28,74,080/- which was declared in the original return of income.

8.1 During the course of assessment proceedings the A.O. made copies of seized material available to the assessee who produced the books of account alongwith supporting vouchers which were test checked by the A.O. The assessee was maintaining personal books of accounts which were produced. The A.O. observed that the documents in the form of Annexure ISB-8, 11 & 21 were found during the course of search, he made the addition on the basis of notings on those documents and assessed the income at Rs. 80,92,47,524/- , the assessment order dt. 25/03/2013 of the A.O. for making the various addition is reproduced verbatim as under:

A search u/s 132 of the I.T. Act was conducted at the residential premises of Sh. Inderjeet Singh Brar and his family members on 18.02.2011. The original return of income was filed on declaring income of Rs.28,74,080/-. Accordingly, a notice u/s

153-A was issued to the assessee. In response to the notice, the assessee filed his return of income on 11.09.2012 declaring income of Rs.28,74,080/-.

1. Subsequently, notices u/s 143(2) & 142(1) alongwith questionnaires were issued on 13.11.2012. In response to these notices, Shri Ashwani Juneja, ITP and CA Harpal Singh, duly authorized representatives, attend the proceedings from time to time and files necessary information/replies/ documents etc, with whom the case was also discussed. During assessment proceedings, the copies of the seized material pertaining to the assessee were made available. Books of account along with supporting vouchers were produced and test checked.

2. The assessee is an individual and is having "salary, house property, capital gain & other sources". It is stated that the assessee is maintaining personal books of accounts which has been produced.

2.1 During the course of search of the residence premises of the assessee at Mohali, certain documents in the form of annexure ISB-8, 11 & 21 were found during the course of search. The notings on these documents are discussed as under:

(a) Document No.25 & 26 of ISB-8

On these pages, the investment of Rs.4,87,00,000/- and Rs.5,66,00,000/-in properties in Hans Nagar, Bathinda has been mentioned regarding purchase of property for Rs.5,66,00,000/- it is total land of 7acres, the purchase price of which comes to Rs.1600/- per sq. yards.-Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of investments on these properties. The assessee file letter dated 11.03.2013 stating there in that no such property was purchased and it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures along with the area of land and situation of property is also mentioned. As such it can not be treated as a dumb document. Since the assessee has failed to explain the source of these investments in the properties these amounts are added back to the total income of the assessee. Further the assessee has sold land out of this total of 7 acres of the land situated at Hans Nagar, the assessee has sold land measuring 6622 sq. yard for Rs.1,66,32,800/- and land measuring 2200 sq. yards has been sold for Rs.45 lacs. It is also revealed that 2 acres have been sold at Rs. 1,66,00,000/- i.e. at the purchase price itself. The profit earned on the property is worked out as under:

Total area sold	8822 Sq. yards
Sale price as mentioned above	Rs.2,11,32,800/-
Cost price @ 1600/- persq. yard	<u>Rs.1.41.15,200/-</u>
Total Profit	Rs. 70,17,600/-

From the above said detail it can be concluded that the assessee made investment of Rs.10,53,00,000/- on the purchase of land in Hans Nagar, Bathinda and made profit of Rs.70,17,600/- on sale of land out of above purchase which is also to be included in the total income of the assessee. **As such addition of Rs.11,23,17,600/- (Rs.4,87,00,000/- +Rs.5,66,00,000/- + Rs70,17,600/-).** Penalty

proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(b) Document No. 27 of ISB-8

This documents mentions the details of sale of properties by the assessee from the various land and the investment in those properties in village **Jai Singh Wala** which are as under:

Sale

Jai Singh Wala	=	Rs. 4,67,50,000/-
Profit 1 acre	=	Rs. 9,37,000/-
Profit 2 acre	=	1,66,00,000/-
Sale Hans Nagar	=	6,51,97,000/-

Invest

Aulakh	=	1,79,53,000-6612 Sq. yards
I.S. Brar	=	20,64,000-5558
Gurdas	=	35,00,000-900
Hans Nagar	=	4,00,00,000/-
Total	=	6,29,17,000/-
Gurdas	=	75,00,000/-
Loss	=	8,00,000/-
Interest	=	8,50,000- Biana-Hans Nagar

Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of investments on these properties. The assessee file letter dated 11.03.2013 stating there in that no such property was purchased and it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures along with the area of land and situation of property is also mentioned. As such it can not be treated as a dumb document. From the above said detail it can be concluded that the assessee has made investment of Rs.7,97,17,000/- in various lands and profit of Rs.6,51,97,000/- on the sale of the various lands situated at Bathinda. Since **the assessee has failed to disclose the source of investment, the investment of Rs.7,97,17,000/- plus profit earned on the sales out of above property amounting to Rs.6,51,97,000/- i.e. total of Rs.14,49,14,000/- are added back to the total income of the assessee.** Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(c) Document No.28 of ISB-8

This document mentions the details of land transaction done by assessee with regard to 23155 sq. yards of land situated at Lai Singh Basti, Bathinda. From the details on this document it can be concluded that the assessee made investment of Rs.3,92,75,215/- in the purchase of land measuring 23155 Sq. yards in Basti Lai sing Bathinda @ Rs.1696/-per Sq. Yards. The following land has been sold by the assessee:

- a) land measuring 3666 Sq. Yards at the rate of Rs.3800/- per sq yards for a total consideration of Rs. 13930800/-
 (b) Land measuring 9700 sq. yards at the rate of Rs. 2400/- per sq. yards for a total consideration of Rs. 23280000/-
 c) land measuring 1200 sq. yards has been sold for Rs. 25Lacs.

The land measuring 4308 sq. yards is still available with the assessee valued at the rate of Rs.2500/- per sq. yards i.e. total value of Rs. 10770000/-. Therefore it is clear that the assessee has sold 14566 sq. yards of land for a total consideration of Rs.39710800/- and made a profit of Rs. 1,50,06,864/- (Rs.39710800 -Rs24703936) on the sale of part of this land. Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of investments on these properties. The assessee file letter dated 11.03.2013 stating there in that no such property was purchased and it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures along with the area of land and situation of property is also mentioned. As such it can not be treated as a dumb document. From the above said detail it can be concluded that the assessee has made investment of Rs.3,92,75,215/- in various lands and profit of Rs. 1,05,06,864/- on the sale of the various lands situated at Bathinda. **Since the assessee has failed to disclose the source of investment, the investment of Rs.3,92,75,215/- plus profit earned on the sales out of above property amounting to) Rs.1,50,06,864/- i.e. total of Rs.5,42,82,079/- are added back to the total income of the assessee.** Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(d) Document No.29 of ISB-8

The document mentions the details of land transactions done by assessee with regard to two lands measuring 5½ acre and 21 kanal 2 marla situated at Village Jai Singh wala, Distt., Bathinda. From the detail on this document it can be concluded that that assessee made investment of Rs.4,67,50,000/- and Rs.7,05,26,000/- and made profit of Rs.1,74,18,265/- from the sale of property at Village Jai Singh Wala and Mulatani Road, Bathinda. Since the assessee has failed to give any explanation the amounts of Rs. 4,67,50,000/-, Rs.7,05,26000/- (investment) and Rs.1,74,18,265/- (Profit) total Rs.13,46,94,265/- are to be considered as undisclosed income of the assessee,

(d) (1) Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of investments on these properties. The assessee file letter dated 11.03.2013 stating there in that no such property was purchased and it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures along with the area of land and situation of property is also mentioned. As such it can not be treated as a dumb document. From the above said detail it can be concluded that the assessee has made investment of Rs.7,05,26,000/- and Rs.4,67,50,000/- in various lands and profit of Rs.1,74,18,265/- on the sale of the various lands situated at Bathinda. **Since the assessee has failed to disclose the source of investment, the investment of Rs.4,67,50,000/- and Rs.7,05,26,000/- plus profit earned on the sales out of above property amounting to Rs.1,74,18,265/- i.e. total of Rs.13,46,94,265/- are added back to the total income of the assessee.**

Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(e) Document No.30 of ISB-8

The document mentions the details of purchase of land for Rs.1.25 Crore at Bir Talab, Bathinda and earned profit of Rs.9,37,000/- by selling the same. Since the assessee has failed to give any explanation the amounts of Rs. 1.25 Crore (investment) and Rs.937000/-(Profit) are considered as undisclosed income of the assessee and added back to his total income. Penalty proceedings under section 271AAA are initiated on this account. Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of investments on these properties. The assessee file letter dated 11.03.2013 stating there in that no such property was purchased and it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures along with the area of land and situation of property is also mentioned. As such it can not be treated as a dumb document. From the above said detail it can be concluded that the assessee has made investment of Rs.1.25crore in various lands and profit of Rs.9,37,000/- on the sale of the various lands situated at Bir Talab, Bathinda. **Since the assessee has failed to disclose the source of investment, the investment of Rs.1.25crore plus profit earned on the sales out of above property amounting to Rs.9,37,000/- i.e. total of Rs.1,34,37,000/- are added back to the total income of the assessee.** Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(f) Document No.5 of ISB-11

Backside of this document mentions the details of some investment in the properties total of which comes to Rs.20. however no denomination has been mentioned any where about the exact investment. Since the assessee has failed to explain the contents of this document, for the sake of natural justice and to be fair the investment is taken at Rs.20 lacs. Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of investments on these properties. The assessee filed letter dated 11.03.2013 stating there in that no such property was purchased and it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures along with the area of land and situation of property is also mentioned. As such it can not be treated as a dumb document. **Because the assessee has failed to explain the source of investments, as such the same is added back to the total income of the assessee i.e. Rs.20lacs.** Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(g) Document No.7 of ISB-11

(1) This page has two parts, on one part there is mention regarding some investment of Rs.35crores however there is totaling mistake and exact amount comes to Rs.32.5crores. Since the assessee has failed to explain the contents of this document, for the sake of natural justice and to be fair the investment is taken at Rs.32.5crores. Vide this office letter dated 27.02.2013 the assessee was

specifically requested to give the complete details regarding source of investments on these properties. The assessee file letter dated 11.03.2013 stating there in that no such property was purchased and it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures along with the area of land and situation of property is also mentioned. As such it can not be treated as a dumb document. **Because the assessee has failed to explain the source of investments, as such the same is added back to the total income of the assessee i.e. Rs.32.5crores.** Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(g) (2) Second part of this page mentions the details of some investment in the properties total of which comes to Rs.34. however no denomination has been mentioned any where about the exact investment. Since the assessee has failed to explain the contents of this document, for the sake of natural justice and to be fair the investment is taken at Rs.34 lacs. Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of investments on these properties. The assessee file letter dated 11.03.2013 stating there in that no such property was purchased and it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures along with the area of land and situation of property is also mentioned. As such it can not be treated as a dumb document. Because the assessee has failed to explain the source of investments, as such the same is added back to the total income of the assessee i.e. **Rs.34lacs.** Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(h) Document No.6 to 8 of ISB-11

This document mentions the details of payments made to various persons of Rs.1,42,28,500/- which is as under:

D	Rs. 71,28,500/-
Dealer	Rs. 10,00,000/-
Parlahd	Rs. 25,000/-
Staffy	Rs. 25,00,000/-
Staffy	<u>Rs. 3,50,000/-</u>
	Rs. 1,34,78,500/-
c/f	<u>Rs. 7,50,000/-</u>
	<u>Rs. 1,42,28,500/-</u>

Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of payments. The assessee file letter dated 11.03.2013 stating there in that it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures regarding various payments, as such it can not be treated as a dumb document. Because the assessee has failed to explain the source of payments,

the same is added back to the total income of the assessee i.e. Rs.1,42,28,500/- . Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

(i) Document No.4 of ISB-11

This document mentions the details of payments made to various persons of Rs.21,00,000/- on 26.10.2010. Vide this office letter dated 27.02.2013 the assessee was specifically requested to give the complete details regarding source of payments. The assessee file letter dated 11.03.2013 stating there in that it was only dumb document. The reply of the assessee has been considered and I find no merit in that because the specific figures regarding various payments, as such it can not be treated as a dumb document. **Because the assessee has failed to explain the source of payments, the same is added back to the total income of the assessee i.e. Rs.21lacs.** Penalty proceedings u/s 271AAA is initiated separately for concealing the particulars of income.

The income of the assessee is computed as under;-

	Returned income	Rs. 28,74,080/-
<u>Add:</u>	Addition as per para 2.1(a)	Rs.11,23,17,600/-
	Addition as per para 2.1(b)	Rs.14,49,14,000/-
	Addition as per para 2.1(c)	Rs. 5,42,82,079/-
	Addition as per para 2.1(d) (1)	Rs.13,46,94,265/-
	Addition as per para 2.1(e)	Rs. 1,34,37,000/-
	Addition as per para 2.1(f)	Rs. 20,00,000/-
	Addition as per para 2.1(g) (1)	Rs.32,50,00,000/-
	Addition as per para 2.1(g) (2)	Rs. 34,00,000/-
	Addition as per para 2.1(h)	Rs. 1,42,28,500/-
	Addition as per para 2.1(i)	<u>Rs. 21,00,000/-</u>
	Total income assessed	<u>Rs. 80,92,47,524/-</u>

3.1 Charge interest u/s 234A, 234B & 234C.

3.2 Assessed as per I.T.N.S 150. Notice of demand U/s 156 of I.T. Act, 1961 determining the sum payable if any issued. Issue demand notice and challan.

3.3 This order is passed after seeking approval u/s 153D form the Addl. CIT, Central Range, Ludhiana vide F.No. 1508 dated 25/03/2013.

9. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the documents at page no. 27 of ISB-8 was in respect of

projection / proposal and was just a proposal / estimate and that the use of word invest clearly demonstrated this fact. It was further submitted as under:

i) From a close reading of the document, it can never be referred that the assessee has made the investment of Rs. 7,97,17,000/-, because the notings mentioned therein is not an investment, but the word has been mentioned as "Invest" and invest means to be invested and it is not that the assessee has made the investment.

ii). There is no mention of the land area or whether this paper relates to any dealings in immovable property, which had taken place or not is not clear.

iii). If we go by the basis of Assessing Officer, then also it is very clear that it is mere proposal/estimate or certain projection, because the word mentioned at Page 27 are interest and loss and which has been interpreted as investment by the Assessing Officer and which is factually incorrect.

iv). Also, the basis of making the addition as per mind of the Assessing Officer was to make an exorbitant addition, which is borne out from the fact that the total investment which he has taken and the total sales have been added. This is again is an incorrect application of mind by the Assessing Officer by taking the dumb document as the basis for making the uncalled for addition of Rs. 14,49,14,000/-.

9.1 It was stated that all the investments made by the assessee in the property were duly accounted for and the department did not get any document relating to unaccounted purchase / sale of property or any other investment by the assessee in any assessment year during the course of search. The additions were made only on the basis of noting in the diary which had not been correlated to any document found during the course of search. It was further submitted that the presumption under section 132(4A) of the Act is available to the proceedings under section 132(5) of the Act only and where the legislature intended to provide such presumption it has been so provided in various chapters. It was also stated that in the chapter relating to search and seizure the presumption about books of account and the documents is provided but it is limited to the summary proceedings about retention or release of the assets under section 132(5) of the Act which cannot be extended to the assessment proceedings and that the presumption under section 132(4A) is rebuttable

presumption and the same can only be raised by the department when a document is a speaking one and it reflects complete transaction without two interpretations. Reliance was placed on the following case laws:

- P.R. Metrani Vs. CIT 287 ITR 209 (SC)
- ACIT Vs. Satyapal Wassan (2008) 5 DTR (Jab) 202 para 31
- Gurlal Singh Grewal Vs. ACIT in ITA No. 1208/Chd/2011 vide order dt. 29/08/2012 (Chd)
- CIT Vs. Atam Valves (P) Ltd. (2009) 184 Taxman 6 (P&H)
- Satnam Singh Chhabra Vs. Dy. CIT (2002) 74 TTJ(Lucknow) 976
- CIT Vs. Ravi Kumar 294 ITR 78 (P&H)
- Kantilal Chandulal & Co. Vs. CIT (1982) 136 ITR 889 (Cal)

9.2 It was further stated that in such type of cases there cannot be any extrapolation by presuming that the figures were in lacs or crores when no such figures had been written on the documents seized during the course of search. Reliance was placed on the following case laws:

- CIT Vs., Girish Chaudhary (2008) 296 ITR 619 (Del)
- Atul Kumar Jain Vs. DCIT 64 TTJ 786 (Delhi)

9.3 The Ld. CIT(A) after considering the submissions of the assessee directed the A.O. to produce the said seized record and also to bring on record the basis of working out unaccounted income / investment the A.O. submitted his report dt. 06/01/2014 and the relevant portion of the said report read as under:

ii) The notings on page no.27 of ISB-8 are with regard to sale of various properties amounting to Rs.6,51,97,000/- which has not been disclosed by the assessee in the return of income.

Similarly, there are notings on this page regarding investment totaling Rs.7,97,17,000/- for which details, such as name of persons and the amount are available on this page. During the course of assessment preceding the assessee had failed to disclose the identity of these persons and investment made in various properties. On the top of this page, it has been written "Jai Singh Wala". This shows that the property might be situated in Jai Singh Wala. Further the transactions are running into crores against some property which has not been disclosed by the assessee during the assessment proceedings just to avoid

inquiries/verifications by the department. The plea of the assessee that it was only proposal which did not materialized is a vague explanation because during the assessment proceedings he did not specify the land and the person with whom the proposal was made. The notings on this page also show the amounts written as sales/profits.

The addition of Rs. 14,49,14,000/- has been made which is the total of sales and investment which was not disclosed by the assessee.

Jai Singh Wala	4,67,50,000/-
Profit 1 Acre	9,37,000/-
Profit 2 Acre	9,10,000/-
Sale Hans Nagar	<u>1,66,00,000/-</u>
S.J.	<u>6,51,97,000/-</u>

9.4 The Ld. CIT(A) mentioned that a letter was written on 04/12/2013 to the Sub-Registrar cum Tehsildar, Bathinda regarding purchase / sale of properties by Shri Inderjeet Singh Brar i.e; the assessee and his family members during the period 01/04/2009 to 31/03/2011 in the area of Hans Nagar, Bathinda; Bir talab, Bathinda; Vill. Jai Singh Wala, Bathinda; Lal Singh Basti, Bathinda and Multania Road, Bathinda. He also mentioned that a reply was received vide letter No. 575 dated 12/12/2013 in which it had been stated that Shri Inderjeet Singh Brar has sold 35 Kanals of land in vill. Jai Singh Wala on 05/06/2009 and Smt. Jaswinder Kaur W/o Shri Karnail Singh (mother of Sh. Inderjeet Singh Brar) had also sold land measuring 32 Kanal 14 Marla in Vill. Jai Singh Wala on 05/06/2009 and that no other property was purchased or sold during the period 01/04/2009 to 31/03/2011 by the assessee or his family members.

9.5 The A.O. submitted in his report that it was the Modus-operandi of the property dealers that generally they do not purchase the property by way of registration deed but only by way of power of attorney and the same land was sold on the basis of power of attorney, hence their name did not appear in the registration deed or in revenue records. It was further stated that since the assessee had not pin pointed the properties against which he had stated to be only proposals , he may be asked to explain the above properties so that the verification could be made. The Ld. CIT(A) further asked the A.O. to pursue the

matter in terms of investigating the ramifications of the contents of the seized documents and to record the statement of the assessee as the same had not been done at the time of assessment proceedings. The A.O. was also directed to make inquiries with the land revenue authorities in the geographical locations recorded in the seized document. The report of the enquiries was submitted by the A.O. vide letter dt. 27/01/2014 which read as under:

"In continuation of remand report submitted in the above case by this office vide letter no.976-77 dated 06.01.2014, further report is being submitted as under:-

As per your directions Sh. Inderjit Singh Brar was called in this office and his statements were recorded on 21.01.2014. All the seized documents on the basis of which additions were made during assessment proceedings confronted to him and he was required to give explanation of the entries against in these documents. On all these entries in the seized record the assessee stated that these were only projection. When asked to specify the land for which this projections were made or the name of the person with whom projections were made, the assessee replied that the matter is very old and he did not remember any such land or the person (refer Q.no.2). Even regarding specific amounts written on these documents, the assessee still stated them to be projections (refer Q.no.3). Where the amount written as "paid", this was stated that the amount might have been required to be paid (refer Q.No.4).

As per Q.no.14 the assessee was asked how the profits of Rs.9,37,000/- and Rs.9,10,000/- were calculated against which ' properties (page no.27 of ISB-8). The assessee stated that these figures were only estimates. Regarding other seized documents mentioned in the assessment order as well as in the remand report dated 06.01.2014, the assessee gave no explanation and only stated that he did not remember the nature of entries contained in the seized documents. As per Q.No.27 the assessee was specifically asked that if he does not remember the location of land and the name of person who made the proposal for sale of land in all the cases mentioned in the seized record, then he should tell only the names of three persons or location of land for which offers for sale of land was received by him during this period. Even to this question he stated that the matter is very old and he has not kept any record. This shows gross non-cooperative attitude of the assessee and clearly proves that he is not willing to give any information to the department to avoid further investigations. It is very much unbelievable that a person of sound mind is stating that he has forgotten all the land transactions proposal during the last 7-8 years, not even remembering names of three persons or the location of lands against which proposals were made to him which he noted in his diary with specific amounts.

During the post search enquiries by the investigation wing, the statements of Sh. Inderjit Singh Brar were recorded on 10.03.2011, he did not give answer or explanation to the seized documents confronted to him by the DDIT(Inv.). He just only stated that the entries contained in these documents as dumb paper and

projections. Further, he also stated that he was not in frame of mind to give answer to the seized documents.

Keeping in view the non-cooperative attitude of the assessee regarding explanation of seized documents, additions made on the basis of these documents may kindly be confirmed. Copy of statements of Sh. Inderjit Singh Brar dated 21.02.2014 is enclosed."

The aforesaid letter of the A.O. was confronted to the assessee. In response the assessee submitted as under:

"During the course of hearing of the appeal the issue regarding the additions made by the AO on account of alleged undisclosed investment and sale of immovable properties was discussed with your goodself.

The complete details of investment in purchase of properties during the A.Y. 2005-06 to 2011-12 was filed before the AO during the course of assessment proceedings alongwith the source of investment and no addition has been made by the AO on account of undisclosed investment in any immovable property on the basis of any document/purchase deed/agreement seized during the course of search or otherwise. Similarly the evidence regarding sale of properties has been filed and no addition has been made by the AO.

The investment in immovable properties has been disclosed under the head fixed assets in the personal balance sheet filed during the course of assessment proceedings and the profit if any arising from sale of any asset has been declared under the head capital gains. No property was sold by the assessee after development and plotting of the same and there is no evidence in the seized record that any such activity was carried out by the assessee.

It was explained in the attested affidavit filed before the A.O. that:-

i) No investment in any immovable property was made either by the assessee himself/wife/children in any area known as Hans Nagar, Lai Singh Basti, Multania Road, Bir Talab during any period. The addition has been made by the AO only on the basis of notings in the seized record without correlating the same with any document/agreement/purchase/sale deed which is not accounted for.

ii) Even the company M/s Sheesh Mahal Developer Limited did not make any investment in any immovable property in the areas of locality known as Hans Nagar, Lal Singh Basti, Multania Road, Bir Talab, Jai Singh Wala etc.

The assessee purchased only 1/2 share of 70 kanal of agriculture land at Vill Jai Singh Wala on 03.08.2007 and the same was sold on 30.06.2009 as agriculture land. The evidence regarding the same was filed during the course of assessment proceedings.

Despite the fact that the AO failed to correlate the notings in the seized record with any document/purchase deed/agreement to prove that such notings resulted into actual investments/sale of immovable **properties** or profit was actually earned by the assessee, exorbitant additions have been made by the AO which are merely based on presumptions.

Our contention that the assessment has been framed by the AO without making any effort to correlate the notings with any document in seized records is proved beyond any iota of doubt from the fact that the AO made additions of Rs. 32,50,00,000/- based on the notings of 35 cr. (which could be credit also) on left hand side of the document and 34,00,000/- on account of 34 written on right hand side of the document no. 7 of ISB-11 which shows that the figures have been extrapolated by the AO by presuming that they are in lac or crores as per his whims and fancies and the additions have been made in A.Y. 2011-12. So much so that the profit of 6,51,97,000/- has been determined from the sale of properties in which undisclosed investment have been determined at Rs. 7,97,17,000/- resulting in addition of Rs. 14,49,14,000/- in A.Y. 2011-12 on the basis of notings in the document no. 27 ISB-8. Similarly the word plots has been extrapolated in document no. 38 of ISB-13 and the alleged sale of Rs. 6,32,00,000/- has been taxed as undisclosed income for A.Y. 2007-08. The action of the AO in making exorbitant addition of Rs. 80,63,73,444/- for A.Y. 2011-12 and Rs. 6,32,00,000/- for A.Y. 2007-08 merely on the basis of notings in the seized records shows that the assessment framed by the AO is a typical case of assessment based summaries and conjectures. The above said cases are only examples and the detailed submissions on all the additions made by the AO has already been submitted before your goodself and discussed.

In view of the above stated facts, it is most humbly prayed that the additions made by the AO on account of the alleged unexplained investments made by the assessee in the immovable properties or the profits earned from sale of properties may kindly be deleted."

9.6 The assessee further stated that the notings on the seized documents were only projections and proposals which did not materialize or rough notings. The relevant submissions for the issue under consideration furnished by the assessee before the Ld. CIT(A), were as under:

Sr.	Page No.	Interpretation by the A.O.	Comments
1.	25 and 26 of ISB 8 (Page 2 of assessment order) Addition of Rs. 112317600/- (Rs. 000/- + Rs. 56600000/-+ 7600/-) = Rs.11231760 0/-	Noting on page 26 which is loose slip has been written as 48700000/- as invest 44200000/- + 4500000/- for 4.5 acres of land in Hans Nagar, Bathinda which has been written on page 25 which is also a loose slip.	In the assessment order the AO has interpreted as investment in purchase in Hans Nagar despite the fact that the word invest and not investment has been used. There are no further reference of any transaction of sale of this property in the seized record. In the assessment order/remand report the AO has treated the amount of Rs. 4.87 crores as part of the amount invested

		<p>Noting on page 26 which is a loose slip of Rs. 56600000/- has been treated as purchase of 7 acres of property for Rs. 56600000/- and profit of Rs. 7017600/- has been worked out by computing the purchase price of Rs. 1600/- per sq. yrd. for which no details has been given in the assessment order that how this working has been made. Further 6622 sq. yrds has been treated as sold for Rs. 16632800/- and 2250 sq. yrds has been treated sold for Rs. 4500000/- and Rs. 16000000/- as the sale consideration of 2 acres.</p>	<p>for purchase of 7 acres of land in Hans Nagar Bathinda. This proves the non application of mind by the AO because 4.5 acres @ 80 has been noted on page 25 in the context of Rs. 48700000/- mentioned on page 25 and top of the page 26.</p> <p>1 acre of land consist of 4840 sq. yrds and 55% saleable area is normally available after leaving the area for streets etc. The purchase price has been computed @ Rs. 1600/-per sq. yrds which is without any details of working in the assessment order or in the remand report and the same comes to Rs. 1670/- if calculated actually for 7 acres which comes to 33180 sq. yrds. The saleable area would have been 18600 sq. yrds from the total 7 acres of land. But the AO has treated as 2 acres and 8852 sq. yrds. as sold which makes the projection incomplete because if ploting is done 2 acres cannot be sold without converting the same into plots and if Rs. 7017600/- has been earned from 8852 sq. yrds why 2 acres has been treated to be sold at cost price. Further the amount of Rs. 16632800/- taken as sale price by the AO of 6622 sq. yrds the same comes to Rs. 2500/- per sq. yrd as against the amounts of @ 2400/- and 2800/- has been mentioned in the document. All these facts proves that the noting on this document are only projections and estimations otherwise the complete details of the transactions would have been noted</p>
2	<p>Page 27 of ISB 8 Addition of Rs. 144914000/- (Page 3 of the assessment order) (Rs. 65197000/- + Rs. 79717000/-)</p>	<p>The sale word has been used on this loose slip and under the same profit 1 acre and 2 acres has also been mentioned total of Rs. 65197000/- has been written</p> <p>Rs. 79717000/- has been interpreted as investment on the basis of noting on this loose slip</p>	<p>The notings does not lead to any conclusion because profits of Rs. 937000/- and Rs. 910000/- noted on this document and clearly legible and reproduced by the AO in the assessment order cannot be the sales.</p> <p>The totaling sales proves that only estimates. The A3 has made addition of Rs. 65197000/- despite the fact that the amount of Rs. 16600000/- sale Hans Nagar has been also mentioned on page 26 of ISB 8 and profit 937000/-has also been mentioned on page 30 of ISB 8 for which separate additions have been made.</p> <p>On the second part of this document there is no total and word invest has been mentioned and the amount of loss and interest has also been totaled for Rs. 79717000/-which includes Rs. 8500000/- biana for Hans Nagar for which addition of Rs. 56600000/- + 48700000/- has been separately made</p>

			as per noting on page 26. Further Rs. 40000000/- against Hans Nagar is also part of the figures as noted on page 26 but separate additions have been made. These facts proves non application of mind by the AO. The figure of Rs. 48700000/- noted on page 25 and 26 mentioned in round figure of Rs. 40000000/- that the <u>notings on these loose slips</u> are only estimate. Further the loss 7500000/-interest 800000/- has also been added while making addition of Rs. 79717000/- and the same proves that these are only rough notings which has been added to the income without application of mind <u>by the AO.</u>
3	Page 28 of ISB 8 Addition of Rs. 54282079/- (Page 4 of the assessment order) (Rs. 39275215/- + Rs. 15006864/-)	The AO has interpreted the noting on this loose slip as transaction of purchase/sale of land in Lai Singh Basti, Bathinda. The purchase price has been taken at Rs. 39275215/- and sale has been computed at Rs. 39710800/- for sale of 14566 sq. yrds of land and 4308 sq. yrds has been treated as available @ Rs. 2500/- per sq. yrd and the profit has been computed at Rs. 15006864.	The calculation on this page relates to 23155 sq. yrds of land against which the sale and left area is only 18874 sq. yrds. (3666+9700+ 1200 sq. yrds taken as sales and 4308 sq.yrds as left out area) sold without any details of the balance land which shows that these are only projections. The AO has not taken any cognizance of the balance land which shows non application of mind by the AO. The word 1200 sold by 255/85 and 25 lacs has been interpreted as sale price of 1200 sq. yrds. Left area 5558 has not been taken into consideration for purpose of computation as 5558-1200=4308 has been taken as left area which shows that calculation have been made according to convenience and without application of mind by the AO.
4.	Page 29 of ISB 8 Addition of Rs. 134694265/- (Page 5 of assessment order) (Rs. 46750000/- + Rs. 70526000/- + Rs. 17418265/-)	The noting of 5.5 acres and 21.2 kanal at Jai Singh Wala on this loose slip has been taken as investment. The notings of Rs. 70526000/- has been taken as investment at Multania Road and profit of Rs. 17418265/- has been computed for which no details have been given in the assessment order but the same has been given in the remand report.	There is no notings on this loose slip that whether this transaction of purchase or sale but the same ahs been treated as investment in property at Jai Singh Wala. There are no details of sale of this property in the seized record and this amount has also been mentioned on page 27 for which separate addition has been made. The total land was 27746.80 sq. yrds but the profit has been computed for only 13835 sq. yrds and there is no discussion of balance land of 13911 sq. yrds. Which shows the non application of mind by the A.O. and also the fact that the notings on this page are only projections and estimates Rs. 17953000/- has also been mentioned on page 27 of the seized record for which separate addition has been made.
5.	Page 30 of ISB 8 (Page 5 of assessment order) Addition of Rs. 13437000/-	The investment in property at Bir Talab has been taken at Rs. 12500000/- and the net profit has been computed at Rs. 937000/-.	Rs. 937000 has been mentioned on page 27 of the seized record for which separate addition has been made. The notings is only Bir Talab 1 acre

			purchase price 1.25, sale price 1.37 and net p 937000/- which has been interpreted as a transaction of purchase and sale in some property at Bir Talab, Bathinda.
6.	Page 5 of ISB 11 (Page 6 of assessment order) Addition of Rs. 2000000/-	The notings of 20.00 has been interpreted as 2000000/- as according to the A.O. the details are of some properties of 9.5 acres	In the statement recorded on 21.01.2014, the assessee has clarify that till to date there is no property mentioned on right hand side of the page in the name of 2 acre Zander Tower. 7 acre farm house Either owned by him or his family members and these are rough nothings only. Moreover the diary in which notings have been made is of 14.01.2010 but the addition has been made in the A.Y. 2011-12 for which no reasons have been given by the A.O. in the assessment order or the remand report.
7.	Page 7 of ISB 11 (Page 6&7 of the assessment order) Addition of Rs. 32.5 crores and Rs. 34 lacs	Right hand side of this page has been interpreted as investment of Rs. 32.5 crores and left hand side of this page has been interepreted as investment of Rs. 3400000/- in some properties.	The figure of Rs. 32.5 has been taken in crores by extrapolation only on the basis of 32.5 cr despite the fact the totaling of the notings has been mentioned as 35 but the same comes to 32.5 which proves that these are rough notings otherwise the person making investment to the tune of 32.5 crores cannot write the total as 35 crores. The figures on right hand side written as 34 has been interpreted as 3400000/- without linking the noting on this page with any unaccounted investment. The notings has been made in the diary dated 21.01.2010 but the addition has been made in A.Y. 2011-12 for which no reason have been given either in the assessment order or the remand report.
8.	Page 6 of ISB 21 (Page 7 of the assessment order) Addition of Rs. 14228500/-	Rough notings on this page has been treated as some payments made to various payments.	The A.O. has not made any efforts either in the assessment order or remand report to give the nature of payments but have made the addition without application of mind.
9.	Page 4 ISB 21 Page 7 & 8 of assessment order Addition of Rs. 2100000/-	The total of 0.21 has been extrapolated as 2100000/- as payment of Rs. 2100000/-	The figure 0.21 has been extrapolated as payment of 2100000/- without application of mind by the A.O. or giving the nature of payment either in the assessment order of in the remand report.

9.7 On the basis of the aforesaid submissions it was stated that the notings on the said loose slip were only projections and proposals for which estimates were noted but did not materialize into any transaction of actual purchase / sale resulting into any unaccounted investment or profit to the assessee. It was further stated that the interpretation of the notings on the loose slip had been

made by the A.O. without any application of mind as the unaccounted investment in various properties had been considered without any noting on loose slip that the noting relates to purchase /sale and profits on part of the land had been computed without going into the complete details which proved that the figures noted were only for the purpose of proposals / estimates. It was stated that the additions had been made by the A.O. without giving the section of the Income Tax Act under which additions had been made which also proved that the addition had been made without application of mind.

9.8 The Ld. CIT(A) after considering the submissions of the assessee and the report of the A.O. observed that search in this case was carried out on 18/02/2011 wherein no cash or any valuable except 200 gms of gold had been seized and no documents in the form of agreement to sell or registered sale deeds had been found evidencing any unaccounted purchase /sales by the assessee. However certain documents as highlighted in the assessment order had been found which were written in the hand of the assessee himself, some in the form of loose papers. He further observed that any such document has to be descriptive speaking enough to hold on its own and for this purpose has to record the sufficiently descriptive nature of the transaction carried on, the specific details of property purchased or sold, the buyers or sellers thereof, the specific dates/year in which such transaction had been carried out and other attendants details to establish that the presumed transactions had actually taken place and the amounts in question had been actually exchanged. However in case the documents so found and seized fall short in any respect, the gaps thereof were to be bridged by carrying out investigations either by the investigation wing or by the Assessing Officer. The Ld. CIT(A) further observed that the documents found and seized had not sufficiently descriptive and speaking which is the first step in the process of arriving at the likely unaccounted income of the person concerned and that the next logical step was to collect more evidence in the form of investigations so that the possibility

of unaccounted investment / income as evidenced by the seized document was established with certain reasonable certainty. The Ld. CIT(A) observed that the judicial view on whether a particular seized document was speaking enough or not has been expressed in number of cases. The reference was made to the following case laws:

- Gurlal Singh Grewal Vs. ACIT, Circle-VI, Ludhiana, ITA No. 1208/Chd/2011 order dt. 29/08/2012

9.9 The Ld. CIT(A) discussed the facts in the case of ACIT Vs. Satyapal Wassan (supra) decided by the ITAT Jabalpur on the issue of categorization of a particular document as dumb document wherein the A.O. relied upon the documents contained in the following details:

“ G.S	5
Ravi	2
Kotli	2
Umiya	2
Swamy	5
Ganpath	1-1/2
Radheshyam	½
Shyamjibhai	1
Dari	.30
Lamba	½
BHu	½
Dev Bros.	2
	22.30”

9.10 The Ld. CIT(A) reproduced the observations of the ITAT, Jabalpur in the aforesaid referred to case which are reproduced verbatim as under:

"We have already pointed out above that this document is bereft of necessary details about year of transaction, ownership of transaction, nature of transaction, necessary code for deciphering the figures. It may be possible that a document may not be complete in all respects as the businessman or tax evaders may choose to record minimum details on a document and keep the rest in their memory. It is the duty of the Assessing Officer to carry out necessary investigations by correlating the impugned document with other documents seized, with regular books of accounts, with record kept by outside agencies, such as banks or financial institutions or debtors/creditors and finally, by recording the

statements of concerned parties so as to fill up the gaps in confirming the inference arising from the documents for a proper charge of tax. Such correlation is necessary unless the document is capable of speaking giving full details so as to enable any intelligent person to find out the nature of transaction, the year of transaction, the ownership of the transaction and quantum thereof. Even in that situation, it is necessary to give opportunity to the assessee to offer his explanation and investigation be carried out to strengthen the direct inference arising from this document."

14. The Hon'ble Bench further made detailed observations on the issue as under:-

"Let us now examine how all these transactions are necessary for the purposes of levying tax on the basis of a seized document.

Sec. 4 relates to charge of income-tax. It reads as under :

"Sec. 4 (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with and subject to the provisions (including provisions for the levy of additional income-tax) of this Act in respect of the total income of the previous year of every person :

Provided that where by virtue of any provision of this Act, income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-s. (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act."

From a reading of above section, we find following components which enter into the concept of taxation. The first is the taxable event which attracts the levy. The second is the person on whom the levy is imposed and who is obliged to pay the tax. The third is the assessment year in which charge of income-tax is levied. The fourth is the total income of the previous year and the fifth is the rate or rates at which tax is to be imposed. The rates are prescribed in the annual Finance Act. Therefore, this component has no value in determining total income on the basis of seized document. Our view in this regard is supported by the decision of Hon'ble Supreme Court in Govind Saran Ganga Saran vs. CST (1985) 155 ITR 144 (SC) wherein it was held that for the purpose of charging to tax, there should be four components to be satisfied. For the sake of convenience, we refer to the relevant headnotes from that decision :

"The component which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law.

Any uncertainty or vagueness in the legislation scheme defining any of those components of the levy will be fatal to its validity."

Now let us examine these components in detail and how they are relevant for taxing an item.

The first component shows that it is necessary to find out the nature of transaction which is the source of generating income. It has to be clearly spelt out as to whether a particular transaction is of income yielding nature as per IT law. Not all transactions yield taxable income. Firstly, it is only the financial transactions which yield taxable income and secondly, it is of revenue character. The capital transactions, unless specified in the IT Act will not yield taxable income. It has to be shown either from the reading of the document or from accompanying investigation that the transaction recorded in a document is of revenue character or is otherwise taxable under IT Act. As a quasi-judicial authority, the AO has to satisfy himself on the basis of cogent material, either found in the search or on post-search enquiries that transaction recorded in the impugned document is real one and not imaginary (i.e. an estimate or something which is to take place in future) and it has actually taken place. It has to be shown that the transaction recorded in the impugned document is sale or purchase, advance or loan, of capital or of interest; whether it is a statement of existing assets, disclosed or undisclosed; what is the commodity involved; who are the people involved in the transaction; if it is advance, then whether debtors concerned are existing, their identity; whether advance so taken is reflected in their books; whether any interest is paid on such transaction, what are the documents executed for recovery of such advances or what arrangement the assessee has done for recovery of such advances; whether there are any other related document found in the search; whether any person recorded in the impugned documents had, otherwise any other transaction with the assessee recorded in the regular books. In the present case, the AO has simply presumed that the alleged figures are advances without there being any material on record to support such presumption.

About the second component the charging section clearly spells out that income-tax will be levied on the total income of a person. The person must be the one as defined in s. 2(31). It must be clearly established who is that person whether he is the one from whose possession the document is recovered or someone else. Merely because a document is recovered from the body of a person, does not automatically lead to the inference that it belonged to him. It is only for certain purposes that presumption under s. 132(4A) has been enacted and not for all purposes including the assessment. Further, this presumption is not conclusive. It is rebuttable. If the assessee has, by way of affidavit denied ownership of the document and, further, Smt. Nirmalkanta, wife of Sri Dharamvir Wassan admitted that it belonged to her husband; it could not be inferred without rebutting those evidences (filed in the form of affidavits before the AO) that document and transactions recorded therein, in fact, belonged to Sri Satyapal Wassan. Onus under s. 132(4A) is always shifting. This sub-section provides that :

Sec. 132 (4A)—Where any books of account, other documents, money, bullion jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested by the person by whom it purports to have been so executed or attested."

Thus, the legislature has used the words "may presume". A presumption is an inference drawn from other known or proved facts. It is a rule of law under which Courts are authorized to draw a particular inference from certain set of facts. This can be disproved by other evidence provided by other party. The words "may presume" leave it to the Court to make or not to make the presumption according to the circumstances of the case. Such presumption is optional and the Court is not bound to make it. Even if such presumption is made, it is only rebuttable one. A rebuttable presumption is, thus, clearly a rule of evidence which has the effect of shifting the burden of proof by leading the evidence. Initially the AO would be justified to make such presumption, if drawn after judicial application of mind to the fact of the case. Thereafter, when the assessee leads the evidence, then the AO has to consider it judicially. What amount of evidence one requires to rebut the evidence depends upon facts of each case. There is no rigid rule in this behalf. Sometimes, mere statement of the assessee may be enough. Hon'ble Rajasthan High Court in Addl. CIT vs. Thahrayamal Balchand 1977 CTR (Raj) 219 : (1980) 124 ITR 111 (Raj) observed as under :

The evidence which satisfied the Tribunal was the facts and circumstances of the case. As pointed out above what quantum of evidence would rebut a legal presumption in a given set of facts does not admit of any rigid rule. The evidence may be direct or circumstantial or both and a mere statement of the assessee may be enough in some cases. It does not raise a question of law."

The assessee filed his affidavit and also the affidavit of Smt. NirmalaKantaWassan wife of Dharamvir Wassan to the effect that impugned document contained transaction belonging to Shri DharamvirWassan. It could not be said that onus did not shift to the AO. In our considered view, the affidavits, even if regarded as self-serving do not lose their evidentiary value if there is no material contrary to the averments made in the affidavit. When sufficient other material is found in the search which corroborates that document belonged to the assessee, then denial of such ownership merely by affidavits will be meaningless and they do not carry any weight to rebut the presumption lying on the assessee. In the present case, nothing is shown by the AO that there was other material correlated with the impugned document clearly showing that it belonged to the assessee. Under

these circumstances, the assessee has successfully shifted the onus on to the AO by filing the affidavits. They may be self-serving but carry enough weight to shift the burden or rebut the presumption. Once the onus is shifted to the AO, he was duty-bound to collect evidence so as to belie the contents of the affidavit and hold that document and transactions recorded therein, in fact, belonged to Satyapal Wassan. If the AO has not done so, it could not be said that the second component of levy of charge has been properly established by him.

The third component in levy of charge is assessment year. The document and/or follow up investigation must establish the period of transaction before charge of income-tax could be levied during the current assessment year. The document is silent on this aspect. It is only post-search investigation and correlation with other documents that could have filled up the gap. Since there is no material on record to indicate in certain terms the period of transaction, it is not possible to infer that the transactions belonged to this year.

The last component is the quantum of income. As stated above, the AO has failed to properly decode the figures mentioned in the document as to whether they are in thousands or in ten thousands or in lakhs and what is the unit of these transactions. The document does not tell anything about this. It could have been done only by way of investigation. It has not been done. Therefore, one cannot infer merely from the face of the document as to what is the total of those transactions and whether they are in rupees or in kilograms or something else. In the absence of such proper decoding and clarification of number/quantity involved, no charge of income-tax can be levied. If the figures in the documents are same these are the quantities then they have to be converted in terms of money. There has to be some basis for conversion. If it is money, then it has to be shown how much it is. The presumption that these figures are in lakhs is simply bald, wild and baseless. We have no option but to infer that the AO has failed to discharge his duties. He drew inferences, made presumptions, relied on surmises and thus made unsustainable additions.

The above discussion also leads us to infer that a charge on the basis of document can be levied only when the document is a speaking one. The document should speak either out of itself or in the company of other material found on investigation and/or in the search. The speaking from the document should be loud, clear and unambiguous in respect of all the four components as described above. If it is not so, then document is only a dumb document. No charge can be levied on the basis of a dumb document.

We also notice that the AO could not establish that the assessee has charged any interest, if at all the impugned figures were advances. There is no material to show that the AO has taxed these advances as wealth of the assessee. There is also no material to show that the assessee has taken any action to recover the money from the alleged debtors. It is not believable that the assessee or his legal heir would forget their money lying with the debtors. By one way or other, he or his legal heir would try to recover the money. The Department has not done anything to find out that after the search in April, 1995. We are also unable to satisfy ourselves as to why the alleged transactions are considered in the asst. yr. 1989-90 when there is no date mentioned on the document. Once search took place in April, 1995, then undated -aper could be presumed to be belonging to

that period and hence, the year of taxability would be asst. yr. 1996-97. Thus, it is merely by surmises that the AO has taxed it in the year 1989-90.

Our view is supported by the decisions of Tribunal in several other cases. In *Bansal Strips (P) Ltd. vs. Asstt. CIT (2006) 100 TTJ (Del) 665 : (2006) 99 ITD 177 (Del)*, the AO has found certain loose papers during the course of search which indicated that certain figures against certain names were written. They were decoded to make the total to Rs. 53,69,260. The assessee submitted before the Tribunal that (i) the impugned seized papers are dumb documents and no addition can be made on their basis in the absence of corroborative materials. No circumstantial evidence in the form of unaccounted cash, jewellery or investment outside the books was found in the search, (ii) The assessee from the very inception denied having any nexus with the seized papers, (iii) The impugned papers did not constitute books of account, (iv) The said papers are unsigned and, therefore, not sufficient to fasten the liability on the assessee. (v) The AO did not carry out any enquiry by summoning the persons named in the seized papers although the assessee has furnished their addresses, (vi) Some of the documents did not specify the year. The Revenue did not discharge the onus lying on them to prove that the documents pertained to the block period. On this basis, the Tribunal held that no addition could be made on the basis of seized papers as material available with the AO is grossly inadequate.

In *Kay Cee Electricals vs. Dy. CIT (2003) 81 TTJ (Del) 734 : (2003) 87 ITD 35 (Del)*, it has been held in para 21 that where seized slips did not contain any amount the same can be treated only as dumb document and on that basis no addition can be made. In the same case, other slips were found along with the cash. The contents of the slips were correlated with the cash found and, therefore, entries in the slips were treated as reflected unaccounted income. Those slips contained details of the amounts having correlation with the cash found from the same almira. The Tribunal held them as speaking documents reflecting undisclosed income. In the present case also, it is not established that document No. 7 contained any amount.

In *D.N Kamani (HUF) vs. Dy. CIT (1999) 65 TTJ (Pat)(TM) 504 : (2000) 241 ITR 85 (Pat)(TM)(AT)*, it was held by the Third Member that where document did not reflect any on-money taken in respect of some other flats sold, then additions on that basis could not be made. It means that recording of receipt of on-money in respect of one flat can result into addition in respect of that flat only and on that basis no further addition could be made in respect of other flats sold by the assessee as the document did not reflect receipt of such on-money in respect of others. To that extent, the document was treated as dumb document.

In *Steel Home vs. Asstt. CIT (1999) 65 TTJ (Del) 393 : (1999) 69 ITD 240 (Del)*, the Tribunal held that where the entries recorded on a document found in the course of the search could not be related to the assessee, then any mentioning of low withdrawals or purchase of plots or the mentioning of stock or the figures of stock could not be added as the assessee's income as they could not be related to the assessee. It shows that it is very important for the AO to find out that the entries and related transactions belonged to the assessee. In our case, where affidavit is filed that entries related to Dharamvir Wassan and not to the assessee, it was incumbent on the AO to carry out necessary enquiries and relate the transactions

with Sri Satyapal Wassan. Since such exercise has not been done, the & document could not be considered in the assessment year in question or even otherwise in the case of the assessee.

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In the case of *Smt. NeenaSyal vs. Asstt. CIT (2000) 69 TTJ (Chd) 516 : (1999) 70 ITD 62 (Chd)*, the decision of Tribunal in the case of *Ashwani Kumar vs. ITO (1991) 42 TTJ (Del) 644 : (1991) 39 ITD 183 (Del)* was referred in which it was held that where documents found at the time of the search did not indicate whether figures referred to in the paper reflect quantities of money or to quantities of goods, the same are only dumb documents and, therefore, no addition could be made on the basis of such documents. It was held in *Neena Syal's case (supra)* that where a document found during the course of search is open to more than one possibility of interpretation and does not prove conclusively that any premium was given by the assessee or received by the seller then no addition could be made in respect of premium paid on purchase of plot. From this decision, it is clear that the document must unmistakably reflect the transaction without having any second interpretation.

In *Elite Developers vs. Dy. CIT (2000) 68 TTJ (Nag) 616 : (2000) 73 ITD 379 (Nag)*, it was held that where seized documents evidencing receipt of on-money by the assessee were not speaking documents as they did not contain any narration or description about different figures noted thereon and Department having failed to bring on record any material or evidence to corroborate allegation regarding receipt of on-money, then presumption on the basis of documents could not be raised.

Similar view was taken by the Tribunal in the cases of *KishanchandSobhrajmal vs. Asstt. CIT (1991) 42 TTJ (Jp) 423 : (1992) 41 ITD 97 (Jp)* and *Agrawal Motors vs. Asstt. CIT (2000) 66 TTJ (Jab) 130 : (1999) 68 ITD 407 (Jab)*.

The crux of these decisions is that a document found during the course of search must be a speaking one and without any second interpretation, must reflect all the details about the transaction of the assessee in the relevant assessment year. Any gap in various components as mentioned in s. 4 of the IT Act must be filled up by the AO through investigations and correlations with other material found either during the course of the search or on investigation. As a result, we hold that document No. 7 is a non-speaking document."

9.11 The Ld. CIT(A) observed that the detailed analysis of the judicial view on whether a particular document is sufficiently descriptive/speaking or dumb has to be applied to the facts of the case under consideration. The Ld. CIT(A) discussed the document found, sized and relied upon by the A.O. to make the impugned additions which are reproduced at page no. 49 to 59 of the impugned order, for the cost of repetition the same are not reproduced herein.

9.12 The Ld. CIT(A) observed that the common feature amongst all the documents was that there was a general specification of location of some property and recording of certain amounts as purchases / sales and resultant figures as profits as well. However no specific dates were recorded on the seized documents neither there was any detail of receipts /payments either in cash or in cheque on a sequential basis. He further observed that recordings were infact a summary of various either estimates or transactions which could have happened, it therefore becomes apparent that apart from seizure of the impugned documents during search no further efforts had been made by the investigation wing to bring on record any corroborative evidence to establish the veracity of such documents and also to establish that transactions as recorded had actually taken place at some point of time and at the given locations. He further observed that even during the course of assessment proceedings, no such efforts had been made by the Assessing Officer as well. However, during the appellate proceedings the A.O. was directed to pursue the matter further and in this regard investigation was directed to be caused to find out from the revenue authorities if the assessee or any of his entities had carried out certain land transactions during the year under consideration or earlier years.

9.13 The Ld. CIT(A) pointed out that the enquiries so caused revealed that there was no such corresponding existence of any of the assessee's entities as buyer or seller during the year under consideration. The transactions that had been recorded in the revenue records also stood reflected in the regular books of account of the assessee as detailed by the A.O. in the remand report which threw up the possibility that the entire set of transactions as indicated / suggested by the impugned seized record could have been carried out by the assessee without going through the process of documentation like agreement to sell or registration deeds. Such a possibility off course could not be ruled out.

9.14 The Ld. CIT(A) further observed that the assessee being in the business of real estate developers would be getting proposals from the market which in turn have to be worked upon in order to have sufficient data to make the decision whether to go ahead with the proposed transaction or not. Therefore the claim of the assessee as made before the A.O. and during the appellate proceedings before him that recordings on the impugned seized documents were just estimates could also be a distinct possibility in view of the peculiar nature of business carried out by the assessee. The Ld. CIT(A) observed that in the above said background that the documents found and seized have to be analyzed and appreciated to see if those document stood on their own without any corroboration to show that certain transactions of purchase / sales of land had taken place or not.

9.15 The Ld. CIT(A) observed that pages at serial no. 25,26,27,28,29 and 30 of Annexure ISB-8 were all interrelated in terms of their impact. The Ld. CIT(A) pointed out that documents at S.No. 25 and 26 records certain transactions pertaining to Hans Nagar and sales thereof and document at S.No. 27 was a summary of funds available on a given date with the assessee on account of different projects and also record below investments in the same from different persons like Shri Aulakh and Shri I.S. Brar etc. He further pointed out that the documents at S.No. 27 talks of sale of Jai Singh Wala to the tune of Rs. 4,67,50,000/- and the same transaction was recorded at page no. 29 in a more descriptive way as followed:

Jai Singh Wala

½ acres @ 15 = 1,27,50,000/-

Back

21-2 @ 16 = 3,40,00,000/-

4,67,50,000/-

9.16 The Ld. CIT(A) also observed that the working on page no. 29 was therefore carried to page no. 27. He also pointed out that the working at page no. 30 with respect to profit was the sale of land at Bir Talab to the tune of Rs. 9.37 lacs & Rs. 9.10 lacs had been recorded which was carried on to page no. 27 and the recording on the lower half portion of page no. 29 in respect of Multania road (Aulakh) had been done wherein investment of Rs. 1,79,53,000/- had been worked out which gets reflected at page no. 27 on the lower half portion, further the sale of Hans Nagar on upper portion of page no. 27 to to the tune of Rs. 1.66 Crore had been recorded which finds mentioned at page no. 25 as well as sale of Hansnagar at the same figure of Rs. 1.66 Crores. Similarly, recording of Rs. 4 Crores on page no. 27 with reference to Hans Nagar on lower portion could also be seen at page no. 26 which shows that the A.O. had been wrong in taking each documents by itself and making addition thereof time and again pertaining to the same transactions. At the same time, the claim of the assessee that the transactions recorded on these papers were mere estimates was also not acceptable because of clear interconnection between recording on the different papers and the specific amounts recorded time and again. According to the Ld. CIT(A) it was quite difficult to reconcile with the claim of the assessee that all the recordings pertaining to different transactions / locations were summarized at one point of time for some financial workings and the same did not represent the record of events actually happened. He therefore held that the similar record at page no. 27 represent the actual state of affairs on the given date which in the absence of anything to the contrary could be taken as the year under consideration. Therefore the amount of Rs. 6,51,97,000/- recorded at page no. 27 could be treated as unaccounted investment of the assessee which takes care of the investment in Hans Nagar and Jai Singh Wala as this level of availability of funds could be said to be enough to take care of the transactions recorded on these seized documents.

9.17 The Ld. CIT(A) categorically stated that the recordings at page no. 28 of the Annexure ISB-8 did not represent the record of transactions which had actually happened as the entire recordings seem to be a proposal wherein even the working was erroneous in terms of calculation, such account of working could be accepted in respect of any proposal by the assessee and therefore no cognizance of the same could be taken in the absence of any corroborative evidence. He further observed that the addition made to the tune of Rs. 35 Crores at page no. 7 of Annexure ISB-11 was not warranted as the recordings on the impugned seized documents did not convey whether it was investment or sales or record of amounts advanced or record of amounts received. The description on the left hand side also did not record any details to make complete picture so as to lead to addition of an amount of Rs. 35 Crores. He was of the view that the documents could be clearly described as dumb document because of the absence of vital features to permit the same to be taken as the basis for an addition. Similar was the case with the figure of 34 written on the same page on the right hand side.

9.18 The Ld. CIT(A) observed that the addition made by the A.O. to the tune of Rs. 1,42,28,500/- on the basis of seized document at page no. 6 was related to the recordings at page no. 7, the same figures had been repeated again. He further observed that the recordings were not descriptive enough to hold independently and even if the same was presumed to be record of payments made by the assessee there is nothing to discount the possibility that same could be part of transactions with respect to other properties which had been held as unaccounted in the earlier portion of the impugned order. According to him there was not enough evidence to warrant an independent addition on the basis of this document. Similar was the case with respect to addition of Rs. 21,00,000/- on the basis of document at serial no. 4 and 5, even otherwise, the availability of unaccounted income to the tune of Rs. 6,51,00,000/- would be sufficient to take into account the possibility of unaccounted expenditure of Rs.

21,00,000/- and Rs. 1,42,00,000/- as recorded on page no. 4 and 6. Accordingly the addition of Rs. 6,51,00,000/- was sustained and the remaining additions were deleted.

10. Now the department is in appeal against the deletion of the various additions mentioned in the grounds of appeal and the assessee is in appeal against the sustenance of the addition of Rs. 6,51,00,000/-.

11. Ld. CIT DR reiterated the observations made by the A.O. and strongly supported the assessment order passed by him. It was further submitted that the document no. 25 & 26 of ISB-8 had description of investment in properties at Hans Nagar, Bhatinda amounting to Rs. 4,87,00,000/- & Rs. 5,66,00,000/- and that the A.O. asked the assessee to submit the source of investment. However, vide letter dt. 11/03/2013 the assessee denied having invested in the said properties and termed the seized paper as dumb documents. But, the A.O. did not accept the submission of the assessee and observed that the assessee had sold total of 8822 square yards at Rs. 2,11,32,800/- in three instances and worked out the profit on sale of land at Rs. 70,17,600/-. Accordingly, addition of Rs. 11,23,17,600/- (Rs. 48700000+Rs. 56600000+Rs. 7017600) was rightly made by the A.O. and the Ld. CIT(A) was not justified in deleting the same. It was further submitted that in the document no. 27 of ISB-8 the description of investment & sale in properties at village Jai Singh Wala was there and the A.O. rightly worked out the unexplained investment at Rs. 7,97,17,000/- on which profit of Rs. 6,51,97,000/- was earned by the assessee therefore the addition of Rs. 14,49,14,000/- was rightly made by the A.O. and the Ld. CIT(A) was not justified in deleting the same.

11.1 It was further stated that he document no. 28 of ISB-8 mentioned the transactions relating to 23155 Sq. Yards of land situated at Lal Singh Basti, Bathinda for which investment of Rs. 3,92,75,215/- was made out of which the land measuring 14566 Sq. Yards was sold for Rs. 3,97,10,800/- by making the

profit of Rs. 1,50,06,864/- therefore the addition of Rs. 5,42,82,079/- (Rs. 3,92,75,215/- + 1,50,06,864/-) was rightly made by the A.O. and the Ld. CIT(A) wrongly deleted the same.

11.2 The Ld. CIT DR stated that the document number 29 of ISB-8 had the description of transactions in two lands measuring 5.5 aca and 21 kanal 2 marla situated at village Jai Singh Wala & Multani Road, Bathinda. Thus the specific figures of investment alongwith area of the land were mentioned on the seized papers therefore the addition on account of unexplained investment of Rs. 4,67,50,000/- & Rs. 7,05,26,000/- alongwith profit of Rs. 1,74,18,265/- totaling of Rs. 13,46,94,265/- was rightly made by the A.O.

11.3 It was further stated that the document no. 30 of ISB-8 mentioned the purchase of land at Bir Talab for consideration of Rs. 1.25 Crore on which profit of Rs. 9,37,000/- was earned by the assessee. Therefore the addition of Rs. 1,34,37,000/- (Rs. 1,25,00,000/- + Rs. 9,37,000/-) was rightly made by the A.O.

11.4 It was further contended that on the back side of the documents no. 5 of ISB-11, details of investment in the properties amounting to Rs. 20,00,000/- was mentioned and the claim of the assessee that it was a dumb document was not accepted by the A.O. therefore the addition of Rs. 20,00,000/- was rightly made and the Ld. CIT(A) wrongly deleted the same.

11.5 It was further contended that the document number 7 of ISB-11 had two parts, one mentioned investment of Rs. 35,00,00,000/-. However the A.O. noticed that there was calculation mistake and the correct value was Rs. 32.5 Crore the A.O. rightly considered that those documents were not dumb documents as the specific figures of investments alongwith area of land and its situation were mentioned therefore the addition of Rs. 32.5 lacs and Rs. 34 lacs was rightly made by the A.O. and Ld. CIT(A) was not justified in deleting the same.

11.6 It was further submitted that documents nos. 6 to 8 of ISB-21 had shown the payment of Rs. 1,42,28,500/- which were specific figure, therefore the addition on account of unexplained payment amounting to Rs. 1,42,28,500/- was rightly made by the A.O.

11.7 It was stated that document no. 4 of ISB-21 had shown payment of Rs. 21,00,000/- to various persons, therefore the A.O. rightly considered that the said document was not a dumb document and made the addition of Rs. 21,00,000/- on account of unexplained payment. The Ld. CIT DR submitted that the Ld. CIT(A) was not justified in confirming the only addition of Rs 6,51,97,000/- instead of the addition made by the A.O. amounting to Rs. 80,63,73,444/-.

11.8 The Ld. CIT DR also furnished the written submissions which are reproduced verbatim as under:

Arguments:

a) The CIT (A) has not appreciated the facts that the additions have been made on the basis of seized documents which are not dumb documents rather they are speaking documents containing meticulous details of various transactions having sufficient description of unaccounted amounts in respect of all the additions made.

b) The CIT (A) has not appreciated the facts that the assessee failed to disclose the source of amounts mentioned in seized documents and also failed to prove the nature of documents seized. The seized documents were confronted to the assessee, however, the assessee gave vague replies to the questions asked. Such vague replies of the assessee are listed below;

> These are only projections.

> The matter is very old and the assessee did not remember any

such land or the person.

> Regarding the amount shown as paid on some seized documents, the assessee replied that the amount might have been required to be paid.

> The figures were only estimates.

> When asked that if does not remember the location of the land and the name of person who made the proposal for sale of land in all the cases mentioned in the seized documents, then he should tell only the names of 3 persons or locations of land for which offers for sale of land was received by him. The assessee replied that the matter is very old and he has not kept any record.

c) The attitude of the assessee had been very non cooperative during the search proceedings, assessment proceedings and during the remand proceedings also.

d) The assessee before the CIT (A) had submitted that additions were made only on the basis of notings in the diary which has not been correlated to any documents found during the course of search. **The diary contains details of unaccounted transactions/investments, how can they be correlated with books of accounts or land revenue records.**

e) The assessee before the CIT (A) had relied upon case law in the case of ACIT vs Satyapal assan (2008) 5 DTR (Jab) 202 (para 32). **This case law is in favour of revenue as the seized documents are speaking ones having specific figures and area of land.**

f) The assessee had referred some other case laws wherein additions have been deleted as the documents seized in those cases were not speaking ones. **However, in the case of the assessee, the seized documents have specific amounts and area, so the case laws referred by the assessee does not apply to this case.**

g) The AO in the remand report has stated that it is the modus operandi of the property dealers that they do not purchase the property by way of registration deed but only by way of power of attorney and the same land is sold on the basis of that power of attorney. Therefore, their names do not appear in the land revenue records. This argument of the assessee was not ruled out by the CIT (A).

h) The statement of the assessee was recorded by the AO during the remand proceedings. Some relevant questions and their answers by the assessee are reproduced as under **(Page 48 to 52 of assessee's Paper Book)**

Q2: Can you tell me the specific land for which the proposal was received and name of person who made the proposal for sale of land?

Ans: I do not remember the person who made the offer.

Q4: If these are projections, how the word "paid" Rs. 4.87/- has been written?

Ans: This can be the amount which might have been required to be paid.

Q9: If the proposal were large in numbers then why only one has been written in this record?

Ans: It is a loose slip and I have not kept any record of the proposals and remaining might have been destroyed as none of the proposals materialized.

The assessee has been getting large numbers of proposals however, strangely none of them materialized.

Q11: On page 26 of this annexure also reveals that amount of Rs. 4.87 Lacs has been invested in Hans Nagar the same amount was written as paid on page 25. Please explain. Ans: It was only proposed investment which did not mature.

The same figures find mention on 2 pages, the assessee still stated that these were only proposals. The assessee was very sure that these were only proposals but did not remember any other details like name of the proposer, time period of receiving the proposals.

Q16: On lower part of page 27 there is noting regarding investment of Rs. 6,29,17,000/- and the names of the persons are also mentioned. Please tell the identification of these entries and persons who invested the amounts.

Ans: The word written is "invest" not invested. Hence the figures written on this page are all the proposals of investment. However no investment has been made by me or my family.....

Q19: At this page the word 1200 sold at Rs. 25,00,000/- is written and below this left land 4308 sq. yd. is written. Please explain this.

Ans: The word sold has been used for the expression to be sold as the notings on this paper is only a proposal which did not materialize.

The assessee at one point is very particular about wording that the word written is 'invest' 'not invested'. On the other hand he stated that word 'sold' is used for 'to be sold' and 'paid' for to 'be paid' (Q4). Moreover, 'sold' or 'to be sold' comes only when the assessee is holding the land, however, he is denying having invested in the properties at the first place, how come he can write 'sold' or 'to be sold' when he is not holding the land. Thus, the statement of the assessee is against human probabilities and therefore, the same is not reliable.

i) The assessee has time and again stated that the entries in the diary were only projections, **however, nowhere words like estimate, proposals, projections etc. are mentioned. Moreover, there are no calculation errors. Even on page no. 27 of ISB-8 specific amounts of profits are written. During the recording of statement the assessee was asked how these profits were calculated, he again gave the same reply that he had been giving to other questions that these were only estimates.**

How can someone estimate profit on land which he has yet not acquired. As per the assessee he was not holding any of the land mentioned in the seized documents. Going by his words that the entries in the seized documents are only proposals, **it can be said that the assessee receives a proposal for purchase of land, at the same time he makes an estimate for sale of the same land and calculates profit (specific figures of Rs. 9,37,000/- and Rs. 9,10,000/- not some estimate like 9 to 10 Lacs) on the transaction and makes note of the profit. This is only possible if assessee can foresee the future. The land deals generally involve**

lots of negotiations, mentioning of specific figures of profit is only possible when the deals have actually taken place.

j) The CIT (A) has analysed the seized documents and concluded that recording at page no. 27 of ISB-8 represents the actual state of affairs. The entries at other pages are concluded in page no. 27. **The CIT (A) failed to appreciate the fact that the AO has been careful in not adding the same amounts twice. The additions have been for all the independent entries.**

k) The CIT (A) has described the entire ISB-11 as dumb document as the recording on the document do not convey whether it is investment or sales or record amounts advanced or received. **This implies that the CIT (A) did agree that the amount mentioned represent sale/investment/payments/receipts. All these are unaccounted transactions and require to be added. It was the duty of the assessee to properly explain the contest of the document. However, despite number of opportunities, the assessee had been non-cooperative. As such the AO has rightfully made the additions.**

l) The CIT (A) vide para 18 of his order has stated that additions made by the AO of Rs. 1,42,28,500/- on the basis of page no. 6 of ISB-21 are related to recordings at page no. 7. The same figures have been repeated again. **The AO has made addition of figures appearing at Page No. 6 only. The repetition of figures at page 7 has not been added. Repetition only proves that the figures are not mere estimates but actual transactions.**

It is prayed that the order of the AO may please be restored.

12. In his rival submissions the Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the assessee furnished the detailed written submission before the Ld. CIT(A) which has been duly discussed by him in para 6 at page nos. 5-11 of the impugned order. The Ld. Counsel for the assessee furnished the brief summary of the submissions made before the Ld.CIT(A) which read as under:

(i) *The document was confronted to the assessee in A.Y.2008-09 which is evident from the reply to the show cause notice submitted during the course of A. Y. 2008-09 ft no show cause notice was issued for A. Y. 2007-08.*

(ii) *The date mentioned on the seized document is 25/2 ft wild guess on the basis it has been adopted as 25.02.2007 despite the fact that the seized document is a page of diary on which the printed date is 26th of October ft the year mentioned is 2007.*

(iii) *The A.O. has interpreted the notings as sale of properties by taking the figures of 4,77,00,000/- & 1,55,00,000/- despite the fact that neither there is mention of word plots against the figure of 4,77,00,000/- & nor there is mention of the word*

plots against any other figure the total of which has been taken at Rs. 1,55,00,000/-.

(iv) The assessee filed an affidavit during the course of assessment proceedings that he did not indulge in any purchase or sale of property.

(v) That the department did not get any sale deed/agreement or any other document relating to unaccounted purchase/sale of property for any assessment year during the course of search & the only seizure from the assessee was of 200 gms of gold at the time of search carried out of 18.02.2011.

(vi) The CIT(A) directed the AO to pursue the matter further in terms of investigating the ramifications of contents of seized documents & the AO was also directed to make enquiries with the land revenue authorities in the geographical locations recorded in the seized document.

(vii) The report of the enquiry by the AO has been discussed in para 7 on page 11 & 12 of the appellate order. The rejoinder by the assessee has been discussed in para 8 on page 12-15 of the appellate order & the crux of the same is as under:-

The word plot has been extrapolated & sale has been presumed on the basis of $3975000 \times 12 = 47700000$ /- & 12 has been interpolated as plots.

(viii) The non application of mind by the AO is apparent from the fact that at the beginning of the remand report it has been stated by the AO that the assessee invested Rs.4,77,00,000/- in the properties but in the assessment order & at the end of the remand report the same has been treated as sale of 12 plots.

(ix) The notings of this document are only projection for converting the land into plots.

(x) That while deciding the appeal the CIT(A) discussed at how a document seized has to be interpreted for the purpose of computing the undisclosed income & has relied on the order of this Hon'ble bench of Gurlal Singh Grewal vs. ACIT dated 29.08.2012. Kindly refer to para 9-11 on page 16 & 17 of the appellate order.

(xi) The CIT(A) has further relied on the order of Jabalpur Bench of the IT AT in the case of ACIT vs. Satyapal Wassan & the detailed findings of the Hon'ble bench have been discussed in para 12-14 of the appellate order.

(xii) According to the Jabalpur Bench of the Hon'ble IT AT the document should speak either of itself or in the company of other material found on investigation and/or in the search & four components have been laid down to put the seized document in the category of speaking document as compared to a dumb document.

- The first component is the nature of transaction that whether it is a purchase/sale, advance or loan, of capital or of interest; whether it is a statement of existing assets, disclosed or undisclosed; what is the commodity involved; who are the people involved in the transaction; if it is advance, then whether debtors concerned are existing, their identity; whether advance so taken is reflected in their books; whether any interest is paid on such transaction, what are the documents executed for recovery of such advances or what arrangement the assessee has done for recovery of such advances; whether there are any other related document found in the search; whether any person recorded in the impugned documents had, otherwise any other transaction with the assessee recorded in the regular books. (PB-20)

- The second component is the person from whose possession the document is recovered.

- The third component is the assessment year to which the income belongs.

- The fourth & last component is quantum of income.

- According to the Jabalpur Bench of the ITAT the speaking from the document should speak either out of itself or in the company of other material found on investigation and/or in the search. The speaking from the document should be loud, clear and unambiguous in respect of all the four components as described above. If it is not so, then the document is only a dumb document. No charge can be levied on the basis of a dumb document. (PB-24)

- The Jabalpur Bench of the ITAT relied on the following Judgements to record the categorical finding that "The crux of these decisions is that a document found during the course of search must be a speaking one and without any second interpretation, must reflect all the details about the transaction of the assessee in the relevant assessment year. Any gap in various components as mentioned in s.4 of the IT Act must be filled up by the AO through investigations and correlations with other material found either during the course of the search or on investigation. As a result, we hold that document No. 7 is a non-speaking document." (PB 27)

(i) *Bansal Strips (P) Ltd. vs. Asstt. CIT* (2006) 100 TTJ (Del) 665: (2006) 99 ITD 177 (Del)

(ii) *Kay Cee Electricals vs. Dy. CIT* (2003) 81 TTJ (Del) 734: (2003) 87 ITD 35 (Del)

(iii) *D.N Kamani (HUF) vs. Dy. CIT* (1999) 65 TTJ (Pat)(TM) 504: (2000) 241 ITR 85 (Pat)(TM)(AT)

(iv) *Steel Home vs. Asstt. CIT* (1999) 65 TTJ (Del) 393: (1999) 69 ITD 240 (Del)

(v) *Smt. Neena Syal vs. Asstt. CIT* (2000) 69 TTJ (Chd) 516: (1999) 70 ITD 62 (Chd)

(vi) *Ashwani Kumar vs. ITO* (1991) 42 TTJ (Del) 644: (1991) 39 ITD 183 (Del)

(vii) *Elite Developers vs. Dy. CIT* (2000) 68 TTJ (Nag) 616: (2000) 73 ITD 379 (Nag)

(viii) *Kishanchand Sobhrajmal Vs. Asstt. CIT(1991) 42 TTJ (JP) 423 : (1992) 41 ITD 97 (JP)*

(ix) *Agrawal Motors vs. Asstt. CIT (2000) 66 TTJ (Jab) 130 : (1999) 68 ITD 407 (Jab)*

• The CIT (A) after discussing the facts & findings of the orders of the different benches of the IT AT held in para 15 that:

(i) There is no mention of the location of the property concern & also the buyers/sellers, the mention of ward no.28 on top of the page has been presumed by the Assessing Officer to be the location where such transactions could have happened. However the perusal of the entire diary reveals that the appellant has recorded at page no.25 of the same diary various wards of the city which apparently means that same have been recorded for carrying out political work in mind and therefore mention of ward no. 28 does not seem to have any connection with regard to transactions recorded therein.

(ii) The document does not have sufficient details to reasonably conclude that assessee would have either purchased or sold certain immovable properties & it is possible that being in the real estate business the above record represents calculations with respect to certain deal available in the market. The CIT(A) has further recorded a finding that the AO has merely simplistic presumptions and nothing has been brought on record to corroborate the possibility of transaction suggested by the impugned seized document. (PB-28)

(iii) That in para 16 on page 28 ft 29 of the appellate order the CIT(A) has further recorded a finding that the AO had been directed to take out information from the land revenue authorities in order to find out if the appellant or any of his family members or business entities has purchased or sold any immovable property in the year under consideration. The enquiries so conducted by the Assessing Officer revealed that no such transaction had been carried out and Specific transaction that have been revealed by the land revenue authorities was found recorded and declared by the assessee. In the circumstances, with extremely limited description recorded on the seized documents, It would be extremely presumptuous to conclude that the assessee had unaccounted income to the tune of Rs.6,77,00,0001 - especially when no unaccounted assets had been found during search operations nor any title papers or agreements to sell/purchase had been found to support such voluminous transactions as concluded by the Assessing Officer. In the circumstances, it would be extremely farfetched to hold the view that the seized document could be made the basis of impugned unaccounted income.

13. The Ld. Counsel for the assessee also furnished a chart in rebuttal of the submission made by the Ld. CIT DR in tabular form which read as under:

Now coming to the arguments of the department raised in submissions filed before the Hon'ble Bench the rebuttal to the same is as under:-

Argument	Rebuttal
<p>a) The CIT (A) has not appreciated the facts that the additions have been made on the basis of seized documents which was also confronted to the assessee while recording his statement for which the assessee gave vague replies to the queries raised and his attitude was not co-operative during the course of assessment proceedings.</p>	<p>This argument of the department that the assessee gave vague replies & his attitude was not cooperative is itself a vague argument because the CIT(A) allowed sufficient opportunities to the department to bring the facts on record & even for making enquiries from the revenue authorities.</p>
<p>b) The assessee before the CIT (A) had submitted that additions were made only on the basis of notings in the diary which has not been correlated to any documents found during the course of search. The diary contains details of unaccounted transactions /investments, how can they be correlated with books of accounts or land revenue records.</p>	<p>The department while raising this argument has ignored the fact that according to the settled principle of law the transactions as recorded in the seize documents or diaries cannot be assessed as undisclosed income even if the assessee has failed to explain the contents of the slip & it was for the revenue to prove on the basis of material on record that the same represented undisclosed investment chargeable to tax u/s 69A transactions of sale or stock in hand before making any addition on this score CIT vs. Ravi kumar [2008] 168 Taxman 150 (P&H)</p>
<p>c) The assessee before the CIT (A) had relied upon case law in the case of ACIT vs. Satyapal Wassan (2008) 5 DTR (Jab) 202 (para 32). This case law is in favour of revenue as the seized documents are speaking ones having specific figures.</p>	<p>The argument of the department is factually wrong because in the case of ACIT vs. Satyapal Wassan (2008) 5 DTR (Jab) 202 it has been categorically held that before making any addition on the basis of seized documents 4 components are required to put a document in the category of speaking document as compare to a dumb document. The very first component is that the department has to prove the nature of transaction that whether it is a purchase/sale, advance or loan, of capital or of interest; whether it is a statement of existing assets, disclosed or undisclosed; what is the commodity involved; who are the people involved in the transaction.</p> <p>In the case before the Hon'ble bench the department has failed to prove that whether the notings on the alleged document are of undisclosed</p>

	<p>investment or sale because there is a contradiction in the remand report of the AO on this issue.</p>
<p>d) The assessee had referred some other case laws wherein additions have been deleted as the documents seized in those cases were not speaking ones. However, in the case of the assessee, the seized documents have specific amounts, so the case laws referred by the assessee does not apply to this case.</p>	<p>According to the department the case law does not apply to the assessee.</p> <p>In the case of CIT vs. Ravi kumar [2008] 168 Taxman 150 (P&H) it has been categorically held that the addition u/s 69A can only be made where the assessee is found to be the owners of the valuable article or thing & such addition cannot be made on the basis of loose slips/diaries.</p> <p>In the case of CIT vs. Atam Valves (P) Ltd. (2009) 184 Taxman 6 (P&H) it has been held that the slip pad itself was not enough to make an addition by estimating the sales.</p> <p>In the case of Gurlal Singh Grewal vs. ACIT dated 29.08.2012 ITA No.1208/Chd/2011 the Chandigarh Bench of the Chandigarh ITAT held that after discovery of the document during survey the revenue should have either obtained further information or should have conducted more enquiries to prove the contents of the document.</p> <p>In the case of Manav Singla vs. DCIT ITA No.229/Chd/2013 the Chandigarh Bench 'B' held that unless there is a corroborative evidence to prove the contents in the diary, the addition cannot be made on account of unexplained investment as per the provisions of section 69B.</p> <p>It has also been held by the Hon'ble Punjab High Court the addition u/s 69A can only be made where the assessee is found to the owner of money, bullion, Jewellery or other valuable article & where the assessee is to be found in possession of loose slips/diary & not of valuable article or things the addition cannot be made u/s 69A.</p>
<p>e) The statement of the assessee was</p>	<p>The argument of the department is</p>

recorded by the AO during the remand proceedings (Para 7, Page 11 to 12). However, the assessee did not give any explanation regarding the entries mentioned in the seized documents. He only stated that the figures were rough estimates. When asked about the number of proposals received by the assessee from FY 2006-07 to 2010-11, he stated that these might be less than 10. When the assessee has received less than 10 proposals in the 5 year, he should have remembered the person and property about which proposals were received, however, he wilfully did not disclose the same.	also vague & it has not been substantiated by any corroborative evidence.
f) The CIT (A) held that for a documents to hold on its own it should be descriptive enough having specific details of property purchased or sold, the buyers or sellers thereof, the specific dates/year in which such transactions have been carried out and other attendant details to establish that the presumed transactions had actually taken place. It is not clear that how the ld. CIT (A) decides these criteria to validity any seized documents for the purpose of making addition or otherwise.	The findings of the CIT(A) are based on the order of Jabalpur Bench of the Hon'ble ITAT in the case of ACIT vs. Satyapal Wassan (2008) 5 DTR (Jab) 202 in which four components have been laid down to prove that the seized document is speaking one as compared to a dumb document & the first component laid down by the Hon'ble Bench of the ITAT provides for bringing all the facts on record to make addition on the basis of seized document.
g) The CIT (A) has analysed the seized documents and concluded that the documents falls short of holding on its own. Therefore, more evidence in the form of investigation should have been collected. However, the more evidence can only be collected when the assessee is co-operative and properly explains the seized documents, which is missing here.	The CIT(A) provided sufficient opportunity to the department to make independent enquiries for bringing on record the evidence to prove that the assessee made any investment which was undisclosed.
h) The CIT (A) has described the word 'Ward No.28' written on top of the seized documents as written for political work and not having any relation to the calculations on the same page. Such stand of the CIT (A) was without any basis or	This argument of the department is contradictory because the firstly the department has failed to prove that the notings in the diary related to any undisclosed investment/sale of property secondly even for discussion sake it is presumed that the property

evidence. 'Ward No.28' might have been the location of plots.	was in ward no.28, the same would have come on record during the course of enquiry made by the AO, at the direction of the CIT(A), from the revenue authorities.
It is prayed that the order of the AO may please be restored.	

13.1 It was further submitted that the page of the diary which was under consideration, the month mentioned was October and the date is 25th and on the top of the Diary the year mentioned is 2007 therefore even the said page of the diary did not relate to the year under consideration and the A.O. presumed

the nothings 25/2 a 25.02.2007 which was factually incorrect. It was contended that no addition could have been made without any corroborated evidence as has been held by the ITAT Chandigarh "B" Bench in the case of Shri Mana Singla Vs. DCIT in ITA No. 229/Chd/2013, for the A.Y. 2006-07 vide order dt. 07/05/2019. It was stated that it had not been denied that the assessee was a director in the real estate company where there were purchase and sale transactions, certain proposals were received in the case of company and certain transactions were noted down in a very rough manner. It was stated that the A.O. made detailed enquiries during the remand proceedings from the " Land Revenue Authorities" which revealed that there was no purchase and sales of immovable property by the assessee or his family members, this fact has been mentioned by the Ld. CIT(A) at page no. 29 of the impugned order.

13.2 Ld. Counsel for the assessee submitted that during the course of search no document in the form of agreement to sell or registered sale deed had been found evidencing in unaccounted purchase / sale of the property. It was further stated that the addition was made by the A.O. only on the basis of notings on some documents which according to the A.O. represented unaccounted investment in immovable property and its profit but the A.O. failed to mention that under which section of the Income Tax Act the additions were made and the same was the position in the impugned order passed by the Ld. CIT(A). It was stated that during the course of first appellate proceedings the A.O. made enquiries from the revenue authorities of Bathinda, the result of the enquiries had been reproduced by the Ld. CIT(A) at page no. 25 of the impugned order which read as under:

"A letter was written on 04.12.2013 to the Sub-Registrar-cum Tehsildar, Bathinda regarding purchase/sale of properties by Sh. Inderjeet Singh Brar and his family members during the period 01.04.2009 to 31.03.2011 in the area of Hans Nagar, Bathinda; Bir Talab, Bathinda; Vill Jai Singh Wala, Bathinda; Lai Singh Basti, Bathinda and Multania Road, Bathinda. A reply was received from him vide letter no. 575 dated 12.12.2013 in which it has been stated that Sh. Inderjeet Singh Brar had sold 35 canals of land in vill. Jai Singh Wala on 05.06.2009. Further Smt.

Jaswinder Kaur W/o Sh. Karnail Singh (mother of Sh. Inderjeet Singh Brar) and also sold land 32 canal 14 Maria in vill. Jai Singh Wala on 05.06.2009. No other property was purchased or sold during the period 01.04.2009 to 31.03.2011 by Sh. Inderjeet Singh Brar or his family members as reported by the Tehsildar, Bathinda as per his letter referred above."

13.3 It was further submitted the A.O. in his remand report stated as under:

"It is the modus-operandi of the property dealers that generally they do not purchase the property by way of registration deed but only by way of power of attorney and the same land is sold on the basis of that power of attorney. Hence their name do not appear in registration deed or in revenue records. Since the assessee has not pin-pointed the properties against which he has stated to be only proposals, he may be asked to explain the above properties so that the verification can be made now or the under signed should be authorized to make such inquiries/verifications, otherwise addition may kindly be confirmed"

13.4 The Ld. Counsel for the assessee submitted that it was a matter of record that neither any Power of Attorney relating to any property, alleged to be mentioned at the location in the seized documents was impounded during the course of search proceedings and during the course of enquiries from revenue authorities by the A.O. no such registered Power of Attorney was reported by the revenue authority and that even if it was to be presumed that there was some Power of Attorney then the name of such Power of Attorney holder was to be mentioned in the sale deed but name of the assessee appeared nowhere. It was pointed out that the Ld. CIT(A) in para 9 on page 37 of the impugned order clearly mentioned that " the search in the case of the appellant was carried out on 18/02/2011 wherein no cash or any valuable except 200 gms of gold has been seized. Further, no documents in the form of agreement to sell or registered sale deed had been found evidencing any unaccounted purchases and sales by the assessee.

13.5 It was stated that all the purchases or sales which were made by the assessee were disclosed to the Department, reference was made to page no. 4

to 10 of the assessee's compilation which are the copies of the purchase and sale made by the assessee for the years 2004-05 to 2010-11. It was contended that apart from those purchases and sales disclosed by the assessee, no other sale or purchase was made. It was stated that the assessee furnished the affidavit dt. 04/03/2013 duly attested by the Notary Public before the A.O. disclosing all the facts and stated that the transactions of the sale and purchase as mentioned at page no. 4 to 10 of the assessee's compilation had been disclosed to the Department, reference was made to page no. 25 and 26 of the assessee's compilation which is the copy of the said affidavit. It was submitted that the addition sustained by the Ld. CIT(A) was not justified and deserves to be deleted. Reliance was placed on the following case laws:

- Assistant Commissioner of Income Tax V/s Satyapal Wassan 5 DTR 202, ITAT, Jabaiipur Bench
- P R Metrani V/s Commissioner of income Tax 287 ITR 209 (SC)
- Gurlal Singh Grewal V/s ACIT, ITA NO.1208/CHD/2011, ITAT Chandigarh Bench, Chandigarh order dt. 29/08/2012
- Commissioner of Income tax V/s Atam Valves (P) Ltd 184 Taxman 6 P&H-HC
- Commissioner of Income Tax V/s Ravi Kumar 294 ITR 78 P&H-HC
- Kantilal Chandulal & Co. V/s Commissioner of Income Tax 136 ITR 889 CAL-HC
- Commissioner of Income Tax V/s Girish Chaudhary 296 ITR 619 DEL-HC
- Atul Kumar Jain V/s Deputy Commissioner of Income tax 64 TTJ 786 DEL
- Satnam Singh Chhabra Vs. Deputy Commissioner of Income Tax 74 TTJ 976 ITAT-LKW
- CIT Vs. Ravi Kumar (2008) 168 Taxman 150 (P&H)
- Manav Singla Vs. DCIT in ITA No. 229/Chd/2013, Chandigarh Bench, Chandigarh order dt. 07/05/2019
- DCIT V/s Harvinder Pal Singla ITA No. 456-458/CHD/2014, ITAT Chandigarh Bench, Chandigarh order dt. 05/01/2016
- DCIT Vs. SNJ Distillers Pvt. Ltd. 87 ITR (Trib) 540(Chennai)
- Picheswar Gadde Vs. ITO, ITAT, Delhi Bench 202 DTR 41 (Del)

14. We have considered the submissions of both the parties and perused the material available on the record. In the present case a search was conducted at the residential premises of the assessee on 18/02/2011, during the course of search no documents in the form of agreement to sell or registered sale deed, evidencing unaccounted purchase / sale of the property by the assessee had been found. However the additions had been made by the A.O. on the basis of notings on some documents / loose papers but in those notings, nowhere name of the assessee was mentioned. According to the assessee those notings were rough estimate by the company in which the assessee was a Director. In the instant case, the A.O. on the directions of the Ld. CIT(A) made the enquiries from the revenue authorities of Bhatinda. The result of those enquiries had been reproduced by the Ld. CIT(A) at page no. 25 of the impugned order wherein it has been mentioned that the Sub Registrar cum Tehsildar Bhatinda, in response to the letter written by the A.O. dt. 04/12/2013 regarding purchase / sale of property by the assessee and his family members during the period from 01/04/2009 to 31/03/2011, replied vide letter no. 575 dt. 12/12/2013 that the assessee had sold 35 Kanal of land in Village Jai Singh Wala on 05/06/2009 and mother of the assessee namely Smt. Jaswinder Kaur W/o Shri Karnail Singh also sold land measuring 32 canal 14 Marla in Village Jai Singh Wala on 05/06/2009 and no other property was purchased or sold during the period 01/04/2009 to 31/03/2011 by the assessee or his family member. In the present case it is noticed that the A.O. in his remand report stated that it is the modus-operandi of the property dealers that generally they do not purchase the property by way of registration deed but only by way of Power of Attorney and the same land is sold on the basis of the said power of attorney, hence their name did not appear in the registered sale deed or in the revenue record. However neither any Power of attorney in the name of the assessee, relating to any property alleged to be mentioned at the location in the seized document was

impounded during the course of search proceedings, nor the revenue authority reported any such instance when the enquiries were made by the A.O. from those authorities and no such sale deeds were found where in the name of the assessee was appearing as power of attorney holder. In the instant case during the course of search no valuable or cash was found or seized except 200 gms of gold and no document in the form of agreement to sell or registered sale deed had been found evidencing any unaccounted purchase / sale by the assessee. This fact has been categorically stated by the Ld. CIT(A) in para 5 at page 37 of the impugned order. Therefore the Ld. CIT(A) was not justified in presuming that certain transactions were carried on by the assessee particularly when he himself admitted that no documents in the form of agreement to sell or registered sale deed had been found evidencing any unaccounted purchase / sale by the assessee.

14.1 On a similar issue the Hon'ble Jurisdictional High Court in the case of CIT Vs. Ravi Kumar [2008] 168 Taxman 150 (P&H) held as under;

" In the instant case, the assessee was found to be in possession of loose slips and not of any valuable articles or things. Neither the possession nor the ownership of any jewellery mentioned in the slips could be proved. In view thereof, the provisions of section 69A had rightly not been applied by the Tribunal to the facts of the instant case. Accordingly, the Tribunal was right in deleting additions made by the Assessing Officer.

The revenue could not point out any illegality on the basis of which the findings recorded by the Tribunal could be said to be perverse. Therefore, the findings recorded by the Tribunal were not perverse."

In the present case also the A.O. made the additions only on the basis of certain documents on which there were some notings but neither the possession nor the ownership of any property mentioned in those loose slips could be proved to be belonging to the assessee, therefore keeping in view the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid case, no addition could have been made in the hands of the assessee.

14.2 On a similar issue the ITAT Chennai Bench in the case of DCIT Vs. SNJ Distillers Pvt. Ltd. 87 ITR (Trib) 540 (Chennai) held as under;

“Statements recorded under various provisions of the Income-tax Act, 1961 are a vital tool in the hands of the income-tax authorities in their thrust to establish certain factual and legal positions. Admission is an extremely important piece of evidence and it is admissible against its makers, but a statement recorded during the course of search or survey is an important piece of evidence if it is supported by corroborative evidence. If the contents recorded in the statement are not supported by corroborative evidence, solely on the basis of the statement recorded during the course of search no adverse inference can be drawn against the assessee. more particularly when the statement has been retracted with a sworn affidavit on the ground that it was given under mental pressure and disturbed state of mind. It is a well-settled principle of law that admission is an extremely important piece of evidence, but it is open to the person who made the admission to show that it is incorrect.”

It has further been held that

“the addition made by the Assessing Officer towards unaccounted cash receipts from vendors and suppliers was solely on the basis of the scribbling pad found during the course of search coupled with the statement recorded during the course of search from B, cashier/accountant, S, purchase manager and J, the managing director of the assessee. Except those documents, the Assessing Officer had not brought on record any other evidence to support the additions made towards unaccounted cash receipts as undisclosed income of the assessee.”

It has also been held that

“The Assessing Officer had not made any attempt to corroborate the entries mentioned in the scribbling pad to the names and address of suppliers and vendors. In the absence of any specific reference to the source of cash receipt and from whom cash had been received and the nature of expenditure for which cash had been paid and the persons to whom said cash had been paid, it was very difficult to accept the contents of the scribbling pad as undisclosed income of the assessee outside the books of account. The Department had failed to bring on record any cogent evidence to prove conclusively that the notings in the seized papers referred to the unaccounted cash receipts of the assessee.”

14.3 Similarly the ITAT Delhi 'F' Bench in the case of Picheswar Gadde Vs. ITO, ITAT 202 DTR 41 (supra) held as under:

"It appears that the, entire additions have been made on the presumption that provisions of s. 292C clearly apply on the facts of the case. The additions made merely on presumption under s. 132(4A)/292C cannot be sustained as the presumption has to be backed by direct and corroborative evidence that the notings have materialized into income or unexplained income/unexplained expenditure. A perusal of the assessment order and that of the first appellate authority clearly shows that there is no corroborative / demonstrative evidence to justify the additions so made."

It has further been held that

" No dates have been mentioned in the impugned entries which are basis of the additions. When no dates have been mentioned, then the AO could not come to the conclusion that the document pertains to asst. yr. 2008-09. Considering these facts in totality the additions made by the AO are without any corroborative evidence brought on record, therefore, there is no hesitation in deleting the addition."

14.4 In the present case also there were certain notings on various documents / loose papers found during the course of search which are placed at page no. 49 to 59 of the impugned order, the word used in some of those documents was invest not the investment which is apparent from the aforesaid pages reproduced by the Ld. CIT(A) in the impugned order. So there is no force in this contention of the Ld. Counsel for the Assessee that those were the proposals to invest and no investment was actually made, this fact has categorically been mentioned by the Ld. CIT(A) in the impugned order at page no. 25 wherein the Ld. CIT(A) had mentioned that a letter was written on 04/12/2013 to the Sub Registrar cum Tehsildar, Bhatinda regarding purchase and sale of property by the assessee and his family members, in the reply dt. 12/12/2013 to the said letter, it had been stated that the assessee had sold 35 Kanal of land in village Jai Singh Wala on 05/06/2009 and his mother Smt. Jasvinder also sold land measuring 32 kanal 14 Marlas in Village Jai Singh Wala on 05/06/2009, those transactions were also disclosed by the assessee which is clear from the details of the purchase and sale placed at page no. 9 of the assessee's compilation.

14.5 In the instant case nothing is brought on record to substantiate that the notings in the loose papers which are claimed to be proposal only, materialized any time. The Ld. CIT(A) categorically stated at the end of the para 17 of page no. 63 of the impugned order that the documents could be clearly described as dumb document because of the absence of vital feature to permit the same to be taken as the basis for an addition. He also categorically stated that the same figures had been repeated again and again, the recording were not descriptive enough to hold independently and even if the same was presumed to be record of payments made by the assessee, there was nothing to discount the possibility that the same could be part of transaction with respect to other properties which have been held as unaccounted.

14.6 In the instant case neither the dates pertaining and relevant to the year under consideration were mentioned on the loose papers / documents found during the course of search nor the notings were backed by direct or corroborative evidence that the notings have materialized into sale / purchase of property or there was any agreement to sell, which clearly shows that there was no corroborative / demonstrative evidence to justify the additions so made / sustained.

14.7 Therefore by considering the totality of the facts of the present case and in view of the various judicial pronouncements made in the aforesaid referred to cases, in our opinion, the Ld. CIT(A) was not justified in holding that the summary recorded at page no. 27 represented the actual set of affairs on the given dates which in the absence of anything to the contrary could be taken as year under consideration and therefore the amount of Rs. 6,51,97,000/- recorded at page no. 27 could be treated as unaccounted investment of the assessee. The said document has been reproduced by the Ld. CIT(A) at page no. 51 of the impugned order. However nowhere it has been mentioned that those were the properties owned by the assessee and it is an admitted fact that no agreement

to sell or sale deed having the name of the assessee was found during the course of search. We therefore considering the totality of the facts are of the view that the addition sustained by the Ld. CIT(A) amounting to Rs. 6,51,97,000/- was not justified as the same was made by the A.O. only on the basis of presumption. Accordingly the aforesaid addition sustained by the Ld. CIT(A) is deleted.

15. In ITA No. 455/Chd/2014 for the A.Y. 2007-08 i.e; the appeal by the Department wherein following grounds have been raised:

1(a). That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.6.32 crore made on account of undisclosed income of the assessee.

1(b). That the Ld. CIT(A) has erred in law and on facts in not appreciating the facts mentioned in the assessment order as well as in the remand report.

1(c) That the Ld. CIT(A) has erred in law and on facts in not appreciating the facts that the seized document was not dumb document rather this was speaking document containing meticulous detail of various transactions having sufficient description of unaccounted amounts.

1(d) That the Ld. CIT(A) has erred in law and on facts in not appreciating the fact that the addition was made on the basis of seized document which was also confronted to the assessee while recording his statement for which the assessee gave vague replies to the queries raised and his attitude was not co-operative during the course of assessment proceedings. He failed to disclose the source of amounts in the seized document and nature of document.

2. The Appellant craves leave to add or amend the grounds of appeal on or before the appeal is heard and disposed off.

3. It is prayed that the order of the Commissioner of Income Tax (Appeals), be set-aside and that of the AO be restored .

15.1 From the aforesaid grounds it would be clear that the issues raised by the Department are similar as were involved in ITA No. 454/Chd/2014 for the A.Y. 2011-12, facts are identical and even the rival contentions were the same, the only difference is in the amount of the deletion of addition made by the A.O therefore, our findings given in the former part of this order relating to the A.Y.

2011-12 in ITA No. 454/Chd/2014 and 461/Chd/2014, shall apply mutatis mutandis . Accordingly, we do not see any merit in this appeal of the Department.

16. In the result, appeals of the Department are dismissed and the appeal of the assessee is allowed.

(Order pronounced in the open Court on 21/10/2021)

Sd/-

आर.एल. नेगी

(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

AG

Date: 21/10/2021

Sd/-

एन.के.सैनी,

(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File