

**THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'G', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 1477/Del/2020 : Asstt. Year: 2016-17

DCIT, Central Circle-29, New Delhi-110055	Vs.	Sukhbir Shokeen, A-99, Chhawla, Post Office, New Delhi-110071
(APPELLANT)		(RESPONDENT)
PAN No. ARJPS7497R		

Assessee by : Sh. Karan Kumra, Adv.

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 27.02.2023

Date of Pronouncement: 23.05.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-30, New Delhi dated 09.03.2020.

2. The Revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Ld.CIT(A) has not appreciated the facts and erred in law that the assessee did not cooperate during the assessment proceedings for which he was asked specifically to provide details of all his bank accounts but he failed to do so. When enquiry letters were sent on the bank accounts disclosed by the Investigation Wing, many other bank accounts came to the notice.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has not appreciated the facts and erred in law that inspite of being provided sufficient

opportunities, the assessee did not explain the debit/credit entries appearing in his bank account.

3. On the facts and in the circumstances of the case, the Ld.CIT(A) has not appreciated the facts and erred in law that the assessee was asked to submitted the details of debit/credit entries of his bank account from the very beginning through detailed questionnaires.

4. On the facts and in the circumstances of the case, the assessee himself accepted that he does not maintain regular books of accounts.

5. On the facts and in the circumstances of the case, the Ld.CIT(A) has not provided opportunity to the AO and no remand report u/s 46A of the Act has been called for from the AO in this case so as to counter the new evidences, if any filed by the assessee before the Ld. CIT(A).

6. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the facts and erred in law that on the issue of addition of Rs. 4,59,50,000/- on account of unexplained investment no evidence was filed before the AO during the assessment proceedings in the form of identity, creditworthiness of the lender.”

3. The brief facts of the case are that the assessee filed return of income declaring income at Rs. 10,65,080/-. A search and seizure action u/s 132 of the Act, was carried out on 13.12.2016 at the premises of the appellant. The assessee is engaged in sale and purchase of properties as a broker and deals in real estate and agricultural land. While explaining the substantial cash credits in his bank accounts, the appellant has submitted that he mostly acted as a broker for trading in agricultural land. The appellant also traded in agricultural land and submitted that his family owns ancestral agricultural land approximately 20 acres in Village Chhawla.

4. The A.O. has noted that during the year under consideration, the appellant has been engaged in plotting and sale of this land to different parties. During the A.Y. 2016-17, the A.O. noted that there were substantial credits including the cash deposits in his different bank accounts and that the assessee has not been able to explain how the income figure for different assessment years has been worked out.
5. The income declared by the appellant in the A.Y. 2016-17 was not accepted and the A.O. concluded that the assessee being a broker in real estate business and having no other substantial source of income than the real estate business, the credits in the bank accounts represent the gross receipts of the assessee.
6. Thus, the income of the appellant has been computed by the A.O. at the rate of 8% of the total receipts/credits of Rs.11,08,41,059/-, u/s 44AD of the Act at Rs.88,67,284/-. Since, the appellant has already declared his return of income at Rs.10,65,080/-, for the year under consideration, the difference of Rs.78,02,204/- (11,08,41,059 - 10,65,080) is added by the Assessing Officer in the returned income of the appellant.
7. Further, during the assessment proceedings, the AO sought explanation regarding purchase of property by the appellant. The appellant was asked to submit all the documentary evidences with regard to the investment in property amounting to Rs. 4,59,50,000/-. The AO noted that the explanation in this regard filed by the appellant was not acceptable and added the amount of Rs. 4,59,50,000/- on account of unexplained investment u/s 69 of the Act.

8. Aggrieved by the order of the AO, the assessee filed appeal before the Id. CIT(A) who deleted the addition which led to filing of the appeal before us by the revenue.

9. **Excerpts from the Assessment Order:**

"2. Information was received in this case about huge amount of cash in possession of Sh. Sukhbir Shokeen at his residence A-71, Pachhiya Mohalla, Chawla, Delhi 71. Accordingly, warrant u/s 132 of the Act as issued in respect of the above premise. During the course of search proceedings u/s 132 of the Act on 13.12.2016, cash seizure of Rs. 64,84,000/- (including new currency of Rs. 11.32 lacs) was made. Sh. Sukhbir Shokeen in his statement stated that the above mentioned cash was his unaccounted income of commission/brokerage received from the real estate business during the F.Y. 2016-17. He further stated that this unaccounted income has been generated in the form of commission received from the sale/purchase, mutation, lease deed, rent agreements and this was received by him from different parties in the form of cash. He further stated that he does not remember names of those parties from whom he has received the commission income in cash and does not keep any record of sale/purchase, mutation, lease deed and rent agreements. His statements were recorded u/s 132(4) of the Act on 13.12.2016 & 11.02.2017 and on 31.05.2017 u/s 131(1A) of the Act.

Statement of the assessee was also recorded before the undersigned during assessment proceedings on 24.12.2018. The above statements recorded during the search and post search proceedings were confronted to the assessee.

3. A notice u/s 153A of the Act was issued on 14-12-2017 and served on the assessee requesting to file his return of income within 15 days of the receipt of notice. In response to the statutory notice u/s 153A of the Act, the assessee filed his return of the income on 29-11-2018 declaring total taxable income of Rs. 10,65,080/-. Notice u/s 143(2) of the Act was issued on 07-12-2018 fixing the case for hearing on 13-12-2018, which was duly served upon the assessee through speed post. Notices u/s 142(1) of the Act alongwith detailed questionnaires was issued on 24-07-2018, 16-10-2018, and 26.12.2018 which were duly served on the assessee through speed post and AR of the assessee. In response thereto, Sh. Karan Kumra, of Kumra Bhatia & Co. represented the case before this office as authorized by the assessee and filed necessary details/information/documents, etc. as required.

4. During the year under consideration, the assessee is engaged in the sale and purchase of properties as a broker and deals in real estate and agricultural land. On perusal of the findings of the Investigation Wing, submission/details filed by the assessee and enquiries conducted u/s 133(6) of the Act, the following issues have emerged.

5. Enquiries u/s 133(6) of the Act and information relating to the bank accounts in assessee's name/joint name.

5.1 During the post search as well as assessment proceedings, the assessee has admitted that he has not been maintaining regular books of accounts. Enquiries in the form of issuance of notices u/s 133(6) of the I.T. Act to the concerned bank branches were conducted and information relating to the bank statements of the assessee in his name/joint name were obtained. On

perusal of these bank statements, it has been observed that there are substantial credit and debit entries in these bank accounts.

5.2 During assessment proceedings, vide this office questionnaire dated 26.12.2018, the assessee has been asked to explain these entries and provide narration of these entries. The AR of the assessee submitted that since regular books of accounts have not been maintained by the assessee over the years under consideration, it is not possible for the assessee to recall these entries.

5.3 The assessee is engaged in the sale and purchase of properties as a broker and deals in real estate and agricultural land. While explaining the substantial cash credits in his above mentioned bank accounts, he has submitted that the assessee mostly acts as a broker for trading in agricultural land. The assessee also trades in agricultural land himself and submitted that his family owns ancestral agricultural land approximately 20 acres in Village Chhawla. On perusal of the documents submitted by the assessee, it is seen that during the years under consideration, the assessee has been actively engaged in plotting and sale of this land to different parties. During A.Y. 2016-17, there are substantial credits (including the cash deposits) in his different bank accounts and the assessee has not been able to explain how the income figure for different assessment years has been worked out in absence of any regular books of accounts maintained by him.

6. Special provision for computing profits and gains of business on presumptive basis.

6.1 44AD of the Act states as under:

(1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession":

Provided that this sub-section shall have effect as if for the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.]

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years."

A search and seizure operation u/s 132 of the Act was carried out on the assessee on 13.12.2016 and cash of Rs. 64.84 lacs was found at his residence. The assessee during the course of statement recorded on oath u/s 132(4) of the Act admitted this amount to be his unaccounted income from real estate business. Later, he declared 100% of this amount for taxation u/s 44AD in his return of income filed for A.Y. 2017-18.

6.3 The above discussion implies that consequent upon the search on the assessee and seizure of unaccounted cash of Rs. 64.84 lacs, the assessee declared income from business or profession amounting to Rs. 71,73,450/- u/s 44AD. This amount of Rs. 71,73,450/- includes 100% of the cash seized

during search and offered the same as his unaccounted income while filing his return of income for A.Y. 2017-18. In the preceding years as well as the instant A.Y. 2016-17, the income declared are low as compared to the income declared in A.Y. 2017-18 consequent to the search. Thus, it is apparent that the assessee was having substantially higher income over the different assessment years under consideration. Therefore, income declared by assessee w.e.f. A.Y. 2011-12 to 2016-17 are not acceptable and are re-worked out. The following credits have been observed in different bank accounts of the assessee in his name/joint name during the years under consideration.

A.Y.	Total credits	Cash deposits
2011-12	1,02,28,513/-	82,00,000/ -
2012-13	91,01,238/-	36,08,000/-
2013-14	16,10,31,054/-	78,90,000/-
2014-15	3,04,57,655/ -	40,01,000/-
2015-16	18,53,.63,522/-	35,73,000/-
2016-17	15,67,91,059/- 4,59,50,000/- separately investment properties)	(less Rs. 13,50,000/- considered as unexplained for purchase of
2017-18	5,85,20,118/-	32,00,000/-

6.4 The assessee being a broker in real estate business and having no other substantial source of income than the real estate business, these credits represents the receipts of the assessee from real estate business. The income of the assessee has been worked out as eight percent of the above receipts during the relevant financial year u/s 44AD of the I T Act. As per the table above, the gross receipts during the relevant assessment years are Rs. 11,08,41,059/-. Therefore, income of the assessee is calculated at Rs. 88,67,284/- @8% of gross receipts as per the discussion made above.

Further, for the relevant assessment year, the assessee has declared taxable income of Rs. 10,65,080/- in his return of income filed. Therefore, after deducting this amount from the income worked out above, the balance figure of Rs. 78,02,204/- is added to the returned income of the assessee.

(Addition Rs. 78,02,204/-)

7. Issue of property purchase by Sh. Sukhbir Shokeen

7.1 During the course of survey proceedings u/s 133A of the Act at Rangpuri, Delhi at the office premise of M/s Shokeen Real Estate Pvt. Ltd., Annexure A-1 to A-5 were impounded. These annexures contain sale deed/sale and purchase agreements registered at sub-registrar office. Page 36 to 43, 48 to 55, 56 to 63 and 64 to 71 are related to the purchase of agricultural land by Sh. Sukhbir Shokeen as per following details:-

Annexure	Description of the land	Seller	Buyer	Date of sale deed executed	Total consideration price
A-1 (loose papers) Page No 36 to 43	1.164 acre village Dhansa Delhi	Smt. Premwati	Sh. Sukhbir Shokeen	27.08.2015	6200000
A-3 (loose papers) 48 to 55	1.375 acre Vill Dhansa, Delhi	Sh. Kailash Gahlot	Sh. Sukhbir Shokeen	02.11.2015	7500000
56 to 63	2.7604 acre Vill Dhansa, Delhi	Sh. Harish Gahlot	Sh. Sukhbir Shokeen	27.08.2015	14650000
64 to 71	3.315 acre Vill Dhansa, Delhi	Smt. Sudesh Gahlot	Sh. Sukhbir Shokeen	27.08.2015	17600000

7.3 The assessee vide his submissions dated 18.12.2018, submitted that he had purchased lands in village Dhansa, New Delhi during F.Y. 2015-16. The

sources of payment have been stated to be advance of Rs. 1,00,00,000/- from Mr. Vikram Burman received in assessee's SBI a/c, advance of Rs. 1,00,00,000/- from Ms. Asha Singla received in assessee's HDFC Bank a/c and Rs. 75,00,000/- received in assessee's HDFC Bank a/c, Rs. 25,00,000/- from Sh. Sunil Kumar Sehrawat received in assessee's HDFC a/c. Further, amounts of Rs. 1,00,00,000/- and Rs. 25,00,000/- have been transferred from assessee's own a/c in SBI to assessee's a/c in HDFC Bank.

7.4 As discussed above, additions @8% of the gross receipts in the form of credits entries in his different bank accounts is also being made, therefore the above mentioned amounts paid by the assessee from his bank accounts for the purchase of properties have been excluded from the gross credits entries considered for calculating the income of the assessee @8% u/s 44AD of the Act. In view of the discussion made above, the payments made by the assessee for the purchase of above properties have remained unexplained and are added to the income of the assessee u/s 69 of the Act for A.Y. 2016-17.

(Addition Rs. 4,59,50,000/-)"

10. Before us, the Id. AR supported the order of the Id. CIT(A) whereas the Id. DR supported the order of the Assessing Officer.
11. Heard the arguments of both the parties and perused the material available on record.
12. We find that the Id. CIT(A) deleted the addition holding that the assessee was issued questionnaire on 26.12.2018 and the assessment has been completed on 30.12.2018 and there is absolute lack of time

given to the assessee to explain the transactions of the entire period u/s 153A. The Id. CIT(A) held that the provisions of section 44AD are clear and unambiguous. Section 44AD (6)(ii) clearly provides that the provisions of this section do not apply to a person who earns income in the nature of commission or brokerage. As the appellant only earns income in the nature of commission or brokerage consistently across the years, the provisions of section 44AD cannot be applied to the facts of the appellant. The Id. CIT(A) has also held that on law the explanation B to section 44AD provides for a monetary limit of gross receipts/ turnover for application of deemed profit of 8%. A perusal of the assessment order also shows that the turnover computed for the subject assessment year (Rs.11,08,41,059) also breaches the threshold as per explanation B of section 44AD (Rs. 2,00,00,000). Thus, the application of section 44AD is not correct. The Id. CIT(A) held that no evidence has been brought on record by the Assessing Officer to attract provisions of section 44AD to all credits of the appellant's bank statements. In the absence of any such basis or reasoning, it was held that the application of section 44AD to the facts of the appellant's case is not proper. In the absence of any material contra, we decline to interfere with the adjudication of the Id. CIT(A) on the issue of invocation of the provisions of Section 44AD of the Income Tax Act, 1961.

13. With regard to the addition of Rs.4.59 Cr., the details of the fund flow till the date of payment for all the four properties is as under:

Date		Dr. Amt	Cr. Amt	Balance	
	Opening Balance			10,86,832.93	

07.04.2015	DEP TFR 04430PAYMENT SYSTEM		1,00,00,000.00	1,10,86,832.93	Advance for property JSB Auto
10.04.2015	CHQ DEP 04328 CCPC (CTS) NEW YES		1,00,00,000.00	2,10,86,832.93	Advance for property JSB Auto
13.04.2015	CAS CHQ XFER WD 11361 EPFO Sector23 CA Multicity Cheque TRF TRFto 0030156153398	2,00,00,056.00		10,86,776.93	Refund of advance Ashok Dusat taken on 31.03.2015
20.04.2015	CAS PRES CHQ 04328 CCPC (CTS) NEW CA Multicity Cheque HDF Delhi	1,61,359.00		9,25,417.93	Loan Installment
24.04.2015	HDBDEBIT PDC11361 EPFO Sector-23 SIGN.VERF.	102.00		9,25,315.93	Bank Charges
07.05.2015	DEBIT 04328 CCPC (CTS) NEW ECSDebitHDFC Bank	1,61,359.00		7,63,956.93	Loan Installment
14.05.2015	CAS PRES CHQ 04328 CCPC (CTS) NEW CA Multicity Cheque	7,00,000.00		63,956.93	Salary and expenses
14.05.2015	CSH DEP 11361 EPFO SECTOR-23 CASH DEPOSIT SELF		5,00,000.00	5,63,956.93	
09.06.2015	DEBIT 04328 CCPC (CTS) NEW ECS Debit HDFC Bank LI	1,61,359.00		4,02,597.93	Loan Installment
20.06.2015	CAS PRES CHQ 04328 CCPC (CTS) NEW CA Multicity Cheque	5,240.00		3,97,357.93	Accounting Charges
23.06.2015	DEP TFR 04430 PAYMENT SYSTEM RTGS HDFCR52015062364 764 592 J S B AUTO P STATE BANK OF INDIA TRF FR 3199856044300 RTGS 592 J S B AUTO P STATE BANK OF INDIA HDFCR52015062364 764		25,00,000.00	28,97,357.93	Advance for property JSB Auto

23.06.2015	DEP TFR 04430 PAYMENT SYSTEM RTGS YESBR52015062300 003 849 J S B AUTO P STATE BANK OF INDIA TRF FR 3199859044307 RTGS YESBR52015062300 003 849 J S B AUTO P STATE BANK OF INDIA		25,00,000.00	53,97,357.93	Advance for property JSB Auto
24.06.2015	CHQ DEP 04328 CCPC(CTS) NEW YES		25,00,000.00	78,97,357.93	Contra
24.06.2015	CHQ DEP 04328 CCPC(CTS) NEW YES		25,00,000.00	1,03,97,357.93	Contra
24.06.2015	OUT-CHQ Return 04328 CCPC (CTS) New 01 Funds Insufficient	25,00,000.00		78,97,357.93	Contra
24.06.2015	FID Loans	228.00		78,97,129.93	Bank Charges
24.06.2015	OUT-CHQ Return 04328 CCPC (CTS) New 02Exceeds Arrangement	25,00,000.00		53,97,129.93	Contra
24.06.2015	FID Loans	228.00		53,96,901.93	Bank Charges
02.07.2015	DEP TFR 04430PAYMENT SYSTEM RGS PUNBR52015070210 012 051 VIKRAM BURMA STATE BANK OF INDIA TRF FR 3199855044301 RTGS PUNBR52015070210 012 051 VIKRMA BURMA STATE BANK OF INDIA		2,30,00,000.00	2,83,96,901.93	Advance for property Vikram Burman
03.07.2015	CAS PRES CHQ 04328 CCPC (CTS) NEW CA Multicity Cheque PNB Sarika Malu	5,00,000.00		2,78,96,901.93	Payment of advance refunded on 15.06.2016
07.07.2015	DEBIT 04328 CCPC (CTS) NEW ECS Debit HDFC Bank Ltd.	1,61,359.00		2,77,35,542.93	Loan Installment

07.07.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR5201507071 7256862 Sunil Kumar State Bank of India	2,02,00,056.00		75,35,486.93	Advance given Sunil
09.07.2015	CHQ DEP 04328 CCPC (CTS) NEW PNB		1,00,00,000.00	1,75,35,486.93	Advance for property Vikram Burman
15.07.2015	CAS PRES CHQ 04328 CCPC (CTS) NEW CA Multicity Cheque	4,180.00		1,75,31,306.93	Accounting Charges
20.07.2015	CAS PRES CHQ 04328 CCPC (CTS) NEW CA Multicity Cheque KBL Jasbir and ASS	58,353.00		1,74,72,953.93	Accounting Charges
24.07.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR5201507241 7933436 Sudesh Gahlo State Bank of India	35,00,056.00		1,39,72,897.93	Purchase of Property 2
24.07.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR5201507241 7933705 Harish Gahlo State Bank of India	35,00,056.00		1,04,72,841.93	Purchase of Property 3
24.07.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR5201507241 7933965 Prem Wati State Bank of India	30,00,056.00		74,72,785.93	Purchase of Property 4
27.07.2015	CHQ DEP 04328 CCPC (CTS) NEW BOB		9,00,000.00	83,72,785.93	Advance for property Hari Om Rana
27.07.2015	CHQ DEP 04328 CCPC (CTS) NEW HDF		7,00,000.00	90,72,785.93	Advance for property Ved Prakash Rana
27.07.2015	CHQ DEP 04328 CCPC (CTS) NEW INB		9,00,000.00	99,72,785.93	Advance for property Raj Pal Singh

27.07.2015	CHQ DEP 04328 CCPC (CTS) NEW BOB		9,00,000.00	1,08,72,785.93	Advance for property Ved Prakash Rana
07.08.2015	DEBIT 04328 CCPC (CTS) NEW ECS Debit HDFC Bank LI	1,61,359.00		1,07,11,426.93	Loan Installment
24.08.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR5201508241 9131880 Stock Holdin State Bank of India	8,79,056.00		98,32,370.93	Payment of stamp duty Property 2
26.08.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque DD Issue	1,125.00		98,31,245.93	Payment of stamp duty Property 2
26.08.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque DD Issue	1,125.00		98,30,120.93	Payment of stamp duty Property 2
26.08.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque DD Issue	1,125.00		98,28,995.93	Payment of stamp duty Property 2
26.08.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque DD Issue	62,411.00		97,66,584.93	Payment of stamp duty Property 2
26.08.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque DD Issue	1,76,804.00		95,89,780.93	Payment of stamp duty Property 3
26.08.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque DD Issue	1,47,186.00		94,42,594.93	Payment of TDS - Property 2
28.08.2015	DEP TFR 04430 PAYMENT SYSTEM RTGS YESBR5201508280 0007095 SWEDE AUTO P STATE BANK OF INDIA TRF FR 3199859044307 RTGS YESBR5201508280 0007095 SWEDE AUTO P STATE BANK OF INDIA		75,00,000.00	1,69,42,594.93	Advance for property Swede Auto

29.08.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR5201508291 9359672 Sukhbir Singh State Bank of India	1,00,00,056.00		69,42,538.93	Own account transfer
08.09.2015	DEBIT 04328 CCPC (CTS) NEW ECS Debit HDFC Bank LI	1,61,359.00		67,81,179.93	Loan Installment
21.09.2015	CAS PRES CHQ 04328 CCPC (CTS) NEW CA Multicity Cheque	6,270.00		67,74,909.93	Accounting Charges
07.10.2015	DEBIT 04328 CCPC (CTS) NEW ECS Debit HDFC Bank LI	1,61,359.00		66,13,550.93	Loan Installment
23.10.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR5201510232 1447575 Stock Holding Corp State Bank of India	4,50,031.00		61,63,519.93	Payment of stamp duty Property 1
23.10.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR51529668169 0 Stock Holding Corp State Bank of India	1,119.50		61,62,400.43	Payment of stamp duty Property 1
23.10.2015	REMT THRU CHQ 11361 EPFO Sector- 23 CA Multicity Cheque RTGS SBINR51529668344 9 Stock Holding Corp State Bank of India	75,128.00		60,87,272.43	Payment of stamp duty Property 1
Date		Dr. Amt	Cr. Amt	Balance	
	Opening Balance			19,37,000.00	
15.04.2015	FT-DR- 03381530002362 - Ram Karan Rana	5,00,000.00		14,37,000.00	Advance Given Ram Karan Rana
18.04.2015	RTGS CRUTIB0000096 - ASHA SINGLA-SUKHBIR SHOKEEN- UTIBR52015041800 034884		1,00,00,000.00	1,14,37,000.00	Refund of advance Asha Singla

18.04.2015	RTGS CRUTIB0000096 - ASHA SINGLA-SUKHBIR SHOKEEN- UTIBR52015041800 034824		1,00,00,000.00	2,14,37,000.00	Refund of advance Asha Singla
22.04.2015	FT-CR- 03381530002362- RAM KARAN RANA		5,00,000.00	2,19,37,000.00	Refund of advance Ram Karan Rana
22.04.2015	RTGS CRUTIB0000096 - ASHA SINGLA-SUKHBIR SHOKEEN- UTIBR52015042200 023332		2,00,00,000.00	4,19,37,000.00	Refund of advance Asha Singla
08.05.2015	RTGS DR- SCBL0036086- Jagdish Yadav- Dwarka II- HDFCR52015050862 971654	2,00,00,000.00		2,19,37,000.00	Repayment of advance taken from Jagdish Yadav on 24.03.2015
11.05.2015	RTGS DR- CORP0000888- Stock Holding Corporation of India-Dwarka IIHDFCR520150 51163 022213	11,49,600.00		2,07,87,400.00	Payment of stamp duty Property 5
11.05.2015	CHQ No. - 000068, AMT. - 19352800 Dwarka II - 092412011330 - 0000000000	1,100.00		2,07,86,300.00	Payment of stamp duty Property 5
11.05.2015	CHQ No. - 000068. AMT. - 19352800 Dwarka II - 092412011328 - 0000000068	1,91,60,000.00		16,26,300.00	Purchase of Property 5
11.05.2015	CHQ No. - 000068. AMT. - 19352800 Dwarka II - 092412011329 - 0000000000	1,91,700.00		14,34,600.00	Payment of stamp duty Property 5
22.06.2015	RTGS CR- UTIB0000147- Asha Singla-Sukhbir Shokeen - UTIBR52015062200 059385		1,00,00,000.00	1,14,34,600.00	Refund of advance Asha Singla
29.08.2015	FT-DR- 02731530003604 - Harish Gahlot	55,75,000.00		58,59,600.00	Purchase of Property 2
29.08.2015	FT-DR- 02731530003596 Premwati	32,00,000.00		26,59,600.00	Purchase of Property 4

29.08.2015	RTGS CR- YESB0000001 - SWEDE AUTO PRIVATE LIMITED- SUKHIR SINGH SHOKEEN- YESBR52015082900 000737		75,00,000.00	1,01,59,600.00	Advance for land Swede Auto
29.08.2015	RTGS CR- SBIN0011361- SUKHBIR SHOKEENSUKHBIR SINGH SHOKEEN- SBINR52015082919 359672		1,00,00,000.00	2,01,59,600.00	Own account transfer
02.09.2015	FT-DR- 02731530003655- Sudesh Gahlot	70,50,000.00		1,31,09,600.00	Purchase of Property 3
03.09.2015	FT-DR- 02731530003655- Sudesh Gahlot	70,50,000.00		60,59,600.00	Purchase of Property 3
04.09.2015	FT-DR- 02731530003604- Harish Gahlot	55,75,000.00		4,84,600.00	Purchase of Property 2
02.11.2015	RTGS CR- CORP0001244- SUNIL KUMARSUKHBIR SINGH SHOKEEN- CORPR92015110212 440004		25,00,000.00	29,84,600.00	Refund of advance Sunil
04.11.2015	RTGS CR- CORP0001244- SUNIL KUMARSUKHBIR SINGH SHOKEEN- CORPR92015110412 440001		25,00,000.00	54,84,600.00	Refund of advance Sunil
04.11.2015	FT-DR- 02731930001030- Kailash Gahlot	50,00,000.00		4,84,600.00	Purchase of Property 1
05.11.2015	RTGS CR- SBIN0011361- SUKHBIR SINGH		25,00,000.00	29,84,600.00	Own account transfer
09.11.2015	FT-DR- 02731930001030- Kailash Gahlot	25,00,000.00		4,84,600.00	Purchase of Property 1
28.03.2016	Program Management fee Jan-Mar 16 230316	114.50		4,84,485.50	Bank Charges

14. We find that the Id. CIT(A) deleted the addition on the grounds that the sources of the entire amounts, the credits and debits in the bank account have been duly explained. We find that the amounts have been

received against purchase of properties from various persons namely, Ms. Sarika Malu, Sh. Vikram Burman, Sh. Sunil Kumar, Sh. Jasbir, Ms. Premwati, Sh. Ram Karan Rana, Sh. Jagdish Yadav, Ms. Asha Singhla, Sh. Sudesh Gahlot. The bank statement also consists of amounts received and refunded to various people in total five properties have been purchased and payment of stamp duty is also reflected in the same bank account.

15. The assessee also submitted the documentary evidence such as confirmation, PAN details, copies of accounts etc. to substantiate the above source of funds. No adverse inference has been drawn on such explanations by the Assessing Officer. However, it is seen that the Assessing Officer has passed a remark that there exist other transactions of equivalent amounts from these persons and that it is not clear whether these amounts are also advances. The properties which have been purchased in the name of the assessee and the subsequent sale from such properties is offered to tax as capital gains in the year in which such sale is undertaken.
16. The Assessing Officer has made a remark that it is not explained why the properties were purchased by the appellant where the loans were provided by other parties. However, there is no embargo in law to purchase a property from borrowed funds. The appellant has explained that the nature of income earned by him is solely that of commission/ brokerage, pension, interest and capital gains. While explaining his investment activities from which capital gains are earned in the year of sale, the appellant submitted that he makes investment in properties either from his own funds or from borrowed funds. Whenever such

properties are sold, the resultant capital gains is offered to tax in the relevant assessment year.

17. Further, during the course of search, no incriminating evidence was discovered or seized to show that the credits of the appellant's bank statements were in the nature of income or that he was engaged in any other line of work. In this regard, it is noteworthy that the appellant was required to explain the source of funds utilized for purchasing the said properties, which has been duly discharged by the appellant. A mere suspicion has been raised by the Assessing Officer on such other credits of equivalent amounts, without seeking explanation of such other credits from the appellant. All credits appearing in his bank statement are duly explained, and the documentary evidence placed on record has been duly perused and examined. The source of investment made by the appellant during the year stands sufficiently explained. Hence, we decline to interfere with the reasoned order of the Id. CIT(A).

18. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 23/05/2023.

Sd/- Sd/-

(Yogesh Kumar US)
Judicial Member

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 23/05/2023

Subodh Kumar, Sr. PS Copy

forwarded to:

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

ASSISTANT REGISTRAR

